

BOARD MEETING OF SEPTEMBER 12, 2013

J. Paul Ozer, Chair



Juan Muñoz, Vice-Chair
J. Mark McWatters, Member
Leslie Bingham Escareño, Member
Robert D. Thomas, Member
Tom Gann, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

A G E N D A

10:00 a.m.
September 12, 2013

Capitol Extension Auditorium
1500 North Congress, Austin, TX

CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM

J. Paul Oser, Chairman

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

Introduction of Robert D. Thomas, newly appointed member of the Governing Board.

Recognition of Michele Atkins, Assistant Secretary to the Governing Board, upon her retirement.

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 Texas Government Code, Chapter 551, Texas Open Meetings Act.

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

LEGAL:

- a) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Pecan Tree Square Apartments (HTC#97003)
- b) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Spanish Park Apartments (HTC#93038)
- c) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Gables Manor (HTF#98031)
- d) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Monterrey Villa Apartments (HTF#09801)

Jeff Pender
Deputy General
Counsel

INTERNAL AUDIT:

- e) Presentation, Discussion, and Possible Approval of the FY2014 Internal Audit Work Plan

Sandy Donoho
Director, Internal
Audit

COMMUNITY AFFAIRS:

- f) Presentation, Discussion, and Possible Action on Program Year (PY) 2013 Community Services Block Grant (CSBG) Discretionary Awards

Michael DeYoung
Assist. DED, Network
& Customer Service

HOUSING RESOURCE CENTER:

- g) Presentation, Discussion, and Possible Approval on the 2014 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment)

Elizabeth Yevich
Dir. Housing
Resource Center

NEIGHBORHOOD STABILIZATION

- h) Presentation, Discussion, and Possible Ratification on an amendment to a Neighborhood Stabilization Program Contract in order to meet extended deadlines established by HUD

77110000105 Community Development Corporation of Brownsville Brownsville

Marni Holloway
Dir. Neighborhood
Stabilization Program

PROGRAM, PLANNING, POLICY, AND METRICS:

- i) Presentation and Discussion on the Department Snapshot tool for the Mortgage Credit Certificate (MCC) and My First Texas Home (TMP) programs

David Johnson
Mgr., Program
Planning, Policy &
Metrics

ASSET MANAGEMENT:

- j) Presentation, Discussion, and Possible Action on approval of Housing Tax Credit Amendments

Cari Garcia
Dir., Asset
Management

10014 Artisan at Port Isabel Port Isabel

02484 Sycamore Center Villas Fort Worth

02485 Alameda Villas Fort Worth

10079 Steeple Chase Farms Sherman

- k) Presentation, Discussion, and Possible Action on approval of Material LURA Amendments

93038 Spanish Park Apartments Arlington

BOND FINANCE:

- l) Presentation, Discussion, and Possible Action on Resolution No. 14-005 authorizing the sale of mortgage certificates and redemption of bonds relating to Single Family Mortgage Revenue Bonds 2004 Series A

Tim Nelson
Director, Bond
Finance

RULES:

- m) Presentation, Discussion, and Possible Action on the repeal of 10 TAC Chapter 1, §1.24, Foreclosure Data Collection, and directing its publication for public comment in the *Texas Register*

Elizabeth Yevich
Dir., Housing
Resource Center

- n) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22 and proposed new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22, concerning Providing Contact Information to the Department, and directing their publication for public comment in the *Texas Register*

- o) Presentation, Discussion, and Possible Action on proposed amendments to all sections of 10 TAC Chapter 23, Single Family HOME Program; Subchapter A, General Guidance, Purpose; Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds; Subchapter C, Homeowner Rehabilitation Assistance; Subchapter D, Homebuyer Assistance Program; Subchapter E, Contract for Deed Conversion Program; Subchapter F, Tenant-Based Rental Assistance Program; Subchapter G, Single Family Development Program; and the proposed repeal of Subchapter H, Application Procedures for Certification of Community Housing Development Organization (CHDO), and directing their publication for public comment in the *Texas Register*

Jennifer Molinari
Director, HOME

- p) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements, and a proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements, and directing their publication for public comment in the *Texas Register*

Cari Garcia
Director, Asset
Management

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| q) | Presentation, Discussion, and Possible Action on proposed amendment to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §10.1003, and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, §§ 10.1004 - 10.1005, concerning Income and Rent Limits, and directing their publication for public comment in the <i>Texas Register</i> | Patricia Murphy
Chief of Compliance |
| r) | Presentation, Discussion, and Possible Action on proposed new 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, concerning Community Affairs Compliance Monitoring Rules, and directing its publication for public comment in the Texas Register | |
| s) | Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 12, §§12.1, 12.4 – 12.6, 12.10, concerning Multifamily Housing Revenue Bond Rules, and directing its publication for public comment in the <i>Texas Register</i> | Cameron Dorsey
Director, Multifamily
Finance |
| t) | Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter D and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter D, concerning Underwriting and Loan Policy, and directing their publication for public comment in the <i>Texas Register</i> | Brent Stewart
Director, Real Estate
Analysis |
| u) | Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, concerning Comprehensive Energy Assistance Program, §5.430 and proposed new 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, concerning Comprehensive Energy Assistance Program, §5.430 and directing their publication for public comment in the <i>Texas Register</i> | Michael DeYoung
Assist. DED, Network
& Customer Service |

REPORT ITEMS:

The Board accepts the following reports:

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|----|---|---|
| a) | Report on Request for Proposal (RFP) for Master Servicer for the Single Family Mortgage Loan Program | Eric Pike
Director, Texas
Homeownership
Program |
| b) | Report on Request for Proposal for Program Administrator for the Single Family Mortgage Loan and Mortgage Credit Certificate (MCC) Programs | |
| c) | Status report on the HOME Program Contracts and Reservation System Participants through August, 2013 | Jennifer Molinari
Director, HOME |
| d) | Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers | Cari Garcia
Dir. , Asset
Management |
| e) | TDHCA Outreach Activities, July - August 2013 | Michael Lyttle
Chief of External
Affairs |

ACTION ITEMS:

- | | | |
|----------------|---|---|
| ITEM 2: | INTERNAL AUDIT:
Report from the Audit Committee Meeting | Sandy Donoho
Director, Internal
Audit |
| ITEM 3: | PROGRAM PLANNING POLICY & METRICS
Report from the Deputy Executive Director for Single Family, Community Affairs and Metrics | Brooke Boston
DED, Program
Planning, Policy &
Metrics |
| ITEM 4: | COMMUNITY AFFAIRS:
Presentation, Discussion, and Possible Action on Issues Relating to Administration of the Section 8 Housing Choice Voucher Program | Brooke Boston
DED, Program
Planning, Policy &
Metrics |

ITEM 5: MULTIFAMILY FINANCE DIVISION:

Cameron Dorsey
Director, Multifamily
Finance

- a) Presentation, Discussion, and Possible Action on Awards of Competitive 9% Low Income Housing Tax Credits from the Waiting List for the 2013 Housing Tax Credit Application Round

13109 Homestead Apartments Austin

- b) Presentation, Discussion, and Possible Action on Galveston Housing Initiative II, LP, a proposed multifamily development seeking 4% low income housing tax credits. Possible action may include consideration of the granting of waivers and approval of the awarding of 4% low income housing tax credits subject to such conditions and restrictions as the Board may require.

- c) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer:

13409 Park Central Port Arthur

- d) Presentation, Discussion, and Possible Action on Inducement Resolution No. 14-002 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority for the 2013 Waiting List

13606 Peoples El Shaddai Village Dallas

13607 St. James Manor Dallas

13608 Decatur Angle Apartments Fort Worth

- e) Presentation, Discussion, and Possible Action on Inducement Resolution No. 14-003, amending prior Inducement Resolution #13-008, for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority for the 2013 Waiting List

12606 Park Creek Manor Dallas

- f) Presentation, Discussion and Possible Action on Resolution No. 14-001 for the First Supplemental Trust Indenture and Modification Agreement relating to the Multifamily Housing Revenue Bonds, Series 2005 for the Homes at Pecan Grove

- g) Presentation, Discussion and Possible Action on Resolution No. 14-004 for the First Supplemental Trust Indenture and Forbearance and Modification Agreement relating to the Multifamily Housing Revenue Bonds, Series 2005 for Mission Del Rio

- h) Presentation, Discussion and Possible Action on the 2013 HOME Multifamily Rental Development Notice of Funding Availability (NOFA)

Item 6: Rules

- a) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, §§10.601 – 10.625, concerning Compliance Monitoring, and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, §§10.601 – 10.626, concerning Compliance Monitoring, and directing their publication for public comment in the *Texas Register*

Patricia Murphy
Chief of Compliance

- b) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, concerning §1.5, concerning Previous Participation Reviews, and proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.5 concerning Previous Participation Reviews, and directing their publication for public comment in the *Texas Register*

- c) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 11, concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11, concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication for public comment in the *Texas Register*
- d) Presentation, Discussion, and Possible Action on proposed repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and proposed new 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register*

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS. PUBLIC COMMENT MAY INCLUDE REQUESTS THAT THE BOARD PLACE SPECIFIC MATTERS ON FUTURE AGENDAS FOR CONSIDERATION.

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public) with regard to any posted item.

J. Paul Oxer
Chairman

1. Pursuant to Texas Government Code, §551.074 the Board may go into Executive Session 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, including the Director of Internal Audit.
2. Pursuant to Texas Government Code, §551.071(1) the Board may go into Executive Session to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., filed in federal district court, Northern District of Texas.*
 - b) *Threatened litigation – letter from Shari Goldsberry dated August 20, 2013*
3. Pursuant to Texas Government Code, §551.071(2) the Board may go into Executive Session 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 Texas Government Code, Chapter 551:
4. Pursuant to Texas Government Code, §551.072 the Board may go into Executive Session 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-
5. Pursuant to Texas Government Code, §2306.039(c) the Board may go into Executive Session to receive reports from the internal auditor, fraud prevention coordinator, or ethics advisor and discuss issues related to fraud, waste or abuse.

OPEN SESSION

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

ADJOURN

To access this agenda & details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michele Atkins, 512-475-3916 TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, 512-475-4577 at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

CONSENT AGENDA

1a

BOARD ACTION REQUEST

LEGAL SERVICES

SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order regarding Pecan Tree Square Apartments (HTC# 97003)

RECOMMENDED ACTION

WHEREAS, Pecan Tree Square Apartments in Grandview, Johnson County, Texas, owned by Pecan Tree Square Partnership, Ltd., has a history of uncorrected violations of the applicable land use restriction agreement (LURA);

WHEREAS, Pecan Tree Square Partnership, Ltd., and the TDHCA Administrative Penalty Committee ("Committee") have agreed, subject to Board approval, to enter into an Agreed Final Order calling for Pecan Tree Square Partnership, Ltd. to pay a \$485 administrative penalty for failure to provide required supportive services at the property;

WHEREAS, all other file and physical violations at the property have been resolved to the satisfaction of the Compliance Division; 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 the Agreed Final Order assessing an administrative penalty as outlined above for noncompliance at Pecan Tree Square Apartments (HTC# 97003), substantially in the form presented at this meeting, and including any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Pecan Tree Square Partnership, Ltd is the owner of Pecan Tree Square Apartments, a 24-unit apartment complex located in Grandview, Texas, which is subject to a LURA signed in 1998 and amended in 2001 in consideration for an allocation of low income housing tax credits in the annual amount of \$31,742 awarded by TDHCA.

On June 21, 2012, TDHCA performed a file monitoring review at the property and found violations of the LURA. The property did not resolve the violation regarding failure to provide Job Training Partnership Act (“JTPA”) and Comprehensive Energy Assistance Program (“CEAP”) supportive services throughout the Compliance Period as required by Appendix A of the LURA, an act that violated both the LURA and 10 TEX. ADMIN. CODE §60.116 (Monitoring for Social Services).

The supportive service violation remains outstanding and cannot be resolved because the owner cannot provide JTPA and CEAP services (providers went out of business). A material LURA amendment would be required in order to resolve the violation by substituting different supportive services, however, the Compliance Period ended on December 31, 2012 and TDHCA no longer monitors the property for supportive service requirements. Therefore, it is too late for the property to receive a material LURA amendment and provide replacement services.

Consistent with direction from the Department’s Administrative Penalty Committee, a penalty in the amount of \$485 is recommended against Pecan Tree Square Partnership, Ltd. This is the maximum possible penalty under 10 TEX. ADMIN. CODE §60.307, representing a \$5 penalty for each of the 97 days that the property was out of compliance.

**ENFORCEMENT ACTION
AGAINST PECAN TREE SQUARE
PARTNERSHIP, LTD. WITH
RESPECT TO PECAN TREE
SQUARE APARTMENTS
(HTC FILE # 97003)**

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**BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS**

AGREED FINAL ORDER

On this 12th day of September, 2013, the Governing Board of the Texas Department of Housing and Community Affairs (“Board”) considered the matter of whether enforcement action should be taken against **PECAN TREE SQUARE PARTNERSHIP, LTD.**, a Louisiana Limited Partnership (“Pecan Tree” or “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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this order:

FINDINGS OF FACT

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-0503, and 10 TAC §1.14 and 10 TAC, Chapter 60.
2. Pecan Tree Square Apartments, a 24-unit apartment complex located in Grandview, Texas and owned by Respondent, is subject to a Land Use Restriction Agreement (“LURA”) dated to be effective May 29, 1998, filed of record at Volume 2214, Page 968 of the Official Public Records of Real Property of Johnson County, Texas (“the Records”), as amended on November 13, 2001, in a First Amendment filed of record at Volume 2574, Page 82 of the Records. The LURA was entered into and signed by Respondent in consideration for an allocation of low income housing tax credits in the annual amount of \$31,742 awarded by TDHCA.
3. Respondent is a Louisiana limited liability partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

4. An on-site monitoring review was conducted on June 21, 2012, to determine whether Pecan Tree was in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility, keep the properties in good condition and comply with any additional requirements of the LURA. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent, however, the supportive service violation was not corrected before the September 25, 2012 corrective action deadline. Pecan Tree failed to provide Job Training Partnership Act ("JTPA") and Comprehensive Energy Assistance Program ("CEAP") supportive services throughout the Compliance Period as required by Appendix A of the LURA, an act that violated both the LURA and 10 TEX. ADMIN. CODE §60.116 (Monitoring for Social Services).

The supportive service violation remains outstanding and cannot be corrected because the Compliance Period has ended.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pecan Tree violated requirements in Appendix A of the LURA and 10 TEX. ADMIN. CODE §60.116 by failing to provide all required supportive services.
4. 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, including a land use restriction agreement, to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
5. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 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
6. An administrative penalty of \$485.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the statutory factors to be considered in assessing such penalties, 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 **PECAN TREE SQUARE PARTNERSHIP, LTD.** is assessed an administrative penalty of \$485.00 and shall pay the administrative penalty within thirty (30) days of the date this Agreed Final Order is approved by the governing board of TDHCA. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs."

IT IS FURTHER ORDERED that payment must be submitted to the following address:

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

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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 SERVICES

SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order regarding Spanish Park Apartments (HTC# 93038)

RECOMMENDED ACTION

WHEREAS, Spanish Park Apartments in Arlington, Tarrant County, Texas, owned by Cooper Redevelopment, LLC, has a history of uncorrected violations of the applicable land use restriction agreement;

WHEREAS, on June 25, 2013, representatives of Cooper Redevelopment, LLC, met with the TDHCA Administrative Penalty Committee and agreed, subject to Board approval, to enter into an Agreed Final Order with the following requirements:

1. Cooper Redevelopment, LLC, is assessed an administrative penalty in the amount of \$1,700, which is deferred and may be satisfied, in lieu, as follows;
2. All onsite staff, with the exception of maintenance personnel, must attend eight hours of income eligibility training and submit a completion certificate to TDHCA on or before September 30, 2013;
3. All 17 outstanding file violations must be corrected and sufficient evidence of correction must be submitted to TDHCA as indicated in the attachments of the Agreed Final Order on or before September 30, 2013;
4. If the Board does not approve a reduction in the number of restricted units to permit the continued usage of units C118 and C126 as a maintenance shop and management office, both units must be converted to residential use and evidence of the conversion must be submitted on or before January 1, 2014;
5. If outstanding violations are not fully resolved and sufficient evidence of the corrections have not been submitted within the established timelines, the \$1,700 administrative penalty will become due and payable; 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 the Agreed Final Order assessing an administrative penalty, deferred as outlined above, for noncompliance at Spanish Park Apartments (HTC 93038), substantially in the form presented at this meeting, and including any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Cooper Redevelopment LLC, is the owner of Spanish Park Apartments, a 362-unit apartment complex located in Arlington, Texas, which is subject to a land use restriction agreement (“LURA”) signed in 1993 in consideration for an allocation of low income housing tax credits in the annual amount of \$196,065 awarded by TDHCA.

Despite numerous attempts by the Compliance Division to provide technical assistance, Cooper Redevelopment LLC, has not operated the property in full compliance with LURA requirements. Representatives of the owner met with TDHCA’s Administrative Penalty Committee on June 25, 2013, and presented a thorough plan for bringing the property back into full compliance and maintaining files in acceptable condition going forward. They also outlined their plans to conduct a full self-audit of the property files to ensure future compliance. Owner representatives agreed that onsite staff will attend training, and correct all violations on or before September 30, 2013, as indicated in the Agreed Final Order. They agreed to pay the \$1,700 administrative penalty if the conditions of the order are violated. Finally, they have requested material changes to the LURA, for consideration under a separate agenda item, that would reconcile the operational unit mix with the LURA.

Consistent with direction from the Department’s Administrative Penalty Committee, a penalty in the amount of \$1,700, deferred as outlined, is recommended. This represents a penalty amount of \$100 for each of the remaining 17 file monitoring violations discussed during the June 25, 2013, informal conference. The penalty amount would be fully deferred and possibly forgiven provided that Cooper Redevelopment LLC, complies with all terms of the Agreed Final Order.

ENFORCEMENT ACTION	§	BEFORE THE
AGAINST COOPER	§	TEXAS DEPARTMENT OF
REDEVELOPMENT, LLC WITH	§	HOUSING AND
RESPECT TO SPANISH PARK	§	COMMUNITY AFFAIRS
APARTMENTS (HTC FILE # 93038)	§	

AGREED FINAL ORDER

On this 12th day of September, 2013, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **COOPER REDEVELOPMENT, LLC**, a Texas limited liability company (“Cooper” or “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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TAC §1.14 and 10 TAC, Chapter 60.
2. On December 27, 1993, GSSW-REO Westwoods Arlington, L.P. (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$196,065 to build and operate Spanish Park Apartments (“Property”) (HTC file No. 93038 / CMTS No. 2304 / LDLD No. 31).
3. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 27, 1993, and filed of record at Volume 1388, Page 565 of the Official Public Records of Real Property of Tarrant County, Texas (“Records”), as amended by a First Amendment executed on April 1, 1997, and filed in the Records at Document Number D200238016. 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. Respondent took ownership of the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Assume and Comply), effective May 24, 2007, and filed the same in the Records at Document Number D207181663, thereby binding Respondent to the terms of the LURA.
5. Respondent is a Texas limited liability corporation that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

6. An on-site monitoring review was conducted on January 5, 2012, to determine whether Respondent had resolved prior violations of LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Prior monitoring reviews in 1998, 2000, and 2003 had identified violations, and the January 5, 2012 onsite review was intended to verify correction of past noncompliance. A monitoring letter was sent, and Respondent answered. However, several issues remained uncorrected, and Respondent was requested to reply a second time, no later than September 5, 2013. The following were not corrected before the September 5, 2012, corrective action deadline:
 - a. Respondent failed to meet the property's minimum set aside requirement, a violation of Section 4(a) of the LURA. Minimum set aside elections are required pursuant to Internal Revenue Code §42(g)(1), which requires tax credit properties to make such an election regarding how the property shall be monitored by TDHCA, and the making of such an election is further addressed in 10 TEX. ADMIN. CODE § 60.101. Spanish Park has a total of 362 units. Prior Owner selected a minimum set aside of 40% of units to be leased to residents with income levels at or below 60% of area median income ("AMI"). Therefore, at all times, at least 145 units must be leased to households with an income and rent below the 60% AMI limits. Respondent failed to maintain that minimum set aside election in 2003 and the violation cannot be resolved until all other violations indicated below have been corrected.
 - b. Respondent failed to provide documentation that household incomes are within prescribed limits upon initial occupancy for the following 17 units: C116, C126, C226, C244, E102, E109, E115, E117, E126, E131, E201, E207, E217, E229, M110, T206 and T250, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA.
7. On July 19, 2013, TDHCA became aware that units C118 and C126 are being used for non-residential use, a violation of the LURA which requires 100% of the units to be leased to individuals or families whose income is 60% or less of the area median gross income. It came to the attention of the Department that Units C126 and C118 have been used as the maintenance shop and management office since prior to Respondent's purchase of the property in 2007.

8. The following violations remain outstanding at the time of this order:
 - a. Minimum set aside violation described in FOF #6a;
 - b. Household initial occupancy income limit violations for units: C244, E126, E207, E109, E131, T206, C126, C226 and E201, described in FOF #6b.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
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 Section 4(a) of the LURA in 2009 by failing to meet the property set-aside requirement on or before the associated deadline in violation of 10 TEX. ADMIN. CODE §§ 60.101 and 60.117.
5. Respondent violated representations made in the LURA, Section 4 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2012 by failing to provide documentation that household incomes are within prescribed limits upon initial occupancy for the following 17 units: C116, C126, C226, C244, E102, E109, E115, E117, E126, E131, E201, E207, E217, E229, M110, T206 and T250.
6. Respondent violated the representations in the LURA by using Units C118 and C126 for non-residential use as a maintenance shop and management office.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, 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 Chapter 2306 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 \$1700.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 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 \$1,700.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that all onsite property staff at Spanish Park Apartments, with the exception of maintenance personnel, shall attend at least 8 hours of income eligibility training offered by TDHCA and submit a completion certificate to the Agency on or before September 30, 2013.

IT IS FURTHER ORDERED that Respondent shall correct the file monitoring violations as indicated in Attachment 1 and submit documentation of the corrections to TDHCA on or before September 30, 2013.

IT IS FURTHER ORDERED that Respondent shall convert units C118 and C126 to residential use and provide evidence of the conversion on or before January 1, 2014 if the material LURA amendment request to permit a reduction in the number of restricted units is not approved by the Board prior to January 1, 2014.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, and the violations are corrected as required, the satisfactory performance under this order will be accepted in lieu of the assessed administrative penalty and the full 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, then the full administrative penalty in the amount of \$1,700 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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

IT IS FURTHER ORDERED that corrective documentation must be emailed to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us or mailed to one of the addresses below. 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 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

[Remainder of page intentionally blank]

Given under my hand and seal of office this _____ day of _____, 2013.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

Tenant File Instructions

Minimum set aside violation will be considered resolved when all tenant file violations indicated below have been corrected.

Household income above limit upon initial occupancy violations for units C244, E126, E207, E109, E131, T206, C126, C226 and E201 must be resolved as indicated below:

Circumstance with respect to units listed above	Required Action
If unit is occupied by a qualified household	Follow the instructions in the attached letter dated 8/6/2012. Note that you must also complete the Fair Housing Choice Disclosure Notice for any households completing tenant file paperwork after 12/27/2012.
If unit is occupied by a new qualified household	Submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice.
If unit is occupied by a nonqualified household on a month-to-month lease	<ol style="list-style-type: none">1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.2. Upon occupancy by a qualified household, you will be required to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after September 30, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
If unit is occupied by a nonqualified household with a non-expired lease	<ol style="list-style-type: none">1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.2. Upon occupancy by a qualified household, you will be required to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after September 30, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
If unit is vacant	<ol style="list-style-type: none">1. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.2. Upon occupancy by a qualified household, you will be required to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after September 30, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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GOVERNOR

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J. Mark McWaters

(512) 305-8860
wendy.quackenbush@tdhca.state.tx.us

August 6, 2012

Ryan David Gomas
Cooper Redevelopment, LLC
420 W. Park Row
Arlington, TX 76010

RE: Spanish Park Apartments CMTS: 2304 / HTC: 93038

Mr. Gomas:

The Texas Department of Housing and Community Affairs (Department) has received documentation for some of the remaining noncompliance identified during the visit at Spanish Park on January 5, 2012. The visit consisted of reviewing units with outstanding findings of noncompliance.

The Department was able to correct the finding, Household income above income limit upon initial occupancy, for the following units only: C124, C225, E128, E137, E116, and M110. In addition, the documentation submitted was evidence that the development is now marketing to persons with disabilities and the Department was able to correct the finding Failure to provide an Affirmative Marketing Plan.

Listed below are the units reviewed on January 5, 2012 that remain in noncompliance:

C116 – The property must execute the required Annual Eligibility Certification (AEC) form and submit copies of the executed AEC to the Department.

C244 – A new household moved in May 3 2012, and the Development submitted the apartment lease, application, and supplemental application. Submit income and asset verifications, and signed tenant income certification to the Department for review.

E126 – The household's income exceeds the applicable limit at move-in. **Do not renew the household's lease contract.** The unit will be in compliance once it is occupied by an income eligible household.

E207 - The application indicates child support and TANF payments which were not verified and included in the household's income. Obtain documentation of child support and TANF payments and include the income on the Income Certification form. Submit all documentation for review.

221 East 11th - P.O. Box 13941 - Austin, Texas 78711-3941 - (800) 525-0657 - (512) 475-3800

E109 - The household's income exceeds the applicable limit at move-in. Do not renew the household's lease contract. The unit will be in compliance once it is occupied by an income eligible household.

E115 - The property must execute the required AEC form and submit copies of the executed AEC to the Department.

E131 - The household's income exceeds the applicable limit at move in and the subsequent recertification. Do not renew the household's lease contract. The unit will be in compliance once it is occupied by an income eligible household.

E229 - The property must execute the required AEC form and submit copies of the executed AEC to the Department.

M110 - The property must execute the required AEC form and submit copies of the executed AEC to the Department.

T206 - The household has zero income and the unit is not receiving rental assistance. The household is current paying \$650 a month in rent. Properly screen the household for all sources of income and assets under the current income limit. If the household is eligible submit all documentation for review. If the household's income is not eligible do not renew the lease contract. The unit will be in compliance once it is occupied by an income eligible household.

T250 - The household's income exceeds the applicable limit at move in and the subsequent recertification. Do not renew the household's lease contract. The unit will be in compliance once it is occupied by an income eligible household.

Outstanding file issues from the 1998 onsite monitoring review:

Household income above income limit upon initial occupancy: C244 and E229. Lease the unit to an eligible household. Submit a copy of the household's application(s), Income Certification form, verifications of income and assets and the first and signatory page of the lease contract.

Outstanding file issues from the 2000 onsite monitoring review:

Household income above income limit upon initial occupancy: C126; C226; E102; E109; E117; E126; E131; E201; E207; E217; T206 and T250. Lease the unit to an eligible household. Submit a copy of the household's application(s), Income Certification form, verifications of income and assets and the first and signatory page of the lease contract.

Outstanding findings from the 2003 onsite monitoring review:

Project failed to meet minimum set-aside requirements: The property has total of 362 units and selected a minimum set aside of 40/60. This finding will be corrected once all file issues are corrected.

Please supply all requested documentation no later than **September 5, 2012**. If it is not possible to provide the requested documentation by the corrective action deadline, please submit a corrective action plan detailing how and when the issues identified will be resolved.

The Department will notify the Administrative Penalties of the corrected finding. Spanish Park has a current noncompliance score of 116 for the Housing Tax Credit (HTC) program. Please see the attached *Issue of Noncompliance Report* which lists the property's noncompliance findings. HTC properties that have a score of 30 or more are considered to be in material noncompliance with the Department. **Spanish Park is currently in Material Noncompliance.** Owners of properties in material noncompliance are not eligible for additional funding and may be subject to additional fees and sanctions. 10 TAC §60.102 and §60.123 explain this scoring system.

If you have any questions about this monitoring report, please contact Patricia Hensley toll free in Texas at (800) 643-8204, directly at (512) 475-4603, or email: Patricia.Hensley@tdhca.state.tx.us

Sincerely,



Patricia Hensley
Compliance Monitor

cc: Ysella Kaseman
Asset Management and Enforcement Specialist-TDHCA

Property Staff

1c

BOARD ACTION REQUEST

LEGAL SERVICES

SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order regarding Gables Manor (HTF 98031)

RECOMMENDED ACTION

WHEREAS, Gables Manor Apartments in Daingerfield, Morris County, Texas, owned by Stephen Townsend, has a history of uncorrected violations of the applicable land use restriction agreement;

WHEREAS, on July 30, 2013, Stephen Townsend, met with the TDHCA Administrative Penalty Committee and agreed, subject to Board approval, to attend First Thursday Training on August 1, 2013, and then enter into an Agreed Final Order with the following requirements:

1. Stephen Townsend is assessed an administrative penalty in the amount of \$12,000, which is deferred and may be otherwise satisfied, as follows;
2. The following documentation must be submitted within 30 days of the date the Agreed Final Order is approved by the Board:
 - a. Annual Owner's Compliance Reports for the years 2011 and 2012;
 - b. Affirmative Marketing Plan and supplemental marketing materials.
3. All units must be ready for occupancy and a full renovation must be completed in preparation for a TDHCA inspection to be conducted on or after July 31, 2014;
4. If any uniform physical condition standards violations remain when the 2014 TDHCA inspection is performed, Mr. Townsend shall receive a 90-day period to make corrections in accordance with TDHCA rules;
5. A rehabilitation status report must be submitted on or before January 31, 2014;
6. If outstanding violations are not fully resolved and sufficient evidence of the corrections have not been submitted within the established timeline, the \$12,000 administrative penalty shall be immediately due and payable to the Department; 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 the Agreed Final Order assessing an administrative penalty as outlined above for noncompliance at Gables Manor (HTF 98031), substantially in the form presented at this meeting, and including any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Stephen Townsend is the owner of Gables Manor, a 12-unit apartment complex located in Daingerfield, Texas, which is subject to a land use restriction agreement (“LURA”) signed in 1996 in consideration for a Housing Trust Fund allocation in the total amount of \$221,850 awarded by TDHCA.

Despite numerous attempts by the Compliance Division, the TDHCA Asset Review Committee and the TDHCA Administrative Penalty Committee, multiple owners have been unable to operate this property in compliance with LURA requirements and the property was abandoned until Mr. Townsend purchased it during a property tax foreclosure sale. Mr. Townsend met with TDHCA’s Administrative Penalty Committee on July 30, 2013, and presented a plan for rehabilitating the property. He agreed to make necessary corrections on or before July 31, 2014, as indicated in the Agreed Final Order. He agreed to pay the \$12,000 administrative penalty if the conditions of the order are violated.

Consistent with direction from the Department’s Administrative Penalty Committee, a fully deferred penalty in the amount of \$12,000 is recommended. The penalty amount would be fully deferred and forgiven provided that Stephen Townsend complies with all terms of the Agreed Final Order.

**ENFORCEMENT ACTION
AGAINST STEPHEN TOWNSEND
WITH RESPECT TO GABLES
MANOR (HTF FILE # 98031)**

§
§
§
§
§

**BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS**

AGREED FINAL ORDER

On this 12th day of September, 2013, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **STEPHEN TOWNSEND** (“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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-0503, and 10 TAC §1.14 and 10 TAC, Chapter 60.
2. On June 28, 1996, Community Council of Cass, Marion and Morris Counties, Inc., a Texas nonprofit corporation (“Original Owner”) was awarded an Housing Trust Fund allocation in an total amount of \$221,850 to build and operate Gables Manor (“Property”) (HTF file No. 93031 / CMTS No. 2648 / LDLD No. 151).
3. Original Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective June 28, 1998 and filed of record at Volume 267, Page 327 of the Official Public Records of Real Property of Morris County, Texas (“Records”). In accordance with Section 7.8 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. William F. Ross and Susan V. Ross (“Second Owner”) purchased the property and assumed responsibility for the Housing Trust Fund loan on December 16, 2004.

5. Respondent took ownership of the Property by way of a Sheriff's Tax Deed dated December 20, 2011 and filed of record at Document Number 2011-001936 of the Records. The property remained subject to the LURA per Section 7.8 of the LURA. In addition, the property description in the Sheriff's Tax Deed specifically states that the property remains subject to the LURA.
6. Respondent is an individual that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

7. Uniform Physical Condition Standards ("UPCS") inspections were performed in 2004, 2007 and 2008. Each inspection report showed numerous serious property condition violations and violations of 10 Tex. Admin. Code §10.616 which requires the property to be "decent, safe, sanitary, in good repair, and suitable for occupancy." The property became vacant and unsuitable for occupancy, a violation of Section 2.2 of the LURA, which requires units to be available for occupancy. TDHCA first provided notice of the violations to Current Owner on January 27, 2012, after receiving a copy of the recorded Sheriff's Tax Deed and requested that Current Owner submit a corrective plan for consideration by the Administrative Penalty Committee ("Committee"). A December 31, 2012, completion deadline was set to fully renovate the property, but this was not achieved.
8. Annual Owner's Compliance Reports for the years 2011 and 2012 were due on April 30, 2012, and April 30, 2013, respectively. Failure to submit annual reports is a violation of Section 4.3 of the LURA which requires the owner to submit a certificate of continuing compliance in a form prescribed by the Department. It is also a violation of 10 TEX. ADMIN. CODE §10.603 ("Reporting Requirements"), which requires each development to submit an Annual Owner's Compliance Report electronically. TDHCA provided notice of the violation to Current Owner on January 27, 2012, but no reports were submitted.
9. An Affirmative Marketing Plan must be maintained at the property. Failure to have an Affirmative Marketing Plan and keep supportive marketing materials advertising vacancies to disabled persons and to minority persons identified in census materials as living in the community but least likely to apply, is a violation of 10 TEX. ADMIN. CODE §10.612(3) (Requirements Pertaining to Households with Rental Assistance). TDHCA provided notice of the violation to Current Owner on January 27, 2012, but no plan or supporting documents were submitted.
10. The following violations remain outstanding at the time of this order:
 - a. UPCS violations described in FOF #7.
 - b. Annual Owner's Compliance Report violations described in FOF #8.
 - c. Affirmative Marketing Plan violation described in FOF #9.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.041-.0503, 10TAC §1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to Tex. Gov't Code §2306.261 – 2306.271, 10 Tex. Admin. Code §10.601 and Section 4.5 of the LURA, TDHCA has the authority to monitor housing sponsors and their properties for noncompliance.
4. Pursuant to Tex. Gov't. Code §2306.231, TDHCA has the authority to order alterations, changes or repairs necessary to protect the health, safety and welfare of the occupants of a housing development.
5. Respondent violated Section 2.2 of the LURA by failing to make units available for occupancy.
6. Respondent violated 10 Tex. Admin. Code §10.616 by failing to return the property to a condition that is "decent, safe, sanitary, in good repair, and suitable for occupancy" after receiving notice of the violations and not making timely corrections.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, 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 Chapter 2306 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 \$12,000 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 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 \$12,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall submit the documents listed at Attachment 1 within thirty days of the date this Agreed Final Order is approved by the Board.

IT IS FURTHER ORDERED that Respondent shall make all units ready for occupancy and shall perform a full rehabilitation to the Uniform Physical Condition Standard included at Attachment 2, including repairs to all violations indicated at Attachment 3, in preparation for a TDHCA inspection to be performed on or after July 31, 2014. If any violations are found during the 2014 TDHCA inspection, Respondent shall receive a 90-day period to make repairs and submit corrective documentation to TDHCA in accordance with TDHCA rules.

IT IS FURTHER ORDERED that Respondent shall submit a status report regarding the rehabilitation on or before January 31, 2014.

IT IS FURTHER ORDERED that Respondent must request and receive authorization from TDHCA prior to any future property transfer. If a sale is contemplated, Respondent shall submit an ownership transfer request as required by TDHCA rules.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, and the violations are corrected as required, the satisfactory performance under this order will be accepted in lieu of the assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any condition or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$12,000 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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

IT IS FURTHER ORDERED that corrective documentation must be emailed to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us or mailed to one of the addresses below unless otherwise instructed at Attachment 1. 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 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

The following documents must be submitted within thirty days of the date this Agreed Final Order is approved by the Board:

1. Annual Owner's Compliance Reports for the years 2011 and 2012 must be submitted via the Compliance Monitoring and Tracking System at <https://pox.tdhca.state.tx.us/aims2/pox>.

Training materials are available at: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>.

If you have technical difficulties, please contact the database administrator, James Roper, at 512.936.7751 or james.roper@tdhca.state.tx.us.

2. Affirmative Marketing Plan and supplemental marketing materials to organizations that work with the disabled. Written guidance, the affirmative marketing plan form and samples of supplemental marketing materials will be provided by TDHCA to help with this requirement.

Attachment 2

Comprehensive List of Inspection Items under the Uniform Physical Condition Standard

Uniform Physical Condition Standards - Comprehensive Listing

Page: ____ of ____

Inspectable Area: Site

Property ID / Name: _____

Inspection Date: _____

Inspectable Item	Observable Deficiency	NOD	Level			NA	H&S
			1	2	3		
Fencing and Gates	Damaged/Falling/Leaning						NLT
	Holes						NLT
	Missing Sections						NLT
Grounds	Erosion/Rutting Areas						NLT
	Overgrown/Penetrating Vegetation						
	Ponding/Site Drainage						
Health & Safety	Air Quality - Sewer Odor Detected						NLT
	Air Quality - Propane/Natural Gas/Methane Gas Detected						LT
	Electrical Hazards - Exposed Wires/Open Panels						LT
	Electrical Hazards - Water Leaks on/near Electrical Equipment						LT
	Flammable Materials - Improperly Stored						NLT
	Garbage and Debris - Outdoors						NLT
	Hazards - Other						NLT
	Hazards - Sharp Edges						NLT
	Hazards - Tripping						NLT
	Infestation - Insects						NLT
Mailboxes/Project Signs	Infestation - Rats/Mice/Vermin						NLT
	Mailbox Missing/Damaged						
Market Appeal	Signs Damaged						
	Graffiti						
Parking Lots/Driveways/Roads	Litter						
	Cracks						
	Ponding						
Play Areas and Equipment	Potholes/Loose Material						
	Settlement/Heaving						
Refuse Disposal	Damaged/Broken Equipment						NLT
	Deteriorated Play Area Surface						
Retaining Walls	Broken/Damaged Enclosure-Inadequate Outside Storage Space						
Storm Drainage	Damaged/Falling/Leaning						NLT
Walkways/Steps	Damaged/Obstructed						
	Broken/Missing Hand Railing						NLT
	Cracks/Settlement/Heaving						
	Spalling						

- In order to accurately categorize a deficiency as a "Level 1", "Level 2" or "Level 3" (including independent Health & Safety items), you must refer to the Final Dictionary of Deficiency Definitions (PASS) Version 2.3, dated 03/08/2000. This document can be found at http://www.hud.gov/offices/reac/pdf/pass_dict2.3.pdf (325 Pages, 343 KB)

- Additional clarification to these definitions is contained in the REAC PASS Compilation Bulletin which can be found at http://www.hud.gov/offices/reac/pdf/pass_bulletin.pdf (24 Pages, 275 KB)

- Only level 3 is applied to independent Health & Safety deficiencies.

- In the H&S column, NLT is a "Non-Life Threatening" Health & Safety concern whereas LT is a "Life Threatening" concern which calls for immediate attention or remedy and will show up on the Exigent Health and Safety Report at the end of an inspection.

Uniform Physical Condition Standards - Comprehensive Listing
Inspectable Area: Building Exterior

Page: _____ of _____

Property ID / Name: _____
 Building Number: _____

Inspection Date: _____

Inspectable Item	Observable Deficiency	NOD	Level			NA	H&S
			1	2	3		
Doors	Damaged Frames/Threshold/Lintels/Trim						NLT
	Damaged Hardware/Locks						
	Damaged Surface (Holes/Paint/Rusting/Glass)						
	Damaged/Missing Screen/Storm/Security Door						NLT
	Deteriorated/Missing Caulking/Seals						
	Missing Door						
Fire Escapes	Blocked Egress/Ladders						LT
	Visibly Missing Components						LT
Foundations	Cracks/Gaps						
	Spalling/Exposed Rebar						
Health and Safety	Electrical Hazards - Exposed Wires/Open Panels						LT
	Electrical Hazards - Water Leaks on/near Electrical Equipment						LT
	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable						LT
	Emergency Fire Exits - Missing Exit Signs						NLT
	Flammable/Combustible Materials - Improperly Stored						NLT
	Garbage and Debris - Outdoors						NLT
	Hazards - Other						NLT
	Hazards - Sharp Edges						NLT
	Hazards - Tripping						NLT
	Infestation - Insects						NLT
	Infestation - Rats/Mice/Vermin						NLT
Lighting	Broken Fixtures/Bulbs						
Roofs	Damaged Soffits/Fascia						
	Damaged Vents						
	Damaged/Clogged Drains						
	Damaged/Torn Membrane/Missing Ballast						
	Missing/Damaged Components from Downspout/Gutter						
	Missing/Damaged Shingles						
	Ponding						
Walls	Cracks/Gaps						
	Damaged Chimneys						NLT
	Missing/Damaged Caulking/Mortar						
	Missing Pieces/Holes/Spalling						
	Stained/Peeling/Needs Paint						
Windows	Broken/Missing/Cracked Panes						NLT
	Damaged Sills/Frames/Lintels/Trim						
	Damaged/Missing Screens						
	Missing/Deteriorated Caulking/Seals/Glazing Compound						
	Peeling/Needs Paint						
	Security Bars Prevent Egress						LT

Uniform Physical Condition Standards - Comprehensive Listing
Inspectable Area: Building Systems

Page: _____ of _____

Property ID / Name: _____
 Building Number: _____

Inspection Date: _____

Inspectable Item	Observable Deficiency	NOD	Level			NA	H&S
			1	2	3		
Domestic Water	Leaking Central Water Supply						
	Misaligned Chimney/Ventilation System						LT
	Missing Pressure Relief Valve						NLT
	Rust/Corrosion on Heater Chimney						NLT
	Water Supply Inoperable						NLT
Electrical System	Blocked Access/Improper Storage						NLT
	Burnt Breakers						NLT
	Evidence of Leaks/Corrosion						NLT
	Frayed Wiring						
	Missing Breakers/Fuses						LT
	Missing Covers						LT
Elevators	Not Operable						NLT
Emergency Power	Auxiliary Lighting Inoperable						
	Run-Up Records/Documentation Not Available						
Fire Protection	Missing Sprinkler Head						NLT
	Missing/Damaged/Expired Extinguishers						LT
Health & Safety	Air Quality - Mold and/or Mildew Observed						NLT
	Air Quality - Propane/Natural Gas/Methane Gas Detected						LT
	Air Quality - Sewer Odor Detected						NLT
	Electrical Hazards - Exposed Wires/Open Panels						LT
	Electrical Hazards - Water Leaks on/near Electrical Equipment						LT
	Elevator - Tripping						NLT
	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable						LT
	Emergency Fire Exits - Missing Exit Signs						NLT
	Flammable Materials - Improperly Stored						NLT
	Garbage and Debris - Indoors						NLT
	Hazards - Other						NLT
	Hazards - Sharp Edges						NLT
	Hazards - Tripping						NLT
Infestation - Insects							NLT
	Infestation - Rats/Mice/Vermin						NLT
HVAC	Boiler/Pump Leaks						
	Fuel Supply Leaks						NLT
	General Rust/Corrosion						NLT
	Misaligned Chimney/Ventilation System						LT
Roof Exhaust System	Roof Exhaust Fan(s) Inoperable						
Sanitary System	Broken/Leaking/Clogged Pipes or Drains						NLT
	Missing Drain/Cleanout/Manhole Covers						

Uniform Physical Condition Standards - Comprehensive Listing
Inspectable Area: Common Areas

Page: _____ of _____

Property ID / Name: _____
 Building Number: _____

Inspection Date: _____

X	Inspectable Item Location	Observable Deficiency	NOD	Level			NA	H&S
				1	2	3		
	Basement/Garage/Carport	Baluster/Side Railings - Damaged						
	Closet/Utility/Mechanical	Cabinets - Missing/Damaged						
	Community Room	Call for Aid - Inoperable						NLT
	Day Care	Ceiling - Bulging/Buckling						
	Halls/Corridors/Stairs	Ceiling - Holes/Missing Tiles/Panels/Cracks						
	Kitchen	Ceiling - Peeling/Needs Paint						
	Laundry Room	Ceiling - Water Stains/Water Damage/Mold/Mildew						
	Lobby	Countertops - Missing/Damaged						
	Office	Dishwasher/Garbage Disposal - Inoperable						
	Other Community Spaces	Doors - Damaged Frames/Threshold/Lintels/Trim						NLT
	Patio/Porch/Balcony	Doors - Damaged Hardware/Locks						
	Restrooms/Pool Structures	Doors - Damaged Surface (Holes/Paint/Rust/Glass)						
	Storage	Doors - Damaged/Missing Screen/Storm/Security Door						NLT
		Doors - Deteriorated/Missing Seals (Entry Only)						
		Doors - Missing Door						
		Dryer Vent -Missing/Damaged/Inoperable						
		Electrical - Blocked Access to Electrical Panel						NLT
		Electrical - Burnt Breakers						NLT
		Electrical - Evidence of Leaks/Corrosion						NLT
		Electrical - Frayed Wiring						
		Electrical - Missing Breakers						LT
		Electrical - Missing Covers						LT
		Floors - Bulging/Buckling						
		Floors - Floor Covering Damaged						
		Floors - Missing Floor/Tiles						
		Floors - Peeling/Needs Paint						
		Floors - Rot/Deteriorated Subfloor						
		Floors - Water Stains/Water Damage/Mold/Mildew						
		GFI - Inoperable						NLT
		Graffiti						
		HVAC - Convection/Radiant Heat System Covers Missing/Damaged						
		HVAC - General Rust/Corrosion						
		HVAC - Inoperable						
		HVAC - Misaligned Chimney/Ventilation System						LT
		HVAC - Noisy/Vibrating/Leaking						
		Lavatory Sink - Damaged/Missing						NLT
		Lighting - Missing/Damaged/Inoperable Fixture						
		Mailbox - Missing/Damaged						
		Outlets/Switches/Cover Plates - Missing/Broken						LT
		Pedestrian/Wheelchair Ramp						
		Plumbing - Clogged Drains						NLT
		Plumbing - Leaking Faucet/Pipes						NLT
		Range Hood /Exhaust Fans - Excessive Grease/Inoperable						
		Range/Stove - Missing/Damaged/Inoperable						
		Refrigerator - Damaged/Inoperable						
		Restroom Cabinet - Damaged/Missing						
		Shower/Tub - Damaged/Missing						
		Sink - Missing/Damaged						NLT
		Smoke Detector - Missing/Inoperable						LT
		Stairs - Broken/Damaged/Missing Steps						NLT
		Stairs - Broken/Missing Hand Railing						NLT
		Ventilation/Exhaust System - Inoperable						
		Walls - Bulging/Buckling						
		Walls - Damaged						
		Walls - Damaged/Deteriorated Trim						
		Walls - Peeling/Needs Paint						
		Walls - Water Stains/Water Damage/Mold/Mildew						
		Water Closet/Toilet - Damaged/Clogged/Missing						
		Windows - Cracked/Broken/Missing Panes						NLT
		Windows - Damaged Window Sill						
		Windows - Inoperable/Not Lockable						NLT

	Windows - Missing/Deteriorated Caulking/Seals/Glazing Compound						
	Windows - Peeling/Needs Paint						
	Windows - Security Bars Prevent Egress						LT
Health & Safety	Air Quality - Mold and/or Mildew Observed						NLT
	Air Quality - Propane/Natural Gas/Methane Gas Detected						LT
	Air Quality - Sewer Odor Detected						NLT
	Electrical Hazards - Exposed Wires/Open Panels						LT
	Electrical Hazards - Water Leaks on/near Electrical Equipment						LT
	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable						LT
	Emergency Fire Exits - Missing Exit Signs						NLT
	Flammable/Combustible Materials - Improperly Stored						NLT
	Garbage and Debris - Indoors						NLT
	Garbage and Debris - Outdoors						NLT
	Hazards - Other						NLT
	Hazards - Sharp Edges						NLT
	Hazards - Tripping						NLT
	Infestation - Insects						NLT
	Infestation - Rats/Mice/Vermin						NLT
Pools and Related Structures	Fencing - Damaged/Not Intact						
	Pool - Not Operational						
Trash Collection Areas	Chutes - Damaged/Missing Components						

Uniform Physical Condition Standards - Comprehensive Listing

Inspectable Area: Unit

Property ID / Name: _____

Inspection Date: _____

Building/Unit Nmbr: _____

Inspectable Item	Observable Deficiency	NOD	Level			NA	H&S
			1	2	3		
Bathroom	Bathroom Cabinets - Damaged/Missing						
	Lavatory Sink - Damaged/Missing						NLT
	Plumbing - Clogged Drains						NLT
	Plumbing - Leaking Faucet/Pipes						NLT
	Shower/Tub - Damaged/Missing						NLT
	Ventilation/Exhaust System - Inoperable						NLT
	Water Closet/Toilet - Damaged/Clogged/Missing						NLT
Call-for-Aid	Inoperable						NLT
Ceiling	Bulging/Buckling						
	Holes/Missing Tiles/Panels/Cracks						
	Peeling/Needs Paint						
	Water Stains/Water Damage/Mold/Mildew						
Doors	Damaged Frames/Threshold/Lintels/Trim						NLT
	Damaged Hardware/Locks						
	Damaged/Missing Screen/Storm/Security Door						NLT
	Damaged Surface - Holes/Paint/Rusting/Glass						
	Deteriorated/Missing Seals (Entry Only)						
	Missing Door						NLT
Electrical System	Blocked Access to Electrical Panel						NLT
	Burnt Breakers						NLT
	Evidence of Leaks/Corrosion						NLT
	Frayed Wiring						
	GFI - Inoperable						NLT
	Missing Breakers/Fuses						LT
	Missing Covers						LT
Floors	Bulging/Buckling						
	Floor Covering Damage						
	Missing Flooring Tiles						
	Peeling/Needs Paint						
	Rot/Deteriorated Subfloor						
	Water Stains/Water Damage/Mold/Mildew						
Health & Safety	Air Quality - Mold and/or Mildew Observed						NLT
	Air Quality - Sewer Odor Detected						NLT
	Air Quality - Propane/Natural Gas/Methane Gas Detected						LT
	Electrical Hazards - Exposed Wires/Open Panels						LT
	Electrical Hazards - Water Leaks on/near Electrical Equipment						LT
	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable						LT
	Emergency Fire Exits - Missing Exit Signs						NLT
	Flammable Materials - Improperly Stored						NLT
	Garbage and Debris - Indoors						NLT
	Garbage and Debris - Outdoors						NLT
	Hazards - Other						NLT
	Hazards - Sharp Edges						NLT
	Hazards - Tripping						NLT
	Infestation - Insects						NLT
	Infestation - Rats/Mice/Vermin						NLT
Hot Water Heater	Misaligned Chimney/Ventilation System						LT
	Inoperable Unit/Components						NLT
	Leaking Valves/Tanks/Pipes						
	Pressure Relief Valve Missing						NLT
	Rust/Corrosion						NLT
HVAC System	Convection/Radiant Heat System Covers Missing/Damaged						
	Inoperable						
	Misaligned Chimney/Ventilation System						LT

	Noisy/Vibrating/Leaking						
	Rust/Corrosion						
Kitchen	Cabinets - Missing/Damaged						NLT
	Countertops - Missing/Damaged						NLT
	Dishwasher/Garbage Disposal - Inoperable						
	Plumbing - Clogged Drains						NLT
	Plumbing - Leaking Faucet/Pipes						NLT
	Range Hood/Exhaust Fans - Excessive Grease/Inoperable						
	Range/Stove - Missing/Damaged/Inoperable						
	Refrigerator-Missing/Damaged/Inoperable						NLT
	Sink - Damaged/Missing						NLT
Laundry Area (Room)	Dryer Vent - Missing/Damaged/Inoperable						
Lighting	Missing/Inoperable Fixture						NLT
Outlets/Switches	Missing						LT
	Missing/Broken Cover Plates						LT
Patio/Porch/Balcony	Baluster/Side Railings Damaged						
Smoke Detector	Missing/Inoperable						LT
Stairs	Broken/Damaged/Missing Steps						NLT
	Broken/Missing Hand Railing						NLT
Walls	Bulging/Buckling						
	Damaged						
	Damaged/Deteriorated Trim						
	Peeling/Needs Paint						
	Water Stains/Water Damage/Mold/Mildew						
Windows	Cracked/Broken/Missing Panes						NLT
	Damaged Window Sill						
	Missing/Deteriorated Caulking/Seals/Glazing Compound						
	Inoperable/Not Lockable						NLT
	Peeling/Needs Paint						
	Security Bars Prevent Egress						LT

Attachment 3

Uniform Physical Condition Standards (“UPCS”) Violations from 2004, 2007 and 2008

(see attached)

2004 UPCS VIOLATIONS: No list. Full renovation required.

2007 UPCS VIOLATIONS:

Inspectable Area		Deficiency	C	S	3	Comments
Inspectable Item						
Gable Manor 401 McRaynolds Street Daingerfield, TX 75638						
Building:						
Unit:						
	Fencing and Gates	Damaged/Falling/Leaning			L2	
	Grounds	Erosion/Rutting Areas			L2	
	Grounds	Overgrown/Penetrating Vegetation			L2	
	Mailbox/Signs	Mailbox Missing/Damaged			L3	Missing Mail Box Doors Noted
	Market Appeal	Graffiti			L2	
	Market Appeal	Litter			L2	
	Parking/Drives	Cracks			L2	
	Parking/Drives	Potholes/Loose Material			L1	
Building: Bldg 1						
Unit:						
	Building Systems					
	Electrical System	Evidence of Leaks/Corrosion			L3	Rear Wall - Rusting Electrical Components Noted
	Building Exterior					
	Lighting	Broken Fixtures/Bulbs			L2	
	Roofs	Missing/Damaged Components from Downspout/Gutter			L2	
	Roofs	Missing/Damaged Shingles			L1	
	Roofs	Damaged Vents			L1	
	Roofs	Damaged Soffits/Fascia			L3	Soffits and fascia are missing or so damaged that water penetration is visibly possible.
	Patio/Porch/Balcony					
	Stairs	Broken/Missing Hand Railing			L3	Loose Railing Noted
	Building Exterior					
	Walls	Stained/Peeling/Needs Paint			L1	
	Walls	Missing Pieces/Holes/Spalling			L3	Loose/missing siding pieces larger than 8.5X11.
	Windows	Broken/Missing/Cracked Panes			L1	
	Windows	Damaged/Missing Screens			L1	
	Windows	Missing/Deteriorated Caulking/Glazing Compound			L2	
Unit: 1						
	Electrical	Missing Breakers/Fuses			L3	Missing Breakers Noted
Unit: 2						
	Bathroom	Shower/Tub - Damaged/Missing			L2	
	Bathroom	Lavatory Sink - Damaged/Missing			L1	
	Bathroom	Plumbing - Leaking Faucet/Pipes			L1	
	Ceiling	Water Stains/Water Damage/Mold/Mildew			L2	
	Electrical	Missing Breakers/Fuses			L3	Missing Breakers Noted
	Health & Safety	Infestation - Insects			L3	Roach Infestation Noted
	Health & Safety	Air Quality - Mold and/or Mildew Observed			L3	
	Kitchen	Range/Stove - Missing/Damaged/Inoperable			L1	
	Kitchen	Refrigerator-Missing/Damaged/Inoperable			L1	
	Kitchen	Range Hoods/Exhaust Fans -Excessive Grease/Inoperable			L1	
	Outlets/Switches	Missing/Broken Cover Plates			L1	
	Smoke Detector	Missing/Inoperable			L3	Missing Smoke Detector
	Walls	Damaged			L2	
	Windows	Cracked/Broken/Missing Panes			L1	
Unit: 3						
	Bathroom	Lavatory Sink - Damaged/Missing			L1	
	Bathroom	Plumbing - Leaking Faucet/Pipes			L1	
	Bathroom	Shower/Tub - Damaged/Missing			L1	
	Electrical	Missing Breakers/Fuses			L3	Missing Breakers Noted
	Health & Safety	Infestation - Insects			L3	Roaches Noted
	Kitchen	Refrigerator-Missing/Damaged/Inoperable			L1	
	Kitchen	Range Hoods/Exhaust Fans -Excessive Grease/Inoperable			L1	
	Walls	Damaged			L2	

Unit: 5	Bathroom	Lavatory Sink - Damaged/Missing	L1	
	Ceiling	Water Stains/Water Damage/Mold/Mildew	L2	
	Electrical	Missing Breakers/Fuses	L3	Missing Breakers Noted
	Hot Water Heater	Pressure Relief Valve Missing	L3	Missing Extension Pipe Noted
	Windows	Cracked/Broken/Missing Panes	L1	
Unit: 6	Electrical	Missing Breakers/Fuses	L3	Missing Breakers Noted
	Hot Water Heater	Pressure Relief Valve Missing	L3	Missing Extension Pipe Noted

2008 UPCS VIOLATIONS:

Gables Manor 2008 Violations

Area	Building No.	Unit No.	Health and Safety violation	Inspected Item	Observation	Severity	Location	Comments
Site	0	0		Mailboxes/Project Signs	Mailbox Missing/Damaged**	L3	tree standing	broken doors
Site	0	0		Market Appeal	Graffiti**	L2	mailboxes	
Site	0	0		Market Appeal	Litter**	L2		
Site	0	0	x	Hazards	Sharp Edges	L3	grounds	broken glass
Ext	1	0		Walls	Cracks/Gaps**	L2		
Ext	1	0		Walls	Stained/Peeling/Needs Paint	L2		
Ext	1	0		Walls	Missing Pieces/Holes/Spalling**	L3	back wall	missing siding-arrows water penetration
Ext	1	0		Doors	Damaged Surface (Holes/Paint/Rusting/Glass)**	L2		
Ext	1	0		Doors	Damaged Frames/Threshold/Lintels/Trim**	L2		
Ext	1	0		Doors	Damaged Hardware/Locks**	L2		
Ext	1	0		Windows	Damaged/Missing Screens**	L1		
Ext	1	0		Roofs	Damaged Soffits/Fascia	L1		
Ext	1	0		Lighting	Broken Fixtures/Bulbs**	L2		
Ext	1	0		Hazards	Sharp Edges	L3	Units	broken window
CA	1	0		Halls/Corridors/ Stairs	Stairs - Broken/Missing Hand Railing	L3	building	several Areas
DU	1	7		Walls	Damaged**	L2		
DU	1	7		Floors	Floor Covering Damage**	L3	unit Unit	missing covering
DU	1	9		Floors	Floor Covering Damage**	L3	unit	NO covering
DU	1	1		Doors	Damaged Surface - Holes/Paint/Rusting/Glass**	L2		
DU	1	9		Doors	Damaged Surface - Holes/Paint/Rusting/Glass**	L2		
DU	1	3		Doors	Deteriorated/Missing Seals (Entry Only)**	L3	entry door	seal damaged

DU	1	5	Doors	Deteriorated/Missing Seals (Entry Only)**	L3	From door	seal damaged
DU	1	9	Doors	Deteriorated/Missing Seals (Entry Only)**	L3	entry	seal imaged
DU	1	5	Doors	Damaged Hardware/Locks**	L1		
DU	1	3	Doors	Damaged Hardware/Locks**	L2		
DU	1	9	Doors	Damaged Hardware/Locks**	L2		
DU	1	7	Doors	Damaged Hardware/Locks**	L3	Bedroom	Missing hd w
DU	1	9	Doors	Missing Door	L2		
DU	1	1	Doors	Damaged Frames/Threshold/Lintels/Trim**	L2		
DU	1	5	Doors	Damaged Frames/Threshold/Lintels/Trim**	L3	BR 2	strike plate missing
DU	1	1	Windows	Inoperable/Not Lockable**	L3	BR 1	lock broken
DU	1	9	Lighting	Missing/Inoperable Fixture**	L3	unit	m power
DU	1	3	Smoke Detector	Missing/Inoperable**	L3	bedroom 1	will Not test
DU	1	7	Smoke Detector	Missing/Inoperable**	L3	Unit	NO detectors installed
DU	1	7	Hot Water Heater	Inoperable Unit/Components	L3	unit	no power
DU	1	5	Hot Water Heater	Pressure Relief Valve Missing	L3	water heater closet	Bro PRV not within 18" of thon
DU	1	7	HVAC System	Inoperable**	L3	Unit	No power
DU	1	9	HVAC System	Inoperable**	L3	unit	No water heater
DU	1	7	Kitchen	Cabinets - Missing/Damaged**	L3	kitchen	No donning
DU	1	5	Kitchen	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	L3	vent hood	in operable
DU	1	7	Kitchen	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	L3	kit.	Missing
DU	1	9	Kitchen	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	L3	kit	missing
DU	1	1	Kitchen	Range/Stove - Missing/Damaged/Inoperable**	L2		

DU	1	3	Kitchen	Range/Stove - Missing/Damaged/Inoperable**	L2		
DU	1	5	Kitchen	Range/Stove - Missing/Damaged/Inoperable**	L2		
DU	1	7	Kitchen	Range/Stove - Missing/Damaged/Inoperable**	L3	kitchen	missing
DU	1	9	Kitchen	Range/Stove - Missing/Damaged/Inoperable**	L3	kit	kit missing
DU	1	7	Kitchen	Refrigerator - Missing/Damaged/Inoperable	L3	kit.	missing
DU	1	9	Kitchen	Refrigerator - Missing/Damaged/Inoperable	L3	kit	missing
DU	1	9	Kitchen	Sink - Missing/Damaged**	L3	kit	missing
DU	1	7	Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing	L2		
DU	1	9	Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing	L3	B an	missing
DU	1	5	Bathroom	Lavatory Sink - Damaged/Missing**	L1		
DU	1	3	Bathroom	Shower/Tub - Damaged/Missing**	L2		
DU	1	5	Bathroom	Shower/Tub - Damaged/Missing**	L2		
DU	1	9	Bathroom	Shower/Tub - Damaged/Missing**	L2		
DU	1	9	Bathroom	Ventilation/Exhaust System - Inoperable**	L2		
DU	1	1 x	Emergency/Fire Exits	Blocked/Unusable	L3	Bed room 2	lock Reversed headboard blocks window
DU	1	5 x	Emergency/Fire Exits	Blocked/Unusable	L3	BR 2	window
DU	1	1 x	Electrical Hazards	Exposed Wires/Open Panels**	L3	BRs	No inner cover elec. box
DU	1	3	Electrical System	Missing Breakers/Fuses	L3	elec. bet Br,	open port
DU	1	7	Electrical System	GFI - Inoperable	L3	Bath	missing
DU	1	9	Electrical System	GFI - Inoperable	L3	both	No power shorted & miss-edges not protected
DU	1	7 x	Hazards	Sharp Edges	L3	LR	protected
DU	1	5 x	Hazards	Tripping	L3	MBR	cable across door

1d

BOARD ACTION REQUEST

LEGAL SERVICES

SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order regarding Monterrey Villa Apartments (HTC 09801)

RECOMMENDED ACTION

WHEREAS, Monterrey Villa Apartments in Houston, Harris County, Texas, owned by LL Real Property, L.L.C., has a history of uncorrected violations of the applicable land use restriction agreement;

WHEREAS, on July 30, 2013, representatives of LL Real Property, L.L.C., met with the TDHCA Administrative Penalty Committee and agreed, subject to Board approval, to enter into an Agreed Final Order to pay an administrative penalty in the amount of \$2500 to be due and payable within 30 days of the date that the order is approved by the Board provided that corrective documentation submitted during the meeting fully resolved all violations.

WHEREAS, the documentation submitted during the July 30, 2013, was only partially acceptable, leaving 6 unresolved annual income recertification violations, 6 unresolved household income violations and an unresolved violation with respect to the minimum set-aside.

WHEREAS, the Committee met again on August 27, 2013, and voted to enter into an Agreed Final Order with the following requirements:

1. LL Real Property, L.L.C., is assessed an administrative penalty in the amount of \$5,000, which is partially deferred and may be satisfied, in lieu, as follows;
2. A \$2,500 portion of the assessed administrative penalty will be immediately due and payable;
3. All outstanding file violations must be corrected and sufficient evidence of correction must be submitted to TDHCA as indicated in the attachments of the Agreed Final Order on or before November 11, 2013; and
4. If outstanding violations are not fully resolved and sufficient evidence of the corrections have not been submitted within the established timeline, the remaining \$2,500 administrative penalty will become due and payable; 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 the Agreed Final Order assessing a \$5,000 administrative penalty as outlined above for noncompliance at Monterrey Villa Apartments (HTC 09801), substantially in the form presented at this meeting, and including any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

LL Real Property, L.L.C., is the owner of Monterrey Villa Apartments, a 36-unit apartment complex located in Houston, Texas, which is subject to a land use restriction agreement ("LURA") signed in 1998 in consideration for an allocation of Housing Trust Fund money in the total amount of \$544,500 awarded by TDHCA. LL Real Property, L.L.C. acquired the property in 2007 through an arms' length sale transaction and did not receive prior Department approval, but the LURA remains in effect per Section 7.8 of the LURA which stipulates that its restrictions run with the land.

Despite numerous attempts by the Compliance Division to provide technical assistance, LL Real Property, L.L.C., has been unable to operate the property in compliance with LURA requirements. Representatives of the owner first met with TDHCA's Administrative Penalty Committee ("Committee") on May 22, 2012 and agreed that they would submit financial documents, attend training and correct all file monitoring violations on or before September 4, 2012 in preparation for an onsite monitoring review to verify corrections. The onsite review was conducted on October 17, 2012 and a monitoring letter was sent, asking Owner to submit a response with corrective documentation no later than February 7, 2013. A response was received, but many violations remained unresolved. Another monitoring letter was sent outlining remaining violations and providing technical support. Another response was received, but this response was insufficient to resolve any further violations.

Representatives of the owner met with the Committee again on July 30, 2013 and brought corrective documentation to the meeting. Owner agreed to pay a minimum penalty of \$2500 if the corrective documentation was sufficient to correct all violations. The Committee agreed to meet again to determine an appropriate penalty if the corrective documentation was insufficient.

The submitted documentation was reviewed, but was only partially acceptable, leaving 6 unresolved annual income recertification violations, 4 unresolved household income violations and an unresolved violation with respect to additional State required rent and occupancy restrictions. On August 27, 2013, the Committee met again and agreed that \$5,000 would be an appropriate penalty.

Consistent with direction from the Department's Administrative Penalty Committee, a partially deferred penalty in the amount of \$5,000 is recommended, with \$2,500 to be paid immediately and \$2,500 to be deferred and possibly forgiven provided that LL Real Property, L.L.C., complies with all terms of the Agreed Final Order.

**ENFORCEMENT ACTION AGAINST
LL REAL PROPERTY, L.L.C. WITH
RESPECT TO MONTERREY VILLA
APARTMENTS (HTF FILE # 09801)**

§
§
§
§
§

**BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS**

AGREED FINAL ORDER

On this 12th day of September, 2013, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **LL REAL PROPERTY, L.L.C.**, a California limited liability company (“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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this order:

FINDINGS OF FACT

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. On March 5, 1998, W.I. Miller & Associates, Inc. a Texas corporation (“Prior Owner”) was awarded a Housing Trust Fund allocation by the Board, in the total amount of \$544,500 to acquire Monterrey Villa Apartments (“Property”) (HTC file No. 09801 / CMTS No. 2608 / LDLD No. 179).
3. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective March 5, 1998 and filed of record at Document Number S907352 of the Official Public Records of Real Property of Harris County, Texas (“Records”). In accordance with Section 7.8 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the land and binding on all successors and assigns for the full term of the agreement.
4. Respondent took record title to the Property via a General Warranty Deed with Vendor’s Lien that was effective June 1, 2007, and filed of record at Document Number 20070371231 of the Records. The property remained subject to the LURA per Section 7.8 of the LURA.

5. Respondent is a California limited liability company that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

6. An on-site monitoring review was conducted on October 17, 2012, to determine whether Respondent had resolved prior violations of LURA requirements¹ to lease units to low income households, maintain records demonstrating eligibility, determine the appropriate utility allowance and establish appropriate rent amounts. A prior monitoring review in 2010 had identified numerous violations and the October 17, 2012, onsite review was intended to verify correction of past noncompliance. A monitoring letter was sent and Respondent was requested to submit a response including corrective documentation no later than February 7, 2013. A response was received, however, several issues remained uncorrected and Respondent was requested to reply a second time. A response was received, but the following were not corrected before the July 30, 2013, informal conference with the TDHCA Administrative Penalty Committee:
 - a. Respondent failed to correctly complete or document tenant's annual income recertification for units 8, 21, 22, 23, 25, 31 and 35, a violation of Section 2.2(b) and 4.2 of the LURA which requires annual income determination, and a violation of 10 Tex. Admin. Code §60.111(d) (Income at Recertification) which requires annual income recertifications for mixed income Housing Trust Fund properties.
 - b. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for the following units: 7, 18, 21, 22, 23, 25, 27, and 32, a violation of Section 2 of the LURA which defines the income limits, and a violation of 10 Tex. Admin. Code §60.108 (Determination, Documentation and Certification of Annual Income) which outlines documentation requirements for determining income.
 - c. Respondent failed to establish appropriate rent amounts for units 7, 18, 21, 22, 23, 25, 27, and 32, a violation of Section 3.1 of the LURA which defines the appropriate rent limits, and a violation of 10 TEX. ADMIN. CODE §60.118 (Special Rules Regarding Rents and Rent Limit Violations). TDHCA publishes maximum rent limits annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Monterrey Villa was unable to document the rent amounts being charged.
 - d. Respondent failed to meet the property's additional State required rent and occupancy restrictions, a violation of Section 2.2(a) of the LURA. Representations regarding rent and occupancy restrictions are made during the application phase and determine how the property shall be monitored by TDHCA

¹ Within this Agreed Final Order, all references to the TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTER 60 refer to the version of the code in effect at the time of the original November 30, 2010 compliance monitoring review that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

in accordance with in accordance with 10 TEX. ADMIN. CODE § 60.101 the LURA. Monterrey Villa Apartments has a total of 36 units, 27 of which are required to be income and rent restricted. Sections 2.2(a) and 3.1(a) of the LURA indicate that:

- i. 11 units must be occupied by extremely low income families with incomes at or below the 30% area median income (“AMI”) limit published by TDHCA and rents that do not exceed the maximum rent limit published by TDHCA for that income level. In addition, the maximum rent cannot exceed 30% of the family income;
- ii. 11 units must be occupied by very low income families with incomes at or below the 60% AMI limit published by TDHCA and rents that do not exceed the maximum rent limit published by TDHCA for that income level. In addition, the maximum rent cannot exceed 30% of the family income; and
- iii. 5 units must be occupied by low income families with incomes at or below the 80% AMI limit published by TDHCA and rents that do not exceed the maximum rent limit published by TDHCA for a family whose income equals 65% of AMI. In addition, the maximum rent cannot exceed 30% of the family income.

Of these income categories, Owner has only verified 5 of the necessary 11 units at the 30% level indicated at FOF #6d(i).

7. The following violations remain outstanding at the time of this order:
 - a. Annual income recertification violation described in FOF #6a;
 - b. Household initial occupancy income limit violations described in FOF #6b; and
 - c. Additional State required rent and occupancy restrictions described in FOF #6d(i).

CONCLUSIONS OF LAW

1. Respondent is a “housing sponsor” as that term is defined in Tex. Gov’t Code §2306.004(14).
2. Pursuant to Tex. Gov’t Code §2306.261 – 2306.271, 10 Tex. Admin. Code §10.601 and Section 4.5 of the LURA, TDHCA has the authority to monitor housing sponsors and their properties for noncompliance.
3. Respondent violated Sections 2.2(b) and 4.2 of the LURA and 10 Tex. Admin. Code §60.111(d) by failing to annually recertify tenants for units 8, 21, 22, 23, 25, 31 and 35.
4. Respondent violated Section 2 of the LURA and 10 Tex. Admin. Code §60.108 by failing to provide sufficient documentation that household incomes were within prescribed limits upon initial occupancy for units 7, 18, 21, 22, 23, 25, 27, and 32.
5. Respondent violated Section 3.1 of the LURA and 10 TEX. ADMIN. CODE §60.118 by failing to establish appropriate gross rents for units 7, 18, 21, 22, 23, 25, 27, and 32.

6. Respondent violated Section 2.2(a) of the LURA by failing to maintain the additional state required income and rent restrictions.
7. Because Respondent is a housing sponsor with respect to the Property and has violated the TDHCA LURA, 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 the LURA, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
10. A partially probated administrative penalty of \$5000 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 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 \$5,000, 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 correct the file monitoring violations as indicated in the attachments and submit documentation of the corrections to TDHCA no later than November 11, 2013.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, and the violations are corrected as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty in the amount of \$2,500 which shall be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this Order, then the remaining assessed administrative penalty in the amount of \$2,500 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" within thirty days of the date the Department sends written notice that Respondent has violated a provision of this order.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (CMTS), emailed to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us or mailed to one of the addresses below. 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 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

[Remainder of page intentionally blank]

Given under my hand and seal of office this _____ day of _____, 2013.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

Tenant File Instructions

Additional income and rent restrictions. 11 units must be occupied by extremely low income families with incomes at or below the 30% area median income (AMI) limit published by TDHCA and rents that do not exceed the maximum rent limit published by TDHCA for that income level. In addition, the maximum rent cannot exceed 30% of the family income. Respondent has only provided evidence proving that 5 units are occupied by tenants at 30% AMI and must submit qualifying paperwork (tenant application, verifications of all sources of income and assets, tenant income certification, lease and lease addendum) for 6 additional units that are restricted at this level.

Annual recertification violation for units 8, 21, 22, 23, 31 and 35. See chart below.

Household income violation for units 7, 21, 22 and 23. See chart below.

Circumstance with respect to units listed above	Required Action
If unit is occupied by a qualified household	Acceptable documentation was not collected at move-in or during subsequent recertifications. Perform a full recertification for the year 2013 and submit the full file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Note that you must also complete the Fair Housing Choice Disclosure Notice for any households completing tenant file paperwork after 12/27/2012.
If unit is occupied by a new qualified household	Submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice.
If unit is occupied by a nonqualified household on a month-to-month lease	<ol style="list-style-type: none">1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after November 11, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
If unit is occupied by a nonqualified household with a non-expired lease	<ol style="list-style-type: none">1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.2. As soon as the unit is occupied by a qualified household, you must to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after November 11, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.

If unit is vacant	<ol style="list-style-type: none">1. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after November 11, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
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BOARD ACTION REQUEST
INTERNAL AUDIT
SEPTEMBER 12, 2013

Presentation, Discussion and Possible Approval of the Fiscal Year 2014 Internal Audit Work Plan.

RECOMMENDED ACTION

WHEREAS, the Texas Internal Auditing Act and audit standards require the governing board to approve an annual audit work plan that is based on an agency-wide risk assessment as well as input from the governing board and executive management, and that outlines the internal audits planned for the upcoming fiscal year,

RESOLVED, the internal audit work plan for fiscal year 2014 is hereby approved as presented.

BACKGROUND

The annual internal audit work plan is required by the Texas Internal Auditing Act and by audit standards. The plan outlines the program areas that the Internal Audit Division will audit during the 2014 fiscal year as well as outlining the other planned activities of the Internal Audit Division.

**Department of Housing and Community Affairs
Internal Audit Division – Fiscal Year 2014 DRAFT Internal Audit Plan
September 12, 2013**

Program Area/Division	Audit	Hours (4620)	Comments
Single Family	HOME Program	800	Scope Will Be Developed During Planning
Mfg. Housing	Titling Process	900	Scope Will Be Developed During Planning
Community Affairs	Low Income Home Energy Assistance Program (LIHEAP)	900	Scope Will Be Developed During Planning
Agency-wide	Ethics Program	180	Scope Will Be Developed During Planning
Financial Administration	Financial Administration	800	Scope Will Be Developed During Planning
Housing Trust Fund	Amy Young Barrier Removal Program	500	Scope Will Be Developed During Planning
Agency-wide	Performance Measures ¹	540	Contingency – 10% Set-Aside for Board Requests
Program Area/Division	Management Assistance/ Special Projects	Hours (750)	Comments
Internal Audit	Quality Assurance Self-Assessment Review	120	Required by Audit Standards
Internal Audit	Conduct Annual Risk Assessment and Prepare Fiscal Year 2015 Audit Plan	160	Required by the Texas Internal Auditing Act and by Audit Standards
Internal Audit	Annual Review and Revision of Internal Audit Charter	20	Required by Audit Standards
Internal Audit	Preparation and Submission of the Fiscal Year 2014 Annual Internal Audit Report	40	Required by the Texas Internal Auditing Act, Due Each November
Internal Audit	Coordinate with External Auditors	60	Ongoing Requirement
All Divisions	Follow-up on the Status of Prior Audit Issues	100	Required by Audit Standards
All Divisions	Tracking the Status of Prior Audit Issues	50	Required by Audit Standards
All Divisions	Tracking, Follow-up and Disposal of Fraud Complaints	200	Internal Audit is Responsible for the Fraud Hotline and for Reviewing Fraud Complaints

¹ 10% of available hours are set aside for special requests from the board. If no such requests are received, this project will be performed using these hours.

1f

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on Program Year (PY) 2013 Community Services Block Grant (CSBG) Discretionary Awards

RECOMMENDED ACTION

WHEREAS, the Department set aside a total of \$800,000 in State CSBG discretionary funds to be awarded through a Notice of Funding Availability (NOFA) approved by the Board at the January 17, 2013, board meeting and the final amounts to be set-aside per activity approved by the board at the June 13, 2013, board meeting;

WHEREAS, the NOFA solicited applications for a Statewide Homeless Initiative, a Local Homelessness Prevention Innovation Project, a Migrant Seasonal Farmworker Homelessness Initiative, and a Native American Homelessness Initiative;

WHEREAS, staff has reviewed and evaluated the applications received and recommends Board approval of four (4) awards, totaling \$800,000, to three (3) applicants for the 2013 Community Services Block Grant (CSBG) Discretionary Awards;

WHEREAS, staff recommends one award in the amount of \$300,000 to Texas Homeless Network for the Statewide Homeless Initiative; one award in the amount of \$300,000 to Texas Homeless Network for the Local Homelessness Prevention Innovation Project; one award in the amount of \$100,000 to Family Service Association of San Antonio, Inc. for the Migrant Seasonal Farmworker Homelessness Initiative, Inc.; and one award in the amount of \$100,000 to Urban Inter-Tribal Center of Texas for the Native American Homelessness Initiative; and,

WHEREAS, staff recommends the contract period for these awards be October 1, 2013, through July 31, 2014;

NOW, therefore, it is hereby

RESOLVED, that staff funding award recommendations for the 2013 CSBG Discretionary Awards, be and they hereby are approved as presented to this meeting.

BACKGROUND

The Department set aside a total of \$800,000 in State CSBG discretionary funds to be awarded through a Notice of Funding Availability (NOFA) approved by the Board at the January 17, 2013, meeting and the final amounts to be set-aside per activity approved by the board at the June 13, 2013 board meeting.

The Department received a total of eleven (11) applications; two of the applications were terminated due to threshold violations. The NOFA sought applications for four types of projects and identified the maximum award amount for each project: \$300,000 for a Statewide Homeless Initiative, \$300,000 for a Local Homelessness Prevention Innovation Project, \$100,000 for a Migrant Seasonal Farmworker Homelessness Initiative, and \$100,000 for a Native American Homelessness Initiative.

Based on the Department's scoring and ranking of the applications, staff recommends that the Board approve a total of four (4) awards, totaling \$800,000, to three (3) applicants. These applicants were scored utilizing a standardized scoring instrument and the applicants recommended for funding are the applicants with the highest ranking applications in each category. The attached table reflects project type, applicant organizations, final scores, amount of funds requested, and the funding recommendation amount.

Based on new guidance from HUD, the Department will clarify the Statewide Homeless Initiative focus to include the identification of CoCs that intend to become Unified Funding Agencies (UFAs) in 2014 and to provide technical assistance to those UFA's to enable them to meet 24 CFR §578.11 of the CoC Program Interim Rule and have adequate financial systems that meet or exceed the standards set forth in 24 CFR §84.21 and 24 CFR §85.20 as appropriate.

**2013 COMMUNITY SERVICES BLOCK GRANT DISCRETIONARY NOFA
APPLICATION SCORES AND AWARD RECOMMENDATIONS**

Project Type:	Name of Applicant Organization:	Final Score	Funds Requested	Award Recommendation
Local Homelessness Prevention Innovation Projects (LHP)				
LHP	Texas Homeless Network	329	\$300,000	\$300,000
LHP	Panhandle Community Services	101	\$42,276	0
LHP	Port Cities Rescue Mission Ministries	82.5	\$136,458	0
LHP	City of Waco	ineligible	0	0
Migrant Seasonal Farmworker Homelessness Initiative (MSFW)				
MSFW	Family Service Association	469.5	\$100,000	\$100,000
MSFW	Sin Fronteras Organizing Project, Inc.	436	\$100,000	0
MSFW	Housing Authority of Bexar County	319.5	\$192,236	0
MSFW	South Plains Community Action Association, Inc.	ineligible	\$100,000	0
Native American Homelessness Initiative (Nat.Am.)				
Nat.Am.	Urban Inter-Tribal Center of Texas	532.5	\$100,000	\$100,000
Statewide Homeless Initiative (Statewide)				
Statewide	Texas Homeless Network	308.5	\$300,000	\$300,000
Statewide	Housing Authority of the City of Round Rock, Texas	106	\$287,004	0
	TOTAL		\$1,657,974	\$800,000

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BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Approval of the 2014 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment)

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) requires the submission of a One-Year Action Plan in accordance with 24 CFR §91.320,

NOW, therefore, it is hereby

RESOLVED, that the Draft 2014 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment), in the form presented to this meeting, is hereby approved for release for public comment, and

FURTHER RESOLVED, that the Executive Director and his designees are each hereby authorized, empowered and directed, for and on behalf of the Department, to cause notice of the Draft 2014 State of Texas Consolidated Plan: One-Year Action Plan 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 Texas Department of Housing and Community Affairs (“TDHCA”), Texas Department of Agriculture (“TDA”), and Department of State Health Services (“DSHS”) prepared the 2014 State of Texas Consolidated Plan: One-Year Action Plan (“Plan”) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State’s administration of the Community Development Block Grant Program (“CDBG”) by TDA, the Housing Opportunities for Persons with AIDS Program (“HOPWA”) by DSHS, and the Emergency Solutions Grant (“ESG”) Program and the HOME Investment Partnerships (“HOME”) Program by TDHCA.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2014. The Program Year begins on February 1, 2014, and ends on January 31, 2015. The Plan also illustrates the State’s strategies in addressing the priority needs and specific goals and objectives identified in the 2010-2014 State of Texas Consolidated Plan.

A draft of the Plan to be approved by the Board for release for public comment can be found online on the Housing Resource Center website at <http://www.tdhca.state.tx.us/housing-center/pubs.htm> or on TDHCA’s Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>. Upon approval by the Board, the Plan will be available for public comment from September 16 through October 16, 2013. Comment on the

Plan may be provided in writing or directly at the consolidated public hearing held on October 1, 2013, at the William P. Clements Building, 300 W 15th Street, Room 103, Austin, TX 78701 at 1:30 pm.

The final version of the Plan will be presented to the Board for approval in November and is due to HUD by December 15, 2013.

1h

BOARD ACTION REQUEST
NEIGHBORHOOD STABILIZATION PROGRAM
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Ratification of an amendment to a Neighborhood Stabilization Program Contract in order to meet extended deadlines established by HUD

RECOMMENDED ACTION

WHEREAS, at the April 11, 2013, meeting the Board approved an increase in current contract awards for those administrators successfully administering their contracts, and extension of the expenditure deadline for those contract award amounts being increased;

WHEREAS, the Board authorized, empowered, and directed the Executive Director to take any such actions as may be required to implement the approvals thereby given and to make and expedite contract amendments to assure timely commitment of NSP funds, provided that the Chair was consulted prior to taking action; and,

WHEREAS, the Chair provided agreement on the recommendation on July 2, 2013;

NOW, therefore, it is hereby

RESOLVED, pursuant to the approval and authority provided by the Board, the actions taken to amend Community Development Corporation of Brownsville No 77110000105 be and hereby are, ratified and approved.

BACKGROUND

The Neighborhood Stabilization Program “NSP” is a HUD-funded program authorized by 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 Neighborhood Stabilization Program 3 allocation of funds is provided under Section 1497 of the Wall Street Reform and Consumer Protection Act. The purpose of NSP and NSP3 is to redevelop into affordable housing, or acquire and hold, abandoned or foreclosed properties in areas that are documented to have the greatest need for stabilizing declining property values as a result of excessive foreclosures.

NSP regulations impose a 48-month expenditure deadline on all NSP Grantees. NSP3 includes a 36-month expenditure requirement for 50% of grant funds. For TDHCA, the expenditure deadlines fell on March 3, 2013, and March 7, 2013, respectively. On April 15, 2013, HUD issued a letter extending the Neighborhood Stabilization Program 1 Expenditure deadline by 120 days, and directed TDHCA to continue expending grant funds. Any funds that have not been expended by the extended deadlines are potentially subject to recapture by HUD.

The Community Development Corporation of Brownsville "CDCB" was awarded \$2,930,818.20 from the TDHCA NSP3 allocation for construction of up to 30 rental units in the El Naranjal subdivision. Due to several factors, the project was not able to meet TDHCA underwriting requirements. The project has been modified to new construction of no less than 21 ownership units to be sold to income eligible households on lots currently owned by CDCB in the El Naranjal subdivision. Additional funding sources proposed for the original project have been removed, as they are not compatible with the change to ownership. No less than six of the properties will be sold to households at or below 50% of Area Median Income and no less than 2 properties will be sold to special-needs households in order to resolve the reduction in application score created with the shift to an ownership project.

Homebuyers will be able to access up to \$30,000 of subordinate Homebuyer Assistance from Texas NSP3 funds. Homebuyer Assistance will be provided through transfer of the original NSP3 construction investment, and/or separate assistance to purchase the lot, up to the \$30,000 maximum. Homebuyer Assistance may be provided in the form of a deferred-forgivable loan, an amortized loan, or a deferred-payable loan, as dictated by the individual needs of each household. Qualified Households at 50% of AMI or less will be able to access NSP permanent mortgage financing at 0%. In order to facilitate any homebuyer closings after the NSP3 Expenditure deadline, NSP3 funds for Homebuyer Assistance may be provided in the form of a write-down of the construction loan payoff. As the Developer of the properties, CDCB will earn their Developer Fee at completion of construction of each unit, with the Fee due and payable at the closing of the homebuyer transaction.

Extension of the NSP3 milestones in the NOFA is required for completion of the project. All NSP3 funds are required to be expended by March 7, 2014, the HUD deadline. Construction must be completed before the expenditure deadline, but loans may extend beyond that date, in order to prevent default prior to the homebuyer closing.

The Amendment was presented in accordance with Board approved direction and authority to the Chair via email on Wednesday, July 17, 2013, and he subsequently approved the proposal.

1i

BOARD REPORT ITEM

PROGRAM PLANNING, POLICY, AND METRICS (3PM)

SEPTEMBER 12, 2013

Presentation and Discussion on the Department Snapshot tool for the Mortgage Credit Certificate (MCC) and My First Texas Home (TMP) programs

BACKGROUND

The Program Planning, Policy, and Metrics group (“3PM”) was established in the spring of 2012 with the purpose of promoting an agency-wide use of uniform metrics as a key management tool. 3PM has been coordinating efforts to enhance interdivisional efficiency and to create uniform cross agency reporting and performance tools. One of 3PM’s priorities since its inception has been the creation of the “Department Snapshot.” The Snapshot is intended to give Board members and stakeholders a quick reference resource to gauge where each program stands in meeting its highest level objectives, chiefly expenditures.

As outlined in the February 2013 Board meeting, staff will be submitting reports on the programs represented in the Snapshot individually or in small groups at each meeting over a period of months, hence only the MCC and TMP programs are presented for this Board meeting. This enables staff to best articulate specific nuances of each program and how those nuances will be represented by the Snapshot. Because of the complexity of Department programs, accuracy is critical. Therefore, the purpose of the item today is to focus on these programs, explaining the unique details of each program and also what likely trends in the program the reader might see and how those would be reflected.

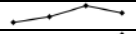
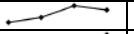
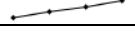
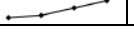
The Texas Department of Housing and Community Affairs created its Texas Mortgage Credit Certificate (MCC) Program for the residents of Texas, to help make ownership of new and existing homes more affordable for individuals and families of low and moderate income, especially first time buyers. A Mortgage Credit Certificate allows the homebuyer to claim a tax credit of up to \$2,000 annually towards the mortgage interest paid per year. It is a dollar for dollar reduction against their federal tax liability. The Texas Mortgage Credit Certificate Program has funds set aside for targeted area loans. A Targeted Area is a census tract in which 70% or more of the families have incomes that are 80% or less of the statewide median income or an area of chronic economic distress. Homebuyers purchasing properties located in Targeted Areas do not have to be a first time homebuyer and purchase price and income limits are generally higher.

My First Texas Home’s “Taxable Mortgage Program” (TMP-79) offers more competitive fixed interest and annual percentage rates while providing down payment and closing cost assistance of 5 percent of the mortgage loan. TMP funds can be combined with the Department’s Mortgage

Credit Certificate Program, further increasing the home's affordability. The program features a number of other benefits eligible homebuyers will find attractive.

Quarterly Snapshot - Program Debut

MCC and TMP

	A	B	C	TDHCA Admin			F	G	H	I	J	K	L	M	N
				D	E										
Program	Award to Administer	Program Income	Total Cumulative Funds	Admin Retained	Expended	% Expended	Non-TDHCA Admin Funds for Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
MCC	\$348,214,286	N/A	\$348,214,286	N/A	N/A	N/A	\$348,214,286	\$153,322,209	\$194,892,076	56%		\$83,795,359	24%		593
TMP	\$600,000,000	N/A	\$600,000,000	N/A	N/A	N/A	\$600,000,000	\$400,042,590	\$199,957,410	33%		\$155,774,248	26%		1,187

Program Narrative

The Mortgage Credit Certificate (MCC) and the My First Texas Home (TMP) programs are somewhat unique programs at TDHCA. Their stages of progress, while comparable to “Awarded,” “Contracted,” and “Expended” are not precisely the same and are referred to differently. These differences are articulated in detail on the Program Area Snapshots.

Neither program reflects any Program Income or TDHCA Admin. While the programs do bring in a considerable amount in fees, this is not considered Program Income for the purposes of the Snapshot because, unlike in the HOME program for example, the funds are not put back to the program’s initial purpose. They are not recycled into new loans. The program is also not represented as having administrative dollars because, while the program certainly utilizes funding for administrative purposes, that funding is not part of the allocation or authority the program receives.

Similar to other programs being broken down into years, the MCC and TMP programs are split into “programs.” The TMP program has Program 79, and MCC is broken down into Programs 80 and 81. These programs are not tied to specific years of funding.

The TMP is also unique because unlike most other programs there is no set amount of award, allocation or authority. However, the Department has set a \$600M cap on the program. While this still sets the program apart, the cap functions as an award amount for the purpose of the Snapshot, serving as a metric for success.

Trendlines

The “% Contracted Trendline” and “% Expended Trendline” (columns J and M) reflect four quarters of history. Each data point on the line reflects a quarter, with the value in columns I and L being the rightmost data point. These lines show recent trends in program activity. Decreases in the percentages (reflected as downward trends in the lines) could be the result of a number of circumstances. For example, the MCC trendline for % Contracted (column J) shows a dip during the most recent quarter. This is due to the addition of a new program (Program 81). This new source increased the amount of funding available but since the funds are new they aren't yet Contracted (Committed in the Pipeline), thus the percentage went down.

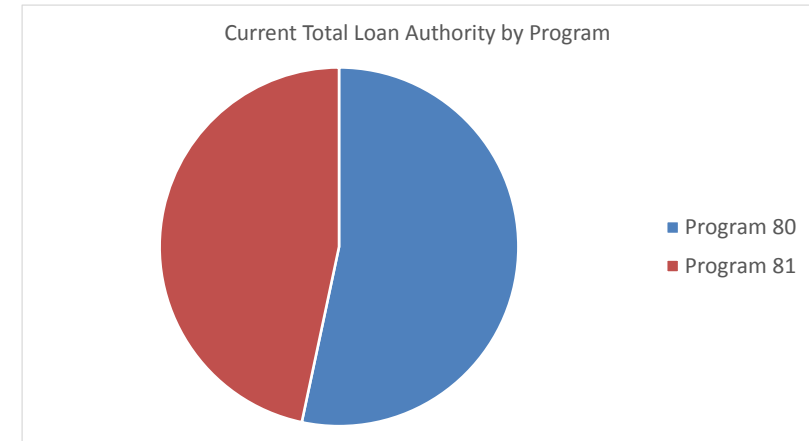
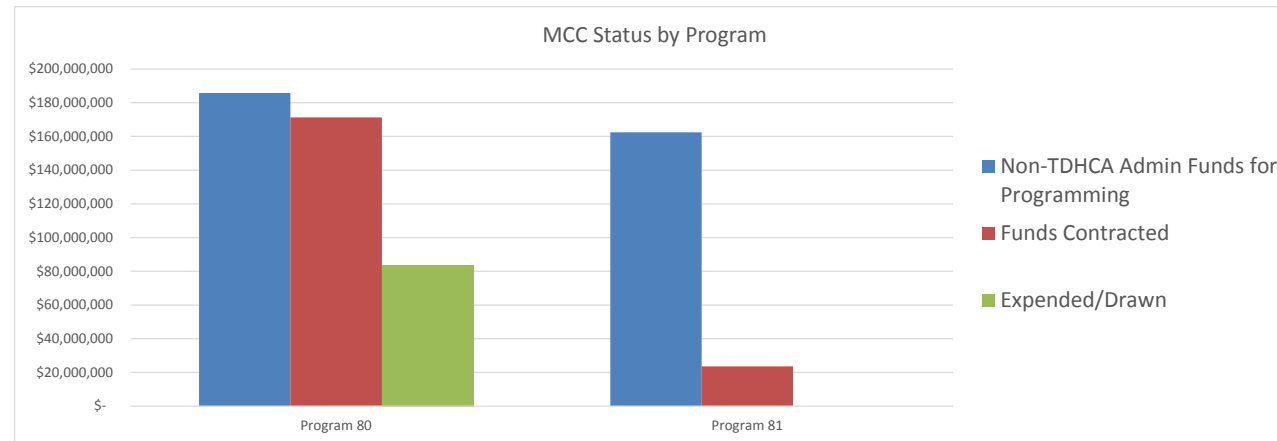
Quarterly Snapshot - Program Debut

Program Area Snapshot - Mortgage Credit Certificate (MCC)

MCC Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Non-TDHCA Admin Funds for Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Deadline
				Admin Retained	Admin Expenditure	% Expended										
Program 80	\$185,714,286	N/A	\$185,714,286	N/A	N/A	N/A	\$185,714,286	\$14,367,240	\$171,347,045	92%		\$83,795,359	45%		593	12/31/2014
Program 81	\$162,500,000	N/A	\$162,500,000	N/A	N/A	N/A	\$162,500,000	\$138,954,969	\$23,545,031	14%		\$0	0%		0	12/31/2015
Total	\$348,214,286	N/A	\$348,214,286	N/A	N/A	N/A	\$348,214,286	\$153,322,209	\$194,892,076	56%		\$83,795,359	24%		593	
Prog. Terms	Loan Authority						Loan Authority			Committed in Pipeline		Issued				

The purpose of the Program Area Snapshot is to articulate some of the attributes of the program that make it unique. These items cannot usually be articulated on the Department Snapshot, which necessitate a closer look. For the MCC program, one unique attribute is that the program uses different terminology than "awarded," "contracted," and "expended." To clarify those distinctions, the "Prog. Terms" row was added to show the terminology used by staff in the program area. Hopefully this information will not only clarify how the program fits into the Snapshot and its comparable stages, but will also help in any communications with the program area.

Please note that both trendlines dip over the last quarter in the Total row. This is due to the addition of Program 81. When a new program comes online, the Loan Authority increases but those new funds are not yet contracted nor expended so the percent Contracted and Expended drop considerably. The same effect will be observed when Program 80 is eventually completed.



The bar chart shows the status of each MCC program. The chart shows the progress of the total loan authority as its Committed in the Pipeline and then Issued. The blue lines show how much funding is intended to go to the subrecipients or households. This is essentially the yardstick by which we can measure progress. The red bar shows the amount contracted. For example, the red bar for Program 80 shows that roughly half of the Total Loan Authority has been obligated, also referred to as Committed in the Pipeline. Finally, the green bar indicates the amount of funds that have been expended, also referred to in the MCC program as "Issued." In the MCC program, the issuance of credits is the goal of the program and thus the final metric used to determine progress.

As one might expect, the older program is further along in both Funds Contracted as well as Expended where the most recent year is moving along but not as fully obligated.

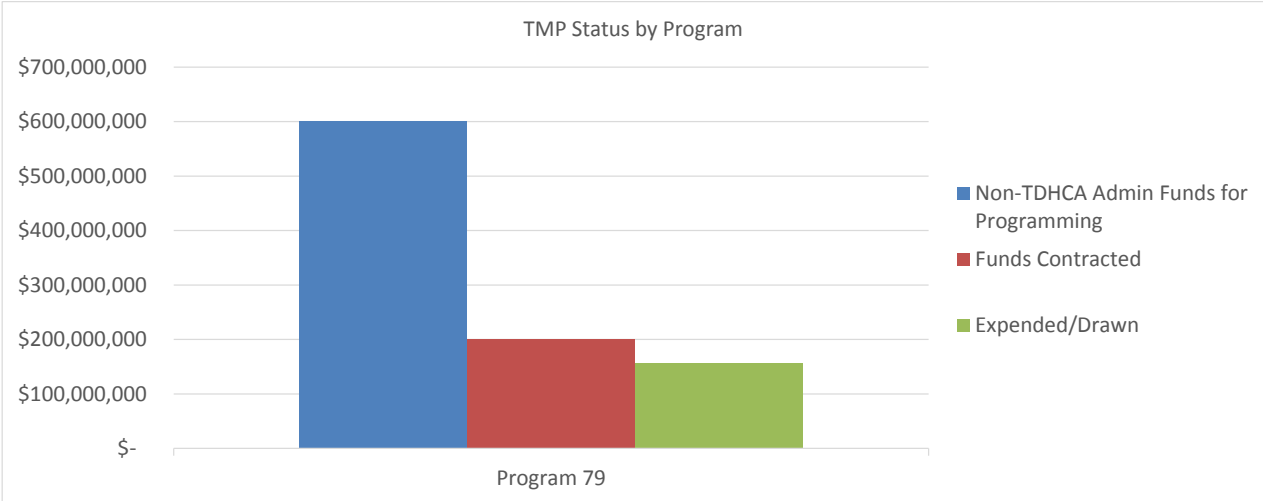
TDHCA's MCC program is split into what is referred to as Program 80 and Program 81. As the above chart shows, the \$348,214,286 in current Total Loan Authority is split between the two programs. Just under half is for the newer Program 81 whereas just over half is for Program 80.

Quarterly Snapshot - Program Debut

Program Area Snapshot - My First Texas Home (TMP-79)

TMP Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds*			Non-TDHCA Admin Funds for Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Deadline
				Admin Retained	Admin Expenditure	% Expended										
TMP - Program 79	\$600,000,000	N/A	\$600,000,000	N/A	N/A	N/A	\$600,000,000	\$400,042,590	\$199,957,410	33%	↔	\$155,774,248	26%	↔	1,187	N/A
Prog. Terms	Program Cap		Program Cap				Program Cap			Reservations & Compliance				Purchased/Service & Investor/Trustee		

The purpose of the Program Area Snapshot is to articulate some of the attributes of the program that make it unique. These items cannot usually be articulated on the Department Snapshot, which necessitate a closer look. For the TMP program, one unique attribute is that the program uses different terminology than "awarded," "contracted," and "expended." To clarify those distinctions, the "Prog. Terms" row was added to show the terminology used by staff in the program area. Hopefully this information will clarify how the program fits into the Snapshot and its comparable stages.



The bar chart shows the status of the TMP program. The chart shows the progress of the funds as they come through the initial Reservations & Compliance stage (blue bar), go through Underwriting Certifications & Exceptions (red bar), and then finally the loans are Purchased (green bar). These stages, respectively, are comparable to the Award, Contracted, and Expended phases of other programs. Unlike the MCC program, there is currently only a single TMP program. The chart above shows that of the \$600M program cap, 33% or about \$200M has reached the Reservations & Compliance stage (or Contracted for in the Snapshot). Further, 26% or about \$155M in loans have been purchased by a Servicer or Investor/Trustee (Expended). For the TMP program, the purchase of the loans are the funds being put to their final purpose and are thus the final metric of success.



**TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS**
Building Homes. Strengthening Communities.

**TDHCA Quarterly Snapshot Intro
Program Planning, Policy, and Metrics
(3PM)
September 12, 2013**

September 12, 2013

The background of the slide features a soft-focus, painterly illustration of a residential scene. On the left, a portion of a red brick house with a white window frame is visible. The rest of the background is dominated by warm, golden-yellow and light blue tones, suggesting a sunlit landscape with trees and a clear sky. The overall aesthetic is bright and professional.

Objective

- Recap Quarterly Snapshot tool
- Review Mortgage Credit Certificate Program (MCC)
 - Current Snapshot
 - Program Area Snapshot
- Review My First Texas Home Program (TMP)
 - Current Snapshot
 - Program Area Snapshot

The background of the slide features a soft-focus image of a red house on the left and a field of tall grass or reeds on the right, under a bright sky. The overall tone is warm and natural.

Quarterly Snapshot RECAP

- Designed for Executive Mgmt, Board, external stakeholders
- High-level gauge of Department's progress
- Shows advancement towards full implementation of funds under current awards/authorities
- Every program has nuances – staff has used comparable benchmarks for each program at each stage

Snapshot General Layout - RECAP

Story of progress from left to right

Grant Funded Programs - Formula-Based																
Programs	A Awards to be Administered	B Program Income	C Cumulative Total Funds	TDHCA Admin		F Non-TDHCA Admin Funds for Programming	G Funds Unencumbered	H Funds Contracted	I % Contracted	J Change Indicator	K Expended /Drawn	L % Expended	M Change Indicator	N Units/ Households	O Persons	P Properties
				D Retained	E Expended											
HHSP	\$ 20,000,000	N/A	\$ 20,000,000	N/A	N/A	\$ 20,000,000	\$ 3,400,000	\$ 16,600,000	83%		\$ 13,600,000	68%		18,419	28,440	
LIHEAP-WAP	\$ 10,000,000	N/A	\$ 10,000,000	\$ 500,000	\$ 400,000	\$ 9,500,000	\$ -	\$ 1,425,000	100%		\$ 475,000	59%		92		
CEAP								\$ 8,075,000			\$ 5,130,000			3,043		
DOE-WAP	\$ 13,000,000	N/A	\$ 13,000,000	\$ 650,000	\$ 180,000	\$ 12,350,000	\$ 9,386,000	\$ 2,964,000	24%		\$ 1,605,500	13%		535		
CSBG	\$ 10,000,000	N/A	\$ 10,000,000	\$ 500,000	\$ 50,000	\$ 9,500,000	\$ 95,000	\$ 9,405,000	99%		\$ 6,270,000	66%			101,581	



DEMONSTRATION DATA ONLY
Does not reflect actual performance



Board Direction from February

Graphic

- Graphic representations
 - Staff has developed the trend lines in columns J and K to provide the reader with historical “at a glance” information. Additionally several graphs have been incorporated on the Program-Area Snapshot specific to each program that convey a great deal of perspective on program activity.

Program-Level

- Show Deadlines
 - Staff has incorporated expenditure deadline information within the Program-Area Snapshot where applicable. As the nature of deadlines vary greatly by program, staff still considers this facet of the report to be under development.
- Projections vs. Actuals
 - Staff is still researching this aspect of the report

Mortgage Credit Certificate (MCC)

Department-level Snapshot excerpt

$$A + B = C; C - D = F; F - G = H$$

Program	A	B	C	TDHCA Admin			F	G	H	I	J	K	L	M	N
				D	E	% Expended									
	Award to Administer	Program Income	Total Cumulative Funds	Admin Retained	Expended	% Expended	Non-TDHCA Admin Funds for Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
MCC	\$ 348,214,286	N/A	\$ 348,214,286	N/A	N/A	N/A	\$ 348,214,286	\$ 153,322,209	\$ 194,892,076	56%	↗	\$ 83,795,359	24%	↗	593

MCC

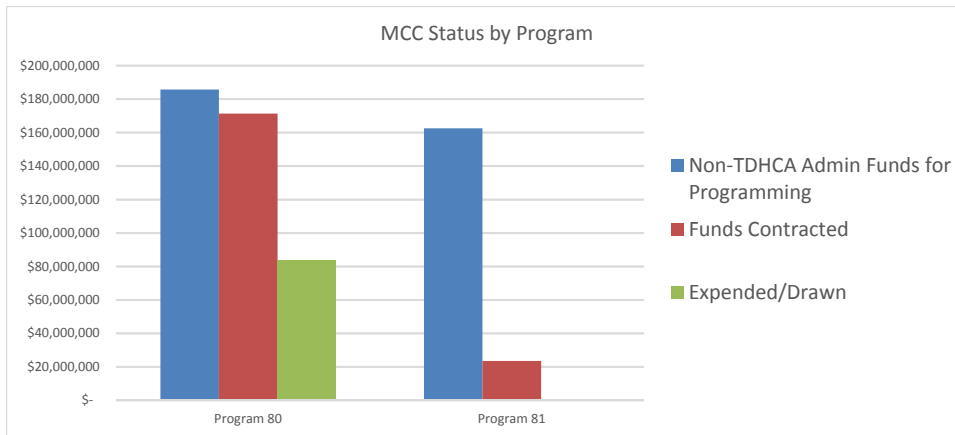
- Allows the homebuyer to claim a tax credit for some portion of the mortgage interest paid per year
- Dollar for dollar reduction against their federal tax liability
- Split into Programs 80 and 81
- Does not have Program Income nor TDHCA Administrative funds

MCC

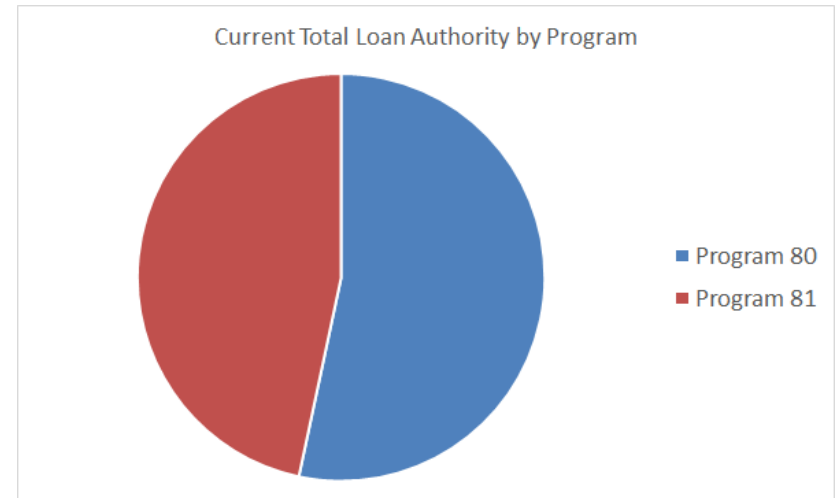
Program-Area Snapshot excerpt

MCC Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Non-TDHCA Admin Funds for	Funds Unencumbered	Funds Contracted	% Contract	Expended/ Drawn	% Expended	% Expended Trendline	Units	Deadline
				Admin Retained	Admin Expenditure	% Expended									
Program 80	\$ 185,714,286	N/A	\$ 185,714,286	N/A	N/A	N/A	\$ 185,714,286	\$ 14,367,240	\$ 171,347,045	92%	\$ 83,795,359	45%		593	12/31/2014
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Total	\$ 348,214,286	N/A	\$ 348,214,286	N/A	N/A	N/A	\$ 348,214,286	\$ 153,322,209	\$ 194,892,076	56%	\$ 83,795,359	24%		593	
Prog. Terms	Loan Authority						Loan Authority		Committed in Pipeline		Issued				

The "Prog. Terms" row was added to show the terminology used by staff in the program area. Hopefully this information will clarify how the program fits into the Snapshot and its comparable stages.



This chart shows the progress of the MCC program. The above chart is what one might expect as it shows older programs being nearer to fully obligated and thus fully expended.



This pie chart helps to illustrate the comparative sizes of the MCC programs.

My First Texas Home(TMP)

Department-level Snapshot excerpt

$$A + B = C; C - D = E; F - G = H$$

Program	A	B	C	TDHCA Admin			F	G	H	I	J	K	L	M	N
				D	E	%									
	Award to Administer	Program Income	Total Cumulative Funds	Admin Retained	Expended	% Expended	Non-TDHCA Admin Funds for Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
TMP	\$ 600,000,000	N/A	\$ 600,000,000	N/A	N/A	N/A	\$ 600,000,000	\$ 400,042,590	\$ 199,957,410	33%	↗	\$ 155,774,248	26%	↗	1,187

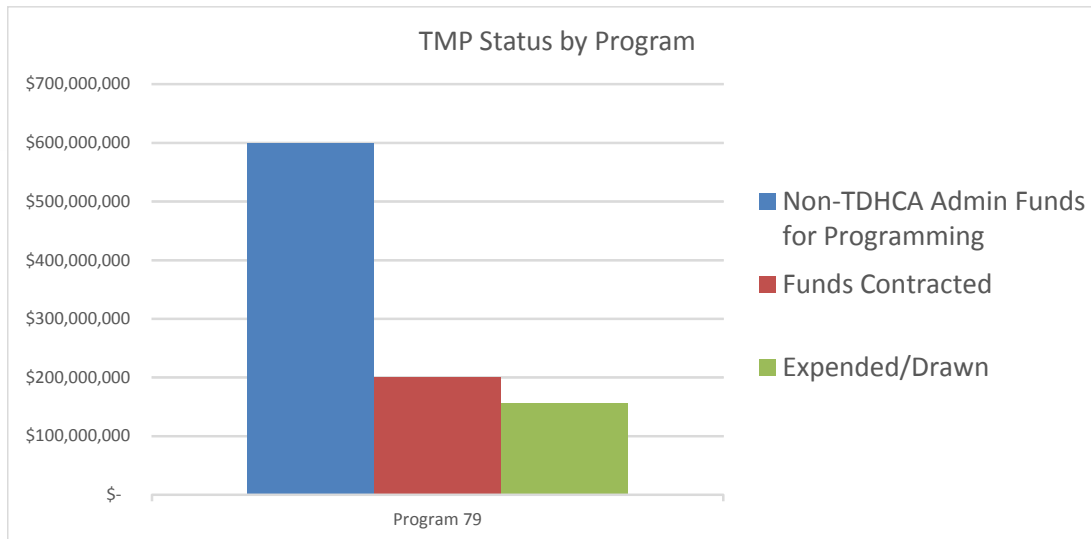
TMP

- Split into Programs, currently Program 79
- Like MCC, no Program Income or TDHCA Admin
- Unlike most programs, doesn't have an actual award but the Department has set a \$600M cap on the program. For the Snapshot, the cap serves as the "allocation"

TMP

Program-Area Snapshot excerpt

TMP Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds*			Non-TDHCA Admin Funds for Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Deadline
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TMP - Program 79	\$600,000,000	N/A	\$600,000,000	N/A	N/A	N/A	\$600,000,000	\$400,042,590	\$199,957,410	33%	———	\$155,774,248	26%	———	1,187	N/A
Prog. Terms	Program Cap		Program Cap				Program Cap		Reservations & Compliance			Purchased/Service & Investor/Trustee				



The "Prog. Terms" row was added to show the terminology used by staff in the program area. Hopefully this information will clarify how the program fits into the Snapshot and its comparable stages.

This chart shows the progress of the TMP program. The above chart is what one might expect as program is nearer to completion. The Contracted amount is nearing 100% with the Expended amount trailing closely.



Questions, Concerns, or Ideas?

Please contact:

David Johnson

Program, Planning, Policy & Metrics (3PM)

david.johnson@tdhca.state.tx.us

1j

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Amendment for Artisan at Port Isabel (File No. 10014)

RECOMMENDED ACTION

WHEREAS, Artisan at Port Isabel received an award of 9% Housing Tax Credits in 2010 to construct 73 multifamily units on 11.061 acres in Mesquite;

WHEREAS, the Development Owner is requesting approval to release 2.4806 unimproved acres of the site from the application and the associated Land Use Restriction Agreement (“LURA”);

WHEREAS, Board approval is required for any change that would materially alter a Development and the Owner has complied with the amendment requirements in Texas Government Code §2306.6712 and 10 TAC §10.405(a)(4); and

WHEREAS, the reduction of the total site acreage and the associated increase in residential density does not materially alter the development in a negative manner or impact the viability of the transaction or amount of tax credits awarded;

NOW, therefore, it is hereby,

RESOLVED, that the amendment of the Housing Tax Credit application for Artisan at Port Isabel is approved as presented to this meeting and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Artisan at Port Isabel was underwritten and approved for a 9% Housing Tax Credit allocation during the 2010 competitive cycle. The application proposed to construct 73 family units on an 11.061 acre site. It was known at the time of underwriting that 2.4806 acres of the site would remain unimproved, but the allocation was conditioned upon encumbering the full acreage by the LURA since the cost of land acquisition for entire site was under control and included in the underwriting analysis. On May 25, 2013, the Department received a letter requesting to have the unimproved remainder acreage (2.4806 acres of the original 11.061 acres) released from the tax credit application and the associated LURA so that the Housing Authority of Port Isabel could develop 70 additional units of senior affordable housing. IRS Forms 8609 have not yet been issued for the original tax credit allocation.

The proposed change would constitute a decrease in site acreage of 22.4% and an increase in residential density of 29.1%. If the original acquisition cost is prorated based on a 22.4% decrease in site acreage, the net effect on the tax credit award would be a reduction of tax credit in the amount of \$74,725. The Development owner already returned \$123,452 in credits on June 20, 2013, to account for this and other changes in their final development cost schedule. The cost certification is currently under review; however, department staff has confirmed that these changes would not negatively impact the final tax credit allocation.

Staff recommends approval of the requested amendment based on the following conditions:

1. The acquisition cost be prorated at cost certification for the decrease site acreage;
2. Any future funding applications that include the released acreage shall be limited to the same acquisition proration as the prorated cost excluded from acquisition in the original development, pending cost certification, plus carrying cost accrued after the date the acreage is transferred to the new development entity; and
3. Upon Board approval of this request, the LURA Amendment to release the 2.4806 unimproved acres of the site will only be processed upon an approved new funding award and the execution of a new LURA for this parcel of land.

ARDC Port Isabel, Ltd
106 Port Road
Port Isabel, Texas 78578
(956) 943-2863

May 25, 2013

Ms. Kathryn Saar
Asset Manager, Asset Management Division
Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, Texas 78701

**Re: Artisan at Port Isabel, Project # 10014
Material Amendment to Housing Tax Credit Application**

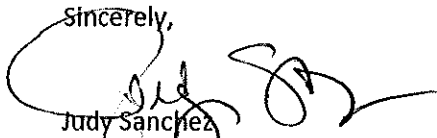
Dear Ms. Saar:

ARDC Port Isabel, Ltd. respectfully requests a Material Amendment to the Housing Tax Credit Application for Project# 10014 - The Artisan at Port Isabel. This amendment is requested in order to release 2.4806 acres of vacant land originally included in the development's 11.061 acre site. A copy of the current 11.061 acre ALTA survey is attached highlighting the land requested for amendment. Also attached is a detail survey of the vacant 2.4806 parcel of land.

As currently stands, and as reflected in the ALTA survey, the vacant land currently remains unused by the project, and no amenities are location on this land. However, the Housing Authority of Port Isabel plans on using the parcel to provide additional affordable housing, with pending plans to develop 70 units of senior (age 65+) affordable units. Construction of new affordable senior housing is much needed in the Port Isabel area, and will be of great benefit to the local elderly population. We believe that use of this dormant parcel to provide additional affordable housing in furtherance of the missions of both TDHCA and the Housing Authority constitutes good cause for it to be released from the LURA.

Finally, it should be noted that the current financing participants approve of the amendment request and release of the parcel. Should TDHCA concur, the Housing Authority will proceed. Please let us know if further information is needed. Thanks in advance for your help and support.

Sincerely,



Judy Sanchez
Executive Director, Port Isabel Public Facilities Corporation – Sole Member of
ARDC Port Isabel GP LLC – General Partner

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Amendment for Sycamore Center Villas in Fort Worth (File No. 02484)

RECOMMENDED ACTION

WHEREAS, Sycamore Center Villas received an award of 4% Housing Tax Credits in 2003 to construct 280 multifamily units in Fort Worth;

WHEREAS, the Development Owner is requesting approval to identify forty-eight (48) 3-bedroom/2-bath units with a den as 4-bedroom/2-bath units and charge the corresponding 4-bedroom rent;

WHEREAS, Board approval is required for any change that would materially alter a Development and the Owner has complied with the amendment requirements in Texas Government Code §2306.6712 and 10 TAC §10.405(a)(4);

WHEREAS, the change as requested would impact existing tenants as well as future prospective tenants; and

WHEREAS, the changes requested improve the viability of the transaction and do not impact the amount of tax credits previously awarded;

NOW, therefore, it is hereby

RESOLVED, that the amendment of the Housing Tax Credit application for Sycamore Center Villas is approved as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Sycamore Center Villas received approval in 2003 to construct 280 new multifamily units in Fort Worth, Texas. In a letter dated February 11, 2013 the Development Owner requested the Department's permission to identify forty-eight (48) 1,300 square foot units that are currently designated as 3-bedroom/2-bath units with a den as 4-bedroom/2-bath units in order to charge the 4-bedroom rental rate.

According to the Development Owner's request letter, the application for Sycamore Center Villas was submitted to the Department at about the same time that two other developments (Alameda Villas and Cypress View Villas), initiated by the same developer, were submitted to the Department. While approximately the same building plans were used for each of these three proposed developments and all included a mix of 2-bedroom/2-bath, 3-bedroom/2-bath and 4-bedroom/2-bath units, the application for Sycamore Center Villas identified the 4-bedroom units as 3-bedroom/2-bath units with a den. It is not clear why the original developer chose to treat this property in this manner and there was no prohibition on 4-bedroom units in the QAP at the time this development was awarded.

The Development Owner goes on to state that the Sycamore property is well-maintained and occupied; but has struggled financially. Copies of the owner's audits for 2009-2012 were provided and confirmed the property's financial condition. To date the investor limited partner has contributed approximately \$3.5M to Sycamore Center Villas, above and beyond its contractual obligation. However, the investor cannot continue to fund the property's deficits. In order to reverse the property's financial struggles, this amendment request is the first of a two-pronged approach that the Development Owner will pursue to address the property's problems. If approval is granted for the change requested in this amendment, the owner plans to increase rents for the larger 3-bedroom/2-bath units with a den to the 4-bedroom rental rate upon lease renewal. According to the owner's initial projections this would generate about \$81K annually in rental revenue for the property.

The Department's analysis of the change requested confirms that additional income would be generated; however, this change alone would not place the property in a position of achieving positive cash flow with the debt in place as currently structured. The Department's analysis takes into account the maximum program rents on all units, including the 4-bedroom units should the change be approved. With the current debt structure, the debt coverage ratio (DCR) would fall outside of the Department's current underwriting guidelines. However, a refinance of the debt at the rates and terms indicated by the Development Owner would improve the DCR allowing it to rise to an acceptable level as reflected in the attached proforma.

While the Department appreciates the Development Owner's current financial position and the efforts being made to address the issues described previously, there is concern with preserving the lower rents for the existing households in the forty-eight (48) units in question. In some cases the rental increase could be significant enough to displace these households. Staff discussed these concerns with the Development Owner. The owner emphasized their desire and intent to keep the existing households at the property. To that end, the owner suggested making some accommodations for those tenants that currently reside in one of the 48 units to be converted from 3-bedroom to 4-bedroom rental rates. For instance, if the tenant could not or did not want to pay the higher 4-bedroom rental rate, the owner could relocate a tenant to another 3-bedroom unit with any relocation costs paid by the owner. Additionally, the owner suggested providing a 60-day lease expiration notice rather than the typical 30-day notice in order to give the tenant sufficient time to "shop around" if they could not stay in the existing unit at the higher 4-bedroom rent level. Neither of these solutions fully compensates the tenant for the long term loss of the affordability of their large unit which they currently call home. Moreover, any prospective tenants on the waiting list for these units may also be impacted if the three bedroom with a den unit is no longer offered. Staff confirmed the waiting list for such units include three households.

Staff recommends approval of the amendment request subject to the Development Owner's implementation of the new 4-bedroom rental rate upon normal turnover of the unit and to making any

vacated units (of the 32 units subject to this request) available to any and all prospective tenants on the waiting list for same size units (3-bedroom/2-bath units) as of the date of this approval. An existing household may not be evicted or non-renewed for other than good cause.

February 11, 2013

RECEIVED
FEB 11 2013
BY: RBM

Ms. Raquel Morales
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: **Amendment Request**
Sycamore Center Villas in Fort Worth ("**Sycamore**")
TDHCA No. 02484

Dear Raquel:

We represent the investor limited partner of Sycamore Center Villas, L.P. (the "**Owner**"), which is the Owner of Sycamore. Sycamore was financed with tax-exempt bonds and 4% tax credits, approved in 2003. The developer who initiated Sycamore initiated two other developments and applications at approximately the same time – Alemeda Villas in Fort Worth ("**Alemeda**") and Cypress View Villas in Weatherford ("**Cypress**"). Each of Alemeda, Sycamore, Sycamore, and Cypress used approximately the same building plans, with a mix of 2-bedroom/2-bathroom units, 3-bedroom/2-bathroom units, and 4-bedroom/2-bathroom units. However, when the tax credit applications were made, the developer identified the 4-bedroom/2-bathroom units in Alemeda and Sycamore as 3-bedroom/2-bathroom units with a den, even though the area designated as a den had all of the square footage, closet space, and other design elements necessary for a bedroom. Only the Cypress tax credit application identified the 4-bedroom/2-bathroom units properly. The developer is no longer affiliated with these properties, so it is not possible to discern why he chose to treat these properties differently in the tax credit applications. There was no prohibition on 4-bedroom units in the QAP at the time these tax credits were awarded.

Thus, Sycamore currently has 48 units in its development that have 1300 total square feet with 3 bedroom, 2 bathrooms, and a den. The Owner has been charging the 3-bedroom rental rates for these units. **The purpose of this amendment request is to seek TDHCA's permission to identify the 3-bedroom/2-bathroom units with a den as 4-bedroom/2-bathroom units so that 4-bedroom rental rates can be charged.**

The Sycamore property is well-maintained and occupied, with its reserves fully funded, but it has been struggling financially. Copies of the Owner's audits for 2009, 2010, and 2011 are enclosed for your reference. In the auditor's notes, you will find that all involved with this property have made a financial sacrifice for Sycamore's ongoing viability. The original developer waived substantial developer fees and contractor fees. Our client, the investor limited partner, has made cash contributions above and beyond its contractual capital obligation and has deferred asset management fees. Despite all of

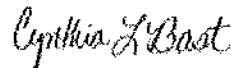
these efforts, the property continues to experience a material negative cash flow each year. The audits include a "going concern" note with regard to the Owner because of its negative cash flow situation.

The investor limited partner has reached a point where it has provided approximately \$3.5 million to Sycamore, above and beyond its capital contribution obligation, and it cannot continue to fund the operations. The Owner plans a two-pronged approach to addressing Sycamore's problems. First, the Owner is endeavoring to generate additional revenues by increasing rents. Last October, the Owner increased its rents to the maximum tax credit rent for the current units. With this amendment, the Owner plans to increase the rents for the 3-bedroom/2-bathroom units with a den to the 4-bedroom rents. Collectively, that change should generate approximately \$81,840 of additional rental revenue annually. For details on this part of the plan, see the rental schedules enclosed herewith. The second element of the plan is to restructure the debt financing Sycamore. However, the lenders want to see the Owner implement the rental revenue changes, including those requested by this amendment, before finalizing the refinancing plan.

The Owner believes this amendment is in the best interests of preserving the affordable restrictions for Sycamore and avoiding severe financial consequences. Further, the Owner believes the change will not have a material adverse effect on the residents for the following reasons. This property rents to residents with 60% AMFI incomes but is limited to charging 50% AMFI rents. When the property increased its rental rates to the maximum tax credit rates for 50% AMFI units last October, there was no significant attrition among the residents. Because the rents are already lower than required for the residents' income levels, the residents have the capacity to pay the increased rents. Additionally, this property has waiting lists for all unit types and would be able to replace any residents who choose not to pay the higher rents. Finally, implementing the 4-bedroom rental rates for the 3-bedroom/2-bathroom units with a den would be done gradually, concurrent with lease renewals.

We hope TDHCA will favorably consider this amendment request. A check payable to TDHCA in the amount of \$2,500 has been included for your time and attention to this request. Please feel free to contact me if you need any additional information.

Sincerely,



Cynthia L. Bast

cc: Gwen Pierce
Adam Stein
Michelle Austin

Enclosures

Property Name:	Sycamore Center	Date:	10/4/2012
City & State	Ft. Worth, TX	U/A Source:	Ft. Worth Housing
No. of Units:	280	Special Provisions:	47 PHA Units Ft. Worth
U/A Source:	Ft. Worth Housing Authority		60% income qualifying; 50% Rent Limits

CURRENT RENT SCHEDULE

Unit Description	# of units	Set aside	Square Feet	Current Rent	Max Rent	Utility Allowance	Max Allowable Rent	Annual Rent Amount
2 bedroom/2 Bath	68	50%	879	\$694	\$778	\$84	\$694	\$ 566,304
2 Bed/2 Bath PHA	20	50%	879	\$214	\$214	N/A	\$214	\$ 51,360
3 Bedroom/2 Bath	121	50%	1158	\$804	\$900	\$96	\$804	\$ 1,167,408
3 Bed/2 Bath-PHA	23	50%	1158	\$214	\$214	N/A	\$214	\$ 59,064
3 Bedroom/2 Bath	44	50%	1300	\$804	\$900	\$96	\$804	\$ 424,512
3 Bed/2 Bath-PHA	4	50%	1300	\$214	\$214	N/A	\$214	\$ 10,272
Total	280						Annual Potential Rent	\$ 2,278,920

REVISED RENT SCHEDULE - ELIMINATE PHA UNITS

Unit Description	# of units	Set aside	Square Feet	Current Rent	Max Rent	Utility Allowance	Max Allowable Rent	Annual Rent Amount
2 bedroom/2 Bath	88	50%	879	\$694	\$778	\$84	\$694	\$ 732,864
3 Bedroom/2 Bath	144	50%	1158	\$804	\$900	\$96	\$804	\$ 1,389,312
3 Bedroom/2 Bath	48	50%	1300	\$804	\$900	\$96	\$804	\$ 463,104
Total	280						Annual Potential Rent	\$ 2,585,280

Operating Statement Comparison

Sycamore Center Villas

Fort Worth, TX



280

Max LIHTC Rent Comparison (Current Debt)

	FYE 2009	per unit	FYE 2010	per unit	FYE 2011	per unit	FYE 2012	per unit	2013 Budget	per unit	AM Analysis	LIHTC Max per unit	AM Analysis	LIHTC Max with 4BR per unit
	12/31/2009		12/31/2010		12/31/2011		12/31/2012		12/31/2013					
Income														
Gross Potential Rent	2,096,900	7,489	2,068,918	7,389	2,161,393	7,719	\$ 2,196,770	7,846	\$ 2,200,920	7,860	\$ 2,233,512	7,977	\$ 2,279,448	8,141
Gain/(Loss) to Lease	-	-	-	-	-	-	-	-	-	-	-	-	-	-
GPR	\$ 2,096,900	7,489	\$ 2,068,918	7,389	\$ 2,161,393	7,719	\$ 2,196,770	7,846	\$ 2,200,920	7,860	\$ 2,233,512	7,977	\$ 2,279,448	8,141

	% of GPR		% of GPR		% of GPR		% of GPR		% of GPR		% of GPR		% of GPR	
Vacancy														
Vacancy Loss	(587,004)	28.0%	(255,772)	12.4%	(297,698)	13.8%	(222,966)	10.1%	(227,892)	10.4%	(156,346)	7.00%	(159,561)	7.00%
Concession Loss	(28,331)	1.4%	(27,529)	1.3%	(31,204)	1.4%	(37,363.73)	1.7%	(37,200)	1.7%	(44,670)	2.00%	(45,589)	2.00%
Bad Debt Loss	(26,331)	1.3%	(22,810)	1.1%	(53,278)	2.5%	(54,933)	2.5%	(55,200)	2.5%	(44,670)	2.00%	(45,589)	2.00%
Non-Rev Units	-	0.0%	-	0.0%	-	0.0%	(11,186)	0.5%	(12,144)	0.6%	(11,168)	0.50%	(11,397)	0.50%
Economic Vacancy	(641,666)	30.6%	(306,111)	14.8%	(382,180)	17.7%	(326,448)	14.9%	(332,436)	15.1%	(256,854)	11.50%	(262,137)	11.50%
Net Rental Income	\$ 1,455,234	5,197	\$ 1,762,807	6,296	\$ 1,779,213	6,354	\$ 1,870,322	6,680	\$ 1,868,484	6,673	\$ 1,976,658	7,059	\$ 2,017,311	7,205

Other Rental Income	7,192		8,824		6,087		9,845		7,800		-		-	
Other Income	122,945	439	77,526	277	67,514	241	110,419	394	93,160	333	100,000	357	100,000	357
Effective Gross Income	\$ 1,585,371	5,662	\$ 1,849,157	6,604	\$ 1,852,814	6,617	\$ 1,990,586	7,109	\$ 1,969,444	7,034	\$ 2,076,658	7,417	\$ 2,117,311	7,562

Expenses														
Payroll & Benefits	333,655	1,192	320,407	1,144	349,135	1,247	\$ 277,396	991	\$ 324,898	1,160	\$ 280,000	1,000	\$ 280,000	1,000
General and Administrative	70,819	253	74,995	268	102,202	365	105,609	377	69,125	247	69,125	247	69,125	247
Repairs and Maintenance	242,270	865	218,189	779	112,884	403	169,353	605	201,941	721	201,941	721	201,941	721
Utilities	188,064	672	212,536	759	243,667	870	333,432	1,191	301,700	1,078	301,700	1,078	301,700	1,078
Advertising & Marketing	4,619	16	1,952	7	2,603	9	3,043	11	18,416	66	18,416	66	18,416	66
Security	-	-	-	-	-	-	35,879	-	-	-	-	-	-	-
Management Fees	91,921	328	124,945	446	134,097	479	141,850	507	117,827	421	124,599	445	127,039	454
Property Insurance	53,838	192	66,210	236	112,847	403	81,961	293	68,000	243	95,930	343	95,930	343
Real Estate Taxes	176,069	629	174,029	622	177,726	635	207,729	742	185,000	661	207,000	739	207,000	739
Miscellaneous	-	-	-	-	-	-	-	-	12,000	43	-	-	-	-
Total Expenses	\$ 1,161,254	4,147	\$ 1,193,263	4,262	\$ 1,235,162	4,411	\$ 1,356,252	4,844	\$ 1,298,907	4,639	\$ 1,298,711	4,638	\$ 1,301,151	4,647
Expenses excluding T&I	\$ 931,347	3,326	\$ 953,024	3,404	\$ 944,589	3,374	\$ 1,066,562	3,809	\$ 1,045,907	3,735	\$ 995,781	3,556	\$ 998,221	3,565

Expenses vs Hunt Proforma	89%		92%		95%		104%		0%		100%		100%	
Management Fee %	5.8%		6.8%		7.2%		7.1%		6.0%		6.0%		6.0%	

Net Operating Income	\$ 424,117	1,515	\$ 655,894	2,342	\$ 617,652	2,206	\$ 634,334	2,265	\$ 670,537	2,395	\$ 777,947	2,778	\$ 816,161	2,915
Expense/Income Ratio	73%		65%		67%		68%		66%		63%		61%	

Replacement Reserve Deposit	66,060	236	66,060	236	66,060	236	0		66,057	236	70,000	250	70,000	250
NOI (less reserves)	\$ 358,057	1,279	\$ 589,834	2,107	\$ 551,592	1,970	\$ 634,334	2,265	\$ 604,480	2,159	\$ 707,947	2,528	\$ 746,161	2,665

Capital Expenditures \$ 105,061 per 2012 FS

Hard Debt Service														
Hard Debt Service (p&i)	790,786	2,824	790,603	2,824	790,005	2,821	856,486	3,059	782,603	2,795	790,005	2,821	864,356	3,087
IRP (income)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
MIP	64,185	229	63,589	227	62,908	225	64,849	232	-	-	64,849	232	-	-
Additional Fees	-	-	-	-	-	-	-	-	91,898	328	-	-	-	-
Total Hard Debt Service	\$ 854,971	3,053	\$ 854,192	3,051	\$ 852,913	3,046	\$ 921,335	3,290	\$ 874,501	3,123	\$ 854,854	3,053	\$ 864,356	3,087
DSC	0.42		0.69		0.65		0.69		0.69		0.83		0.86	

NOI minus DS	\$ (496,914)	(1,775)	\$ (264,358)	(944)	\$ (301,321)	(1,076)	\$ (392,063)	(1,400)	\$ (270,021)	(964)	\$ (146,908)	(525)	\$ (118,195)	(422)
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Operating Statement Comparison		Sycamore Center Villas							
		Fort Worth, TX							
		Max LIHTC Rent Comparison (Current Debt)				Max LIHTC Rent Comparison (New Debt)			
		AM Analysis	LIHTC Max per unit	AM Analysis	LIHTC Max with 4BR per unit	AM Analysis	LIHTC Max per unit	AM Analysis	LIHTC Max with 4BR per unit
Income									
Gross Potential Rent		\$ 2,233,512	7,977	\$ 2,279,448	8,141	\$ 2,233,512	7,977	\$ 2,279,448	8,141
Gain/(Loss) to Lease		-	-	-	-	-	-	-	-
GPR		\$ 2,233,512	7,977	\$ 2,279,448	8,141	\$ 2,233,512	7,977	\$ 2,279,448	8,141
Vacancy		% of GPR		% of GPR		% of GPR		% of GPR	
Vacancy Loss		(156,346)	7.00%	(159,561)	7.00%	(156,346)	7.00%	(159,561)	7.00%
Concession Loss		(44,670)	2.00%	(45,589)	2.00%	(44,670)	2.00%	(45,589)	2.00%
Bad Debt Loss		(44,670)	2.00%	(45,589)	2.00%	(44,670)	2.00%	(45,589)	2.00%
Non-Rev Units		(11,168)	0.50%	(11,397)	0.50%	(11,168)	0.50%	(11,397)	0.50%
Economic Vacancy		(256,854)	11.50%	(262,137)	11.50%	(256,854)	11.50%	(262,137)	11.50%
Net Rental Income		\$ 1,976,658	7,059	\$ 2,017,311	7,205	\$ 1,976,658	7,059	\$ 2,017,311	7,205
Other Rental Income		-	-	-	-	-	-	-	-
Other Income		100,000	357	100,000	357	100,000	357	100,000	357
Effective Gross Income		\$ 2,076,658	7,417	\$ 2,117,311	7,562	\$ 2,076,658	7,417	\$ 2,117,311	7,562
Expenses									
Payroll & Benefits		\$ 280,000	1,000	\$ 280,000	1,000	\$ 280,000	1,000	\$ 280,000	1,000
General and Administrative		\$ 69,125	247	\$ 69,125	247	\$ 69,125	247	\$ 69,125	247
Repairs and Maintenance		\$ 201,941	721	\$ 201,941	721	\$ 201,941	721	\$ 201,941	721
Utilities		\$ 301,700	1,078	\$ 301,700	1,078	\$ 301,700	1,078	\$ 301,700	1,078
Advertising & Marketing		\$ 18,416	66	\$ 18,416	66	\$ 18,416	66	\$ 18,416	66
Security		\$ -	-	\$ -	-	\$ -	-	\$ -	-
Management Fees		\$ 124,599	445	\$ 127,039	454	\$ 124,599	445	\$ 127,039	454
Property Insurance		\$ 95,930	343	\$ 95,930	343	\$ 95,930	343	\$ 95,930	343
Real Estate Taxes		\$ 207,000	739	\$ 207,000	739	\$ 207,000	739	\$ 207,000	739
Miscellaneous		\$ -	-	\$ -	-	\$ -	-	\$ -	-
Total Expenses		\$ 1,298,711	4,638	\$ 1,301,151	4,647	\$ 1,298,711	4,638	\$ 1,301,151	4,647
Expenses excluding T&I		\$ 995,781	3,556	\$ 998,221	3,565	\$ 995,781	3,556	\$ 998,221	3,565
Expenses vs Hunt Proforma		100%		100%		100%		100%	
Management Fee %		6.0%		6.0%		6.0%		6.0%	
Net Operating Income		\$ 777,947	2,778	\$ 816,161	2,915	\$ 777,947	2,778	\$ 816,161	2,915
Expense/Income Ratio		63%		61%		63%		61%	
Replacement Reserve Deposit		70,000	250	70,000	250	70,000	250	70,000	250
NOI (less reserves)		\$ 707,947	2,528	\$ 746,161	2,665	\$ 707,947	2,528	\$ 746,161	2,665
Capital Expenditures									
Hard Debt Service									
Hard Debt Service (p&i)		790,005	2,821	864,356	3,087	641,984	2,293	641,984	2,293
IRP (income)		-	-	-	-	-	-	-	-
MIP		64,849	232	-	-	-	-	-	-
Additional Fees		-	-	-	-	-	-	-	-
Total Hard Debt Service		\$ 854,854	3,053	\$ 864,356	3,087	\$ 641,984	2,293	\$ 641,984	2,293
DSC		0.83		0.86		1.10		1.16	
NOI minus DS		\$ (146,908)	(525)	\$ (118,195)	(422)	\$ 65,963	236	\$ 104,177	372



DEVELOPMENT IDENTIFICATION

TDHCA Application #: Program(s):

Address/Location:

City: County: Zip:

Analysis Purpose:

PRIOR REPORT(S)	PURPOSE
05/01/03	New Application - Initial Underwriting

SUMMARY

Sycamore Center Villas was originally underwritten in May 2003 when the application was submitted proposing the new construction of 280 multifamily units in Fort Worth, Texas. the Development was approved, and ultimately cost certified (8609s issued in July 2006) with the final approved unit mix as follows:

ORIGINAL UNIT MIX AT APPLICATION				
Type	Number	Bedrooms	Baths	Size in SF
TC50%	88	2	2	972
TC50%	144	3	2	1,158
TC50%	48	3	2	1,300

At the time that this application was submitted for review and approval, two other developments were initiated by the same developer at approximately the same time, Alameda Villas in Fort Worth and Cypress View Villas in Weatherford. According to the Amendment Request letter dated February 11, 2013 submitted on behalf of the investor limited partner, each of these three developments used approximately the same building plans with a mix of two, three and four-bedroom units. However, the applications submitted for Sycamore and Alameda Villas identified the 1,300 square foot 4-bedroom/2-bath units as 3-bedroom/2-bath units with dens. This was done despite the fact that the area designated as the den had all of the square footage, closet space and other design elements necessary for a bedroom. It is not clear why the original developer, who is no longer affiliated with these properties, chose to treat these properties differently when all three had the same unit and building plans.

Nevertheless, the investor limited partner is now requesting approval from TDHCA to identify all 48 of the 3-bedroom/2-bath units with a den as 4-bedroom/2-bath units so that 4-bedroom rental rates can be charged. See the requested unit mix below:

PROPOSED UNIT MIX- AMENDMENT				
Type	Number	Bedrooms	Baths	Size in SF
TC50%	88	2	2	986
TC50%	144	3	2	1,158
TC50%	48	4	2	1,300

The Amendment Request included the Owner's projections assuming the 4-bedroom rental rate, as well as copies of the property's audits for 2009-2012 which reflect that the property has been struggling financially over this period of time.

PROFORMA ANALYSIS

Based on the latest rent roll for Sycamore Center Villas (as of May 2013) the property is currently collecting annual rent that is approximately \$64K less than the maximum potential rent, with the current unit mix in place. Review of the property's historical financial statements revealed several issues on the income side, including the fact that the property did not appear to charge the maximum rents for the units and a high vacancy rate (12-16%). Discussions with the investor's Asset Manager for this property further revealed that the previous management company was not charging the maximum potential rent for each of the unit types, despite the fact that the market is able to support the maximum rent. Nevertheless, the current property management company has been working to increase the rental rates for the units as leases come up. The Owner's projections for rental income, which include charging the 4-bedroom rental rate, reflect the maximum program rents for all units. Additionally, the property currently has 47 public housing units which receive rental subsidy from the Fort Worth Housing Authority in the amount of \$219. As of May 31, 2013 the property was 93% occupied.

The Owner's projected expenses appear to be in line with the property's historical operating statements for 2010-2012. TDHCA's projection takes an average of the previous three years for each of the line items, except management fees which is calculated based on the current 6% fee. The Owner's NOI projection, while higher than in previous years, still yields a debt coverage ratio (DCR) that is below 1.00 based on the current debt structure of the property. Audits for previous years reflect that the Owner has incurred significant mortgage late fees which added to the property's negative cash flow. However, the Owner has indicated that a refinance of the current debt for Sycamore is expected after approval of this Amendment Request is granted, as lenders want to see this change before finalizing any refinance plan.

However, the Owner has indicated that a refinance of the current debt for Sycamore is expected after approval of this Amendment Request is granted, as lenders want to see this requested rent change before finalizing any refinance plan. For purposes of the projections provided, the Owner assumed an approximate 4% interest rate on \$12.8M loan amount. At this projected refinanced debt structure, the property's DCR would rise to an acceptable level of 1.26 with the requested 4-bedroom rental rates being charged.

CONCLUSIONS

Staff recommends approval of the Amendment Request to identify the 3-bedroom/2-bath units with den as 4-bedroom/2-bath units in order to charge a 4-bedroom/2-bath rental rate.

Asset Manager: Raquel Morales

Director of Asset Management: Cari Garcia

UNIT MIX/RENT SCHEDULE

Sycamore Center Villas, Fort Worth, 02484

UNIT MIX / MONTHLY RENT SCHEDULE

MRB	Other	Unit Mix					APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS			MARKET RENTS				
		Type	Gross Rent	Type	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
MRB50%			\$778		26	2	2	959	\$778	\$97	\$681	\$0.71	\$681	\$17,706	\$17,706	\$681	\$18.46	\$0		0.00	
MRB50%			\$778		42	2	2	986	\$778	\$97	\$681	\$0.69	\$681	\$28,602	\$28,602	\$681	\$29.01	\$0		0.00	
MRB50%		PHA	\$778		20	2	2	986	\$778	\$97	\$681	\$0.22	\$219	\$4,380	\$4,380	\$219	\$4.44	(\$462)	\$219	0.22	\$0
MRB50%			\$900		49	3	2	1,158	\$900	\$115	\$785	\$0.68	\$785	\$38,465	\$38,465	\$785	\$33.22	\$0		0.00	
MRB50%		PHA	\$900		23	3	2	1,158	\$900	\$115	\$785	\$0.19	\$219	\$5,037	\$5,037	\$219	\$4.35	(\$566)	\$219	0.19	\$0
MRB50%			\$900		72	3	2	1,156	\$900	\$115	\$785	\$0.68	\$785	\$56,520	\$56,520	\$785	\$48.89	\$0		0.00	
MRB50%			\$1,003		44	4	2	1,300	\$1,003	\$131	\$872	\$0.67	\$872	\$38,368	\$38,368	\$872	\$29.51	\$0		0.00	
MRB50%		PHA	\$1,003		4	4	2	1,300	\$1,003	\$131	\$872	\$0.17	\$219	\$876	\$876	\$219	\$0.67	(\$653)	\$219	0.17	\$0
					280			315,074				\$0.60	\$678	\$189,954	\$189,954	\$678	\$30.19	(\$89)	\$37	\$0.03	

\$2,279,448 \$2,279,448

PROFORMA ANALYSIS

			TDHCA - 4BR	TDHCA - Current 3BR	Owner's Request- 4BR	2012 Audit	2011 Audit	2010 Audit	
POTENTIAL GROSS RENT			\$2,279,448	\$2,169,114	\$2,279,448	\$2,196,769	\$2,161,392	\$2,068,917	
Secondary Income	Per Unit/Month	\$20.00	\$67,200	\$67,200	\$100,000	\$110,197	\$67,415	\$77,361	\$29.76 Per Unit Per Month
Other Income:					\$0	\$10,066	\$6,087	\$8,824	\$0.00 Per Unit Per Month
Other Income:					\$0		\$98	\$170	\$0.00 Per Unit Per Month
POTENTIAL GROSS INCOME			\$2,346,648	\$2,236,314	\$2,379,448	\$2,317,032	\$2,234,992	\$2,155,272	
Vacancy & Collection Loss	% of PGI	-7.5%	(\$175,999)	(\$167,724)	(\$205,150)	(\$285,124)	(\$350,975)	(\$278,582)	-8.6% % of PGI
EO/Non-Rental Units/Concessions			\$0		(\$56,986)	(\$48,550)	(\$38,590)	(\$31,246)	
EFFECTIVE GROSS INCOME			\$2,170,649	\$2,068,591	\$2,117,312	\$1,983,358	\$1,845,427	\$1,845,444	

EXPENSES	% of EGI	Per Unit	Per SF						Per SF	Per Unit	% of EGI	
General & Administrative	3.87%	\$300	\$0.27	\$84,077	\$84,077	\$87,541	\$52,409	\$104,803	\$95,020	\$0.28	\$313	4.13%
Management	6.00%	\$465	\$0.41	\$130,239	\$124,115	\$127,039	\$132,850	\$134,097	\$124,945	\$0.40	\$454	6.00%
Payroll & Payroll Tax	11.89%	\$922	\$0.82	\$258,157	\$258,157	\$280,000	\$277,398	\$261,443	\$235,631	\$0.89	\$1,000	13.22%
Repairs & Maintenance	12.42%	\$963	\$0.86	\$269,665	\$269,665	\$201,941	\$304,422	\$227,705	\$276,867	\$0.64	\$721	9.54%
Utilities	1.82%	\$141	\$0.13	\$39,560	\$39,560	\$301,700	\$43,727	\$57,537	\$17,417	\$0.96	\$1,078	14.25%
Water, Sewer & Trash	11.71%	\$907	\$0.81	\$254,087	\$254,087	\$0	\$289,704	\$228,180	\$244,378	\$0.00	\$0	0.00%
Property Insurance	3.16%	\$245	\$0.22	\$68,638	\$68,638	\$95,930	\$62,575	\$34,840	\$46,044	\$0.30	\$343	4.53%
Property Tax	3.19	\$627	\$0.56	\$175,589	\$175,589	\$207,000	\$184,660	\$177,726	\$164,380	\$0.66	\$739	9.78%
Reserve for Replacements	3.22%	\$250	\$0.22	\$70,000	\$70,000	\$70,000	\$71,562	\$66,057	\$71,562	\$0.22	\$250	3.31%
TDHCA Compliance Fees	0.52%	\$40	\$0.04	\$11,200	\$11,200	\$0				\$0.00	\$0	0.00%
Other:	0.00%	\$0	\$0.00	\$0	\$0	\$0				\$0.00	\$0	0.00%
TOTAL EXPENSES	62.71%	\$4,861	\$4.32	\$1,361,212	\$1,355,089	\$1,371,151	\$1,419,307	\$1,292,388	\$1,276,244	\$4.35	\$4,897	64.76%
NET OPERATING INCOME	37.29%	\$2,890.85	\$2.57	\$809,437	\$713,502	\$746,161	\$564,051	\$553,039	\$569,200	\$2.37	\$2,665	35.24%

COMPARABLES USED		
TDHCA DB	DB Per Unit	Other
\$108,611	\$388	
\$108,094	\$386	
\$292,192	\$1,044	
\$152,438	\$544	
\$102,186	\$365	
\$179,287	\$640	
\$68,638	\$245	
\$201,368	\$719	
\$115,779	\$413	

DEBT

First Lien: Red Mortgage (HUD)	\$732,586	\$732,586	\$864,356	\$800,674	\$790,005	\$801,141
Other: mortgage late fees				\$5,270	\$15,812	\$11,859
Other: MIP	\$64,849	\$64,849		\$62,253	\$62,908	\$63,589
TOTAL DEBT SERVICE	\$797,435	\$797,435	\$864,356	\$868,197	\$868,725	\$876,589
NET CASH FLOW	\$12,002	-\$83,933	-\$118,195	-\$304,146	-\$315,686	-\$307,389
AGGREGATE DEBT COVERAGE RATIO	1.02	0.89	0.86	0.65	0.64	0.65
PROJECTED DEBT COVERAGE RATIO- after refinance	1.26		1.16			

MULTIFAMILY COMPARATIVE ANALYSIS (continued)

Sycamore Center Villas, Fort Worth, 02484

PROPOSED PAYMENT COMPUTATION

First Lien: Current Debt	\$12,370,341	Amort	480
Int Rate	5.17%	DCR	1.10

Other: FWHA-Trinity River PFC	\$2,820,000	Amort	0
Int Rate	0.00%	DCR	1.10

RECOMMENDED FINANCING STRUCTURE: TDHCA NOI

First Lien: Current Debt	\$641,953
Other: FWHA-Trinity River PFC	0
Other: MIP	0
TOTAL DEBT SERVICE	\$641,953

First Lien: Refinance	\$12,800,000	Amort	480
Int Rate	4.00%	DCR	1.26

Other: FWHA-Trinity River PFC	\$2,820,000	Amort	0
Int Rate	0.00%	Aggregate DCR	1.26

LONG TERM OPERATING PROFORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
POTENTIAL GROSS RENT	\$2,279,448	\$2,325,037	\$2,371,538	\$2,418,968	\$2,467,348	\$2,724,151	\$3,007,683	\$3,067,837	\$3,129,194	\$3,191,778	\$3,255,613	\$3,320,725
0	\$67,200	\$68,544	\$69,915	\$71,313	\$72,739	\$80,310	\$88,669	\$90,442	\$92,251	\$94,096	\$95,978	\$97,898
0	0	0	0	0	0	\$0	0	0	0	0	0	0
0	0	0	0	0	0	\$0	0	0	0	0	0	0
POTENTIAL GROSS INCOME	2,346,648	2,393,581	2,441,453	2,490,282	2,540,087	2,804,462	3,096,352	3,158,279	3,221,445	3,285,874	3,351,591	3,418,623
Vacancy & Collection Loss	(175,999)	(206,369)	(210,496)	(214,706)	(219,000)	(241,794)	(266,960)	(272,299)	(277,745)	(283,300)	(288,966)	(294,745)
EO/Non-Rental Units/Concessions	0	0	0	0	0	\$0	0	0	0	0	0	0
EFFECTIVE GROSS INCOME	\$2,170,649	\$2,187,212	\$2,230,957	\$2,275,576	\$2,321,087	\$2,562,668	\$2,829,393	\$3,123,878	\$3,449,014	\$3,807,990	\$4,204,328	\$4,641,918
General & Administrative	\$84,077	\$86,600	\$89,198	\$91,874	\$94,630	\$109,702	\$127,175	\$130,990	\$134,919	\$138,967	\$143,136	\$147,430
Management Fee 6.0%	130,239	131,233	133,857	136,535	\$139,265	\$153,760	\$169,764	173,159	176,622	180,154	183,758	187,433
Payroll & Payroll Tax	258,157	265,902	273,879	282,095	\$290,558	\$336,837	\$390,486	402,201	414,267	426,695	439,496	452,680
Repairs & Maintenance	269,665	277,755	286,087	294,670	\$303,510	\$351,851	\$407,892	420,129	432,733	445,715	459,086	472,859
Gas & Electric Utilities	39,560	40,747	41,970	43,229	\$44,526	\$51,617	\$59,839	61,634	63,483	65,387	67,349	69,369
Water, Sewer & Trash	254,087	261,710	269,561	277,648	\$285,978	\$331,526	\$384,330	395,860	407,736	419,968	432,567	445,544
Insurance	68,638	70,697	72,818	75,002	\$77,252	\$89,557	\$103,821	106,936	110,144	113,448	116,851	120,357
Property Tax	175,589	180,856	186,282	191,870	\$197,627	\$229,103	\$265,594	273,561	281,768	290,221	298,928	307,896
Reserve for Replacements	70,000	72,100	74,263	76,491	\$78,786	\$91,334	\$105,881	109,058	112,329	115,699	119,170	122,745
TDHCA Compliance Fees	11,200	11,536	11,882	12,239	\$12,606	\$14,613	\$16,941	17,449	17,973	18,512	19,067	19,639
LESS: TOTAL EXPENSES	1,361,212	1,399,135	1,439,797	1,481,653	\$1,524,737	1,759,901	\$2,031,721	2,345,952	2,709,256	3,129,349	3,615,163	4,177,041
NET OPERATING INCOME	\$809,437	\$788,077	\$791,160	\$793,923	\$796,351	\$802,767	\$797,671	\$777,926	\$739,757	\$678,641	\$589,166	\$464,877
LESS: DEBT SERVICE	641,953	641,953	641,953	641,953	641,953	641,953	641,953	641,953	641,953	641,953	641,953	641,953
NET CASH FLOW	\$167,483	\$146,124	\$149,206	\$151,970	\$154,397	\$160,813	\$155,718	\$135,972	\$97,804	\$36,687	(\$52,788)	(\$177,077)
CUMULATIVE NET CASH FLOW	\$167,483	\$313,607	\$462,813	\$614,783	\$769,180	\$1,564,462	\$2,358,431	\$3,084,347	\$3,657,917	\$3,973,777	\$3,901,339	\$3,279,898
DEFERRED DEVELOPER FEE BALANCE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.26	1.23	1.23	1.24	1.24	1.25	1.24	1.21	1.15	1.06	0.92	0.72
EXPENSE/EGI RATIO	62.71%	63.97%	64.54%	65.11%	65.69%	68.67%	71.81%	75.10%	78.55%	82.18%	85.99%	89.99%

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Amendment for Alemeda Villas in Fort Worth (File No. 02485)

RECOMMENDED ACTION

WHEREAS, Alemeda Villas received an award of 4% Housing Tax Credits in 2003 to construct 192 multifamily units in Fort Worth;

WHEREAS, the Development Owner is requesting approval to identify thirty-two (32) 3-bedroom/2-bath units with a den as 4-bedroom/2-bath units and charge the corresponding 4-bedroom rent;

WHEREAS, Board approval is required for any change that would materially alter a Development and the Owner has complied with the amendment requirements in Texas Government Code §2306.6712 and 10 TAC §10.405(a)(4);

WHEREAS, the change as requested would impact existing tenants as well as future prospective tenants; and

WHEREAS, the changes requested improve the viability of the transaction and do not impact the amount of tax credits previously awarded;

NOW, therefore, it is hereby

RESOLVED, that the amendment of the Housing Tax Credit application for Alemeda Villas is approved with the condition that existing tenants are not impacted by the change but otherwise as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Alemeda Villas received approval in 2003 to construct 192 new multifamily units in Fort Worth, Texas. In a letter dated February 11, 2013, the Development Owner requested the Department's permission to identify thirty-two (32) 1,300 square foot units that are currently designated as 3-

bedroom/2-bath units with a den as 4-bedroom/2-bath units in order to charge the 4-bedroom rental rate.

According to the Development Owner's request letter, the application for Alameda Villas was submitted to the Department at about the same time that two other developments (Sycamore Center Villas and Cypress View Villas), initiated by the same developer, were submitted to the Department. While approximately the same building plans were used for each of these three proposed developments and all included a mix of 2-bedroom/2-bath, 3-bedroom/2-bath and 4-bedroom/2-bath units, the application for Alameda Villas identified the 4-bedroom units as 3-bedroom/2-bath units with a den. It is not clear why the original developer chose to treat this property in this manner and there was no prohibition on 4-bedroom units in the QAP at the time this development was awarded.

The Development Owner goes on to state that the property is well-maintained and occupied, but has struggled financially. Copies of the owner's audits for 2009-2012 were provided and confirmed the property's financial condition. To date the investor limited partner has contributed approximately \$2.8M to Alameda Villas, above and beyond its contractual obligation. However, the investor cannot continue to fund the property's deficits. In order to reverse the properties financial struggles, this amendment request is the first of a two-pronged approach that the Development Owner will pursue to address the property's problems. If approval is granted for the change requested in this amendment, the owner plans to increase rents for the larger 3-bedroom/2-bath units with a den to the 4-bedroom rental rate upon lease renewal. According to the owner's initial projections this would generate about \$55K annually in rental revenue for the property.

The Department's analysis of the change requested confirms that additional income would be generated; however, this change alone would not place the property in a position of achieving positive cash flow with the debt in place as currently structured. The Department's analysis takes into account the maximum program rents on all units, including the 4-bedroom units should the change be approved. With the current debt structure, the debt coverage ratio (DCR) would fall outside of the Department's current underwriting guidelines. However, a refinance of the debt at the rates and terms indicated by the Development Owner would improve the DCR allowing it to rise to an acceptable level as reflected in the attached proforma.

While the Department appreciates the Development Owner's current financial position and the efforts being made to address the issues described previously, there is concern with preserving the lower rents for the existing households in the thirty-two (32) units in question. In some cases the rental increase could be an amount significant enough to displace these households. Staff discussed these concerns with the Development Owner. The owner emphasized their desire and intent to keep the existing households at the property. To that end, the owner suggested making some accommodations for those tenants that currently reside in one of the 32 units to be converted from 3-bedroom to 4-bedroom rental rates. For instance, if the tenant could not or did not want to pay the higher 4-bedroom rental rate, the owner could relocate a tenant to another 3-bedroom unit with any relocation costs paid by the owner. Additionally, the owner suggested providing a 60-day lease expiration notice rather than the typical 30-day notice in order to give the tenant sufficient time to "shop around" if they could not stay in the existing unit at the higher 4-bedroom rent level. Neither of these solutions fully compensates the tenant for the long term loss of the affordability of their large unit which they currently call home. Moreover, any prospective tenants on the waiting list for these units may also be impacted if the three bedroom with a den unit is no longer offered. Staff confirmed the waiting list for such units include six households.

Staff recommends approval of the amendment request subject to the Development Owner's implementation of the new 4-bedroom rental rate upon normal turnover of the unit and to making any

vacated units (of the 32 units subject to this request) available to any and all prospective tenants on the waiting list for same size units (3-bedroom/2-bath units) as of the date of this approval. An existing household may not be evicted or non-renewed for other than good cause.

Locke Lord

Attorneys & Counselors

100 Congress, Suite 300
Austin, TX 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

February 11, 2013

Ms. Raquel Morales
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: **Amendment Request**
Alemeda Villas in Fort Worth ("Alemeda")
TDHCA No. 02485

RECEIVED
FEB 11 2013
BY: RBM

Dear Raquel:

We represent the investor limited partner of Alemeda Villas, L.P. (the "Owner"), which is the Owner of Alemeda. Alemeda was financed with tax-exempt bonds and 4% tax credits, approved in 2003. The developer who initiated Alemeda initiated two other developments and applications at approximately the same time – Sycamore Center Villas in Fort Worth ("Sycamore") and Cypress View Villas in Weatherford ("Cypress"). Each of Alemeda, Sycamore, and Cypress used approximately the same building plans, with a mix of 2-bedroom/2-bathroom units, 3-bedroom/2-bathroom units, and 4-bedroom/2-bathroom units. However, when the tax credit applications were made, the developer identified the 4-bedroom/2-bathroom units in Alemeda and Sycamore as 3-bedroom/2-bathroom units with a den, even though the area designated as a den had all of the square footage, closet space, and other design elements necessary for a bedroom. Only the Cypress tax credit application identified the 4-bedroom/2-bathroom units properly. The developer is no longer affiliated with these properties, so it is not possible to discern why he chose to treat these properties differently in the tax credit applications. There was no prohibition on 4-bedroom units in the QAP at the time these tax credits were awarded.

Thus, Alemeda currently has 32 units in its development that have 1300 total square feet with 3 bedroom, 2 bathrooms, and a den. The Owner has been charging the 3-bedroom rental rates for these units. **The purpose of this amendment request is to seek TDHCA's permission to identify the 3-bedroom/2-bathroom units with a den as 4-bedroom/2-bathroom units so that 4-bedroom rental rates can be charged.**

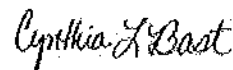
The Alemeda property is well-maintained and occupied, with its reserves fully funded, but it has been struggling financially. Copies of the Owner's audits for 2009, 2010, and 2011 are enclosed for your reference. In the auditor's notes, you will find that all involved with this property have made a financial sacrifice for Alemeda's ongoing viability. The original developer waived substantial developer fees and contractor fees. Our client, the investor limited partner, has made cash contributions above and beyond its contractual capital obligation and has deferred asset management fees. Despite all of these efforts, the property continues to experience a material negative cash flow each year. The audits include a "going concern" note with regard to the Owner because of its negative cash flow situation.

The investor limited partner has reached a point where it has provided approximately \$2.8 million to Alameda, above and beyond its capital contribution obligation, and it cannot continue to fund the operations. The Owner plans a two-pronged approach to addressing Alameda's problems. First, the Owner is endeavoring to generate additional revenues by increasing rents. Last October, the Owner increased its rents to the maximum tax credit rent for the current units. With this amendment, the Owner plans to increase the rents for the 3-bedroom/2-bathroom units with a den to the 4-bedroom rents. Collectively, that change should generate approximately \$55,680 of additional rental revenue annually. For details on this part of the plan, see the rental schedules enclosed herewith. The second element of the plan is to restructure the debt financing Alameda. However, the lenders want to see the Owner implement the rental revenue changes, including those requested by this amendment, before finalizing the refinancing plan.

The Owner believes this amendment is in the best interests of preserving the affordable restrictions for Alameda and avoiding severe financial consequences. Further, the Owner believes the change will not have a material adverse effect on the residents for the following reasons. This property rents to residents with 60% AMFI incomes but is limited to charging 50% AMFI rents. When the property increased its rental rates to the maximum tax credit rates for 50% AMFI units last October, there was no significant attrition among the residents. Because the rents are already lower than required for the residents' income levels, the residents have the capacity to pay the increased rents. Additionally, this property has waiting lists for all unit types and would be able to replace any residents who choose not to pay the higher rents. Finally, implementing the 4-bedroom rental rates for the 3-bedroom/2-bathroom units with a den would be done gradually, concurrent with lease renewals.

We hope TDHCA will favorably consider this amendment request. A check payable to TDHCA in the amount of \$2,500 has been included for your time and attention to this request. Please feel free to contact me if you need any additional information.

Sincerely,



Cynthia L. Bast

cc: Gwen Pierce
Adam Stein
Michelle Austin

Enclosures

Property Name:	Alemeda Villas	Date:	10/11/2012
City & State	Ft. Worth, TX	U/A Source:	Ft. Worth Housing/Tarrant County Housing
No. of Units:	192		68 Voucher Residents
U/A Source:	Ft. Worth Housing Authority/Tarrant		60% income qualifying; 50% Rent Limits

CURRENT RENT SCHEDULE

Unit Description	# of units	Set aside	Square Feet	Current Rent	Max Tax Credit Rent	Utility Allowance	Max Allowable Rent	Annual Rent Amount
2 Bedroom/2 Bath	32	50%	959	\$681	\$778	\$97	\$681	\$ 261,504
2 Bedroom/2 Bath	32	50%	986	\$681	\$778	\$97	\$681	\$ 261,504
3 Bedroom/2 Bath	32	50%	1158	\$787	\$900	\$113	\$787	\$ 302,208
3 Bedroom /2 Bath	64	50%	1156	\$787	\$900	\$113	\$787	\$ 604,416
3 Bed/2Bath/Den	32	50%	1300	\$787	\$900	\$113	\$787	\$ 302,208
	192						Annual Potential Rent	\$ 1,731,840

REVISED RENT SCHEDULE - FOUR BEDROOMS

Unit Description	# of units	Set aside	Square Feet	Current Rent	Max Tax Credit Rent	Utility Allowance	Max Allowable Rent	Annual Rent Amount
2 Bedroom/2 Bath	32	50%	959	\$681	\$778	\$97	\$681	\$ 261,504
2 Bedroom/2 Bath	32	50%	986	\$681	\$778	\$97	\$681	\$ 261,504
3 Bedroom/2 Bath	32	50%	1158	\$787	\$900	\$113	\$787	\$ 302,208
3 Bedroom /2 Bath	64	50%	1156	\$787	\$900	\$113	\$787	\$ 604,416
4 Bed/2Bath/Den	32	50%	1300	\$879	\$1,003	\$124	\$879	\$ 337,536
	192						Annual Potential Rent	\$ 1,767,168
							Difference	\$ 35,328

Operating Statement Comparison

Alemeda Villas

Fort Worth, TX



192

Max LIHTC Rent Comparison (Current Debt)

	FYE 2009	per unit	FYE 2010	per unit	FYE 2011	per unit	FYE 2012	per unit	2013 Budget	per unit	AM Analysis	LIHTC Max per unit	AM Analysis	LIHTC Max with 4BR per unit
	12/31/2009		12/31/2010		12/31/2011									
Income														
Gross Potential Rent	1,510,110	7,865	1,528,724	7,962	1,571,537	8,185	\$ 1,607,617	8,373	\$ 1,634,040	8,511	\$ 1,731,840	9,020	\$ 1,767,168	9,204
Gain/(Loss) to Lease	-	-	-	-	-	-	-	-	-	-	-	-	-	-
GPR	\$ 1,510,110	7,865	\$ 1,528,724	7,962	\$ 1,571,537	8,185	\$ 1,607,617	8,373	\$ 1,634,040	8,511	\$ 1,731,840	9,020	\$ 1,767,168	9,204
Vacancy		% of GPR		% of GPR		% of GPR		% of GPR		% of GPR		% of GPR		% of GPR
Vacancy Loss	(291,212)	19.3%	(310,512)	20.3%	(164,996)	10.5%	(293,759)	18.3%	(201,700)	12.3%	(138,547)	8.00%	(141,373)	8.00%
Concession Loss	(30,601)	2.0%	(44,763)	2.9%	(43,769)	2.8%	(6,712)	0.4%	(12,000)	0.7%	(34,637)	2.00%	(35,343)	2.00%
Bad Debt Loss	(11,008)	0.7%	(32,772)	2.1%	(64,335)	4.1%	(28,737)	1.8%	(38,000)	2.3%	(34,637)	2.00%	(35,343)	2.00%
Non-Rev Units	-	0.0%	-	0.0%	-	0.0%	(35,830)	2.2%	(36,000)	2.2%	(34,637)	2.00%	(35,343)	2.00%
Economic Vacancy	(332,821)	22.0%	(388,047)	25.4%	(273,100)	17.4%	(365,037)	22.7%	(287,700)	17.6%	(242,458)	14.00%	(247,404)	14.00%
Net Rental Income	\$ 1,177,289	6,132	\$ 1,140,677	5,941	\$ 1,298,437	6,763	\$ 1,242,580	6,472	\$ 1,346,340	7,012	\$ 1,489,382	7,757	\$ 1,519,764	7,915
Other Rental Income	26,459	138	21,695	113	17,050	89	20,744	108	20,000	104	-	-	-	-
Other Income	42,581	222	42,506	221	28,324	148	62,198	324	82,630	430	135,000	703	135,000	703
Effective Gross Income	\$ 1,246,329	6,491	\$ 1,204,878	6,275	\$ 1,343,811	6,999	\$ 1,325,522	6,904	\$ 1,448,970	7,547	\$ 1,624,382	8,460	\$ 1,654,764	8,619
Expenses														
Payroll & Benefits	180,207	939	206,368	1,075	258,143	1,344	\$ 200,382	1,044	\$ 234,598	1,222	\$ 235,000	1,224	\$ 235,000	1,224
General and Administrative	52,734	275	41,938	218	54,660	285	80,044	417	52,340	273	\$ 55,000	286	55,000	286
Repairs and Maintenance	93,659	488	103,971	542	166,150	865	111,458	581	110,340	575	\$ 111,500	581	111,500	581
Utilities	68,781	358	93,089	485	99,352	517	111,850	583	163,230	850	\$ 163,000	849	163,000	849
Advertising & Marketing	10,323	54	13,231	69	14,523	76	6,045	31	14,042	73	\$ 14,000	73	14,000	73
Management Fees	58,462	304	60,000	313	60,000	313	62,041	323	58,699	306	\$ 73,097	381	74,464	388
Property Insurance	33,036	172	33,036	172	39,993	208	34,097	178	66,554	347	\$ 66,500	346	66,500	346
Real Estate Taxes	312,000	1,625	265,542	1,383	266,606	1,389	315,821	1,645	205,116	1,068	\$ 132,000	688	132,000	688
Miscellaneous	-	-	-	-	-	-	14,653	76	-	-	\$ -	-	-	-
Total Expenses	\$ 809,202	4,215	\$ 817,175	4,256	\$ 959,427	4,997	\$ 936,392	4,877	\$ 904,919	4,713	\$ 850,097	4,428	\$ 851,464	4,435
Expenses excluding T&I	\$ 464,166	2,418	\$ 518,597	2,701	\$ 652,828	3,400	\$ 586,473	3,055	\$ 633,249	3,298	\$ 651,597	3,394	\$ 652,964	3,401
Expenses vs Hunt Proforma	89%		90%		106%		103%		100%		100%		100%	
Management Fee %	4.7%		5.0%		4.5%		4.7%		4.1%		4.5%		4.5%	
Net Operating Income	\$ 437,127	2,277	\$ 387,703	2,019	\$ 384,384	2,002	\$ 389,130	2,027	\$ 544,051	2,834	\$ 774,285	4,033	\$ 803,300	4,184
Expense/Income Ratio	65%		68%		71%		71%		62%		52%		51%	
Replacement Reserve Deposit	46,548	242	46,548	242	46,548	242	0	0	46,544	242	48,000	250	48,000	250
NOI (less reserves)	\$ 390,579	2,034	\$ 341,155	1,777	\$ 337,836	1,760	\$ 389,130	2,027	\$ 497,507	2,591	\$ 726,285	3,783	\$ 755,300	3,934
Capital Expenditures							\$ 44,826	per 2012 FS						
Hard Debt Service														
Total Hard Debt Service	\$ 779,461	4,060	\$ 705,618	3,675	\$ 729,095	3,797	\$ 786,056	4,094	\$ 715,499	3,727	\$ 729,095	3,797	\$ 729,095	3,797
DSC	0.50		0.48		0.46		0.50		1		1		1	
NOI minus DS	\$ (388,882)	(2,025)	\$ (364,463)	(1,898)	\$ (391,259)	(2,038)	\$ (441,752)	(2,301)	\$ (217,992)	(1,135)	\$ (2,810)	(15)	\$ 26,205	136

Operating Statement
Comparison



Alemeda Villas

Fort Worth, TX

	Max LIHTC Rent Comparison (Current Debt)				Max LIHTC Rent Comparison (New Debt)			
	AM Analysis	LIHTC Max per unit	AM Analysis	LIHTC Max with 4BR per unit	AM Analysis	LIHTC Max per unit	AM Analysis	LIHTC Max with 4BR per unit
Income								
Gross Potential Rent	\$ 1,731,840	9,020	\$ 1,767,168	9,204	\$ 1,731,840	9,020	\$ 1,767,168	9,204
Gain/(Loss) to Lease	-	-	-	-	\$ -	-	\$ -	-
GPR	\$ 1,731,840	9,020	\$ 1,767,168	9,204	\$ 1,731,840	9,020	\$ 1,767,168	9,204
Vacancy		% of GPR		% of GPR		% of GPR		% of GPR
Vacancy Loss	(138,547)	8.00%	(141,373)	8.00%	(138,547)	8.00%	(141,373)	8.00%
Concession Loss	(34,637)	2.00%	(35,343)	2.00%	(34,637)	2.00%	(35,343)	2.00%
Bad Debt Loss	(34,637)	2.00%	(35,343)	2.00%	(34,637)	2.00%	(35,343)	2.00%
Non-Rev Units	(34,637)	2.00%	(35,343)	2.00%	(34,637)	2.00%	(35,343)	2.00%
Economic Vacancy	(242,458)	14.00%	(247,404)	14.00%	(242,458)	14.00%	(247,404)	14.00%
Net Rental Income	\$ 1,489,382	7,757	\$ 1,519,764	7,915	\$ 1,489,382	7,757	\$ 1,519,764	7,915
Other Rental Income	-	-	-	-	-	-	-	-
Other Income	135,000	703	135,000	703	135,000	703	135,000	703
Effective Gross Income	\$ 1,624,382	8,460	\$ 1,654,764	8,619	\$ 1,624,382	8,460	\$ 1,654,764	8,619
Expenses								
Payroll & Benefits	\$ 235,000	1,224	\$ 235,000	1,224	\$ 235,000	1,224	\$ 235,000	1,224
General and Administrative	\$ 55,000	286	\$ 55,000	286	\$ 55,000	286	\$ 55,000	286
Repairs and Maintenance	\$ 111,500	581	\$ 111,500	581	\$ 111,500	581	\$ 111,500	581
Utilities	\$ 163,000	849	\$ 163,000	849	\$ 163,000	849	\$ 163,000	849
Advertising & Marketing	\$ 14,000	73	\$ 14,000	73	\$ 14,000	73	\$ 14,000	73
Management Fees	\$ 73,097	381	\$ 74,464	388	\$ 73,097	381	\$ 74,464	388
Property Insurance	\$ 66,500	346	\$ 66,500	346	\$ 66,500	346	\$ 66,500	346
Real Estate Taxes	\$ 132,000	688	\$ 132,000	688	\$ 132,000	688	\$ 132,000	688
Miscellaneous	\$ -	-	\$ -	-	\$ -	-	\$ -	-
Total Expenses	\$ 850,097	4,428	\$ 851,464	4,435	\$ 850,097	4,428	\$ 851,464	4,435
Expenses excluding T&I	\$ 651,597	3,394	\$ 652,964	3,401	\$ 651,597	3,394	\$ 652,964	3,401
Expenses vs Hunt Proforma	100%		100%		100%		100%	
Management Fee %	4.5%		4.5%		4.5%		4.5%	
Net Operating Income	\$ 774,285	4,033	\$ 803,300	4,184	\$ 774,285	4,033	\$ 803,300	4,184
Expense/Income Ratio	52%		51%		52%		51%	
Replacement Reserve Deposit	48,000	250	48,000	250	48,000	250	48,000	250
NOI (less reserves)	\$ 726,285	3,783	\$ 755,300	3,934	\$ 726,285	3,783	\$ 755,300	3,934
Capital Expenditures								
Hard Debt Service								
Total Hard Debt Service	\$ 729,095	3,797	\$ 729,095	3,797	\$ 612,341	3,189	\$ 612,341	3,189
DSC	1.00		1.04		1.19		1.23	
NOI minus DS	\$ (2,810)	(15)	\$ 26,205	136	\$ 113,944	593	\$ 142,959	745



DEVELOPMENT IDENTIFICATION

TDHCA Application #: Program(s):

Address/Location:

City: County: Zip:

Analysis Purpose:

PRIOR REPORT(S)	PURPOSE
05/30/03	New Application - Initial Underwriting

SUMMARY

Alemeda Villas was originally underwritten in May 2003 when the application was submitted proposing the new construction of 192 multifamily units in Fort Worth, Texas. the Development was approved, and ultimately cost certified (8609s issued in July 2006) with the final approved unit mix as follows:

ORIGINAL UNIT MIX AT APPLICATION				
Type	Number	Bedrooms	Baths	Size in SF
TC50%	32	2	2	959
TC50%	32	2	2	986
TC50%	64	3	2	1,156
TC50%	32	3	2	1,158
TC50%	32	3	2	1,300

At the time that this application was submitted for review and approval, two other developments were initiated by the same developer at approximately the same time, Sycamore Center Villas in Fort Worth and Cypress View Villas in Weatherford. According to the Amendment Request letter dated February 11, 2013 submitted on behalf of the investor limited partner, each of these three developments used approximately the same building plans with a mix of two, three and four-bedroom units. However, the applications submitted for Alemeda Villas and Sycamore Center Villas identified the 1,300 square foot 4-bedroom/2-bath units as 3-bedroom/2-bath units with dens. This was done despite the fact that the area designated as the den had all of the square footage, closet space and other design elements necessary for a bedroom. It is not clear why the original developer, who is no longer affiliated with these properties, chose to treat these properties differently when all three had the same unit and building plans.

Nevertheless, the investor limited partner is now requesting approval from TDHCA to identify all 32 of the 3-bedroom/2-bath units with a den as 4-bedroom/2-bath units so that 4-bedroom rental rates can be charged. See the requested unit mix below:

PROPOSED UNIT MIX- AMENDMENT				
Type	Number	Bedrooms	Baths	Size in SF
TC50%	32	2	2	959
TC50%	32	2	2	986
TC50%	64	3	2	1,156
TC50%	32	3	2	1,158
TC50%	32	4	2	1,300

The Amendment Request included the Owner's projections assuming the 4-bedroom rental rate, as well as copies of the property's audits for 2009-2012 which reflect that the property has been struggling financially over this period of time.

PROFORMA ANALYSIS

Based on the latest rent roll for Alameda Villas (as of May 2013) the property is currently collecting annual rent that is approximately \$60K less than the maximum potential rent, with the current unit mix in place. Review of the property's historical financial statements revealed several issues on the income side, including the fact that the property did not appear to charge the maximum rents for the units and a high vacancy rate (14-20%). Discussions with the investor's Asset Manager for this property further revealed that the previous management company was not charging the maximum potential rent for each of the unit types, despite the fact that the market is able to support the maximum rent. The current property management company has been working to increase the rental rates for the units as leases come up. The Owner's projections for rental income, which include charging the 4-bedroom rental rate, reflect the maximum program rents for all units. It is worth noting that the Owner's projections assuming the 4-BR rents do not take into account the latest (and higher) utility allowances for the property which became effective 7/1/2013. This would explain the difference between the Owner's 4-BR effective gross income and the Department's. As of May 31, 2013 the property was 93% occupied.

The Owner's projected expenses appear to be in line with the property's historical operating statements for 2010-2012. TDHCA's projection takes an average of the previous three years for each of the line items, except management fees which is calculated based on the current 4.5% fee. The Owner's NOI projection, while higher than in previous years, still yields a debt coverage ratio (DCR) of 1.04, which falls below the Department's acceptable guidelines based on the current debt structure of the property. Audits for previous years reflect that in addition to the mortgage payments, mortgage insurance premiums and late fees have been incurred which all contributed to the property's negative cash flow.

However, the Owner has indicated that a refinance of the current debt for Alameda Villas is expected after approval of this Amendment Request is granted, as lenders want to see this requested rent change before finalizing any refinance plan. For purposes of the projections provided, the Owner assumed an approximate 4.5-5.0% interest rate on \$10.8M loan amount. At this projected refinanced debt structure, the property's DCR would rise to an acceptable level of 1.15 with the requested 4-bedroom rental rates being charged.

CONCLUSIONS

Staff recommends approval of the Amendment Request to identify the 3-bedroom/2-bath units with den as 4-bedroom/2-bath units in order to charge a 4-bedroom/2-bath rental rate.

Asset Manager: Raquel Morales

Director of Asset Management: Cari Garcia

UNIT MIX/RENT SCHEDULE

Alemeda Villas, Fort Worth, 02485

UNIT MIX / MONTHLY RENT SCHEDULE

MRB	Unit Mix					APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS			TDHCA PRO FORMA RENTS			MARKET RENTS		
	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Market Rent	Rent per NRA
MRB50%	\$778	32	2	2	959	\$778	\$124	\$654	\$0.71	\$681	\$21,792	\$20,928	\$654	\$21.82		0.00	
MRB50%	\$778	32	2	2	986	\$778	\$124	\$654	\$0.69	\$681	\$21,792	\$20,928	\$654	\$21.23		0.00	
MRB50%	\$900	64	3	2	1,156	\$900	\$148	\$752	\$0.68	\$787	\$50,368	\$48,128	\$752	\$41.63		0.00	
MRB50%	\$900	32	3	2	1,158	\$900	\$148	\$752	\$0.68	\$787	\$25,184	\$24,064	\$752	\$20.78		0.00	
MRB50%	\$1,003	32	4	2	1,300	\$1,003	\$167	\$836	\$0.68	\$879	\$28,128	\$26,752	\$836	\$20.58		0.00	
		192			214,880				\$0.69	\$767	\$147,264	\$140,800	\$733	\$28.14	\$0	\$0.00	

\$1,767,168 \$1,689,600

PROFORMA ANALYSIS

	TDHCA- 4BR	TDHCA- Current 3BR	Owner's Request - 4BR	2012 Audit	2011 Audit	2010 Audit		
POTENTIAL GROSS RENT	\$1,689,600	\$1,597,056	\$1,767,168	\$1,571,787	\$1,571,537	\$1,528,724		
Secondary Income	\$46,080	\$46,080	\$135,000	\$144,426	\$103,464	\$121,283	\$58.59	Per Unit Per Month
Other Income:				\$238	\$301	\$529	\$0.00	Per Unit Per Month
Other Income:							\$0.00	Per Unit Per Month
POTENTIAL GROSS INCOME	\$1,735,680	\$1,643,136	\$1,902,168	\$1,716,451	\$1,675,302	\$1,650,536		
Vacancy & Collection Loss	(\$130,176)	(\$123,235)	(\$176,716)	(\$325,392)	(\$235,617)	(\$338,844)	-9.3%	% of PGI
EO/Non-Rental Units/Concessions	\$0		(\$70,686)	(\$6,712)	(\$43,769)	(\$44,763)		
EFFECTIVE GROSS INCOME	\$1,605,504	\$1,519,901	\$1,654,766	\$1,384,347	\$1,395,916	\$1,266,929		

EXPENSES	% of EGI	Per Unit	Per SF			Per SF	Per Unit	% of EGI
General & Administrative	6.04%	\$505	\$0.45	\$96,963	\$96,963	\$69,000	\$80,347	4.17%
Management	4.50%	\$376	\$0.34	\$72,248	\$68,396	\$74,464	\$62,041	4.50%
Payroll & Payroll Tax	13.43%	\$1,123	\$1.00	215,650	\$215,650	\$235,000	\$182,441	14.20%
Repairs & Maintenance	7.66%	\$641	\$0.57	\$123,047	\$123,047	\$111,500	\$142,536	6.74%
Utilities	3.49%	\$292	\$0.26	\$55,991	\$55,991	\$163,000	\$53,995	9.85%
Water, Sewer & Trash	7.47%	\$624	\$0.56	\$119,879	\$119,879	\$0	\$119,527	0.00%
Property Insurance	2.92%	\$244	\$0.22	\$46,922	\$46,922	\$66,500	\$38,051	4.02%
Property Tax	3.19	\$587	\$0.52	\$112,775	\$112,775	\$132,000	\$205,115	7.98%
Reserve for Replacements	2.99%	\$250	\$0.22	\$48,000	\$48,000	\$48,000	\$54,301	2.90%
TDHCA Compliance Fees	0.48%	\$40	\$0.04	\$7,680	\$7,680			0.00%
Other:	0.00%	\$0	\$0.00	\$0	\$2,002		\$2,002	0.00%
TOTAL EXPENSES	56.00%	\$4,683	\$4.18	\$899,154	\$897,304	\$899,464	\$938,354	54.36%
NET OPERATING INCOME	44.00%	\$3,678.90	\$3.29	\$706,350	\$622,597	\$755,302	\$445,993	45.64%

COMPARABLES USED

TDHCA DB	DB Per Unit	Other
\$74,250	\$387	
\$73,898	\$385	
\$200,360	\$1,044	
\$104,529	\$544	
\$69,855	\$364	
\$122,566	\$638	
\$46,922	\$244	
\$137,666	\$717	
\$79,149	\$412	

DEBT

First Lien: Tarrant County HFC	\$729,095	\$729,095	\$729,095	\$683,625	\$683,037	\$671,242
Other: mortgage late fees				\$11,054	\$13,265	
Other: MIP	\$0	\$0	\$0	\$52,246	\$52,855	\$53,433
TOTAL DEBT SERVICE	\$729,095	\$729,095	\$729,095	\$746,925	\$749,157	\$724,675
NET CASH FLOW	-\$22,745	-\$106,498	\$26,207	-\$300,932	-\$196,018	-\$191,772
AGGREGATE DEBT COVERAGE RATIO	0.97	0.85	1.04	0.60	0.74	0.74
RECOMMENDED DEBT COVERAGE RATIO	1.15		1.23			

MULTIFAMILY COMPARATIVE ANALYSIS (continued)

Alemeda Villas, Fort Worth, 02485

PROPOSED PAYMENT COMPUTATION

First Lien: Tarrant County HFC	\$11,230,000	Amort	480
Int Rate	5.15%	DCR	0.97

RECOMMENDED FINANCING STRUCTURE: TDHCA NOI

First Lien: Tarrant County HFC	\$612,107
Other: FWHA-Trinity River PFC	0
Other: MIP	0
TOTAL DEBT SERVICE	\$612,107

First Lien: Tarrant County HFC	\$10,800,000	Amort	480
Int Rate	4.85%	DCR	1.15

LONG TERM OPERATING PROFORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 40
POTENTIAL GROSS RENT	\$1,689,600	\$1,723,392	\$1,757,860	\$1,793,017	\$1,828,877	\$2,019,228	\$2,229,391	\$2,273,979	\$2,319,459	\$2,365,848	\$2,461,428
0	\$46,080	\$47,002	\$47,942	\$48,900	\$49,878	\$55,070	\$60,802	\$62,018	\$63,258	\$64,523	\$67,130
0	0	0	0	0	0	\$0	0	0	0	0	0
0	0	0	0	0	0	\$0	0	0	0	0	0
POTENTIAL GROSS INCOME	1,735,680	1,770,394	1,805,801	1,841,918	1,878,756	2,074,298	2,290,193	2,335,997	2,382,717	2,430,371	2,528,558
Vacancy & Collection Loss	(130,176)	(164,474)	(167,763)	(171,119)	(174,541)	(192,707)	(212,764)	(217,020)	(221,360)	(225,787)	(234,909)
EO/Non-Rental Units/Concessions	0	0	0	0	0	\$0	0	0	0	0	0
EFFECTIVE GROSS INCOME	\$1,605,504	\$1,605,920	\$1,638,038	\$1,670,799	\$1,704,215	\$1,881,591	\$2,077,428	\$2,293,649	\$2,532,374	\$2,795,945	\$3,408,242
General & Administrative	\$96,963	\$99,872	\$102,868	\$105,954	\$109,132	\$126,514	\$146,665	\$151,065	\$155,597	\$160,265	\$170,025
Management Fee 4.5%	72,248	72,266	73,712	75,186	\$76,690	\$84,672	\$93,484	95,354	97,261	99,206	103,214
Payroll & Payroll Tax	215,650	222,120	228,783	235,647	\$242,716	\$281,375	\$326,190	335,976	346,055	356,437	378,144
Repairs & Maintenance	123,047	126,738	130,540	134,456	\$138,490	\$160,548	\$186,119	191,703	197,454	203,377	215,763
Gas & Electric Utilities	55,991	57,671	59,401	61,183	\$63,019	\$73,056	\$84,692	87,233	89,850	92,545	98,181
Water, Sewer & Trash	119,879	123,475	127,180	130,995	\$134,925	\$156,415	\$181,328	186,768	192,371	198,142	210,209
Insurance	46,922	48,330	49,780	51,273	\$52,811	\$61,223	\$70,974	73,103	75,296	77,555	82,278
Property Tax	112,775	116,158	119,642	123,232	\$126,929	\$147,145	\$170,582	175,699	180,970	186,399	197,751
Reserve for Replacements	48,000	49,440	50,923	52,451	\$54,024	\$62,629	\$72,604	74,782	77,026	79,337	84,168
TDHCA Compliance Fees	7,680	7,910	8,148	8,392	\$8,644	\$10,021	\$11,617	11,965	12,324	12,694	13,467
LESS: TOTAL EXPENSES	899,154	923,980	950,977	978,769	\$1,007,380	1,163,597	\$1,344,255	1,553,200	1,794,888	2,074,477	2,772,206
NET OPERATING INCOME	\$706,350	\$681,940	\$687,061	\$692,030	\$696,835	\$717,994	\$733,174	\$740,449	\$737,486	\$721,468	\$636,035
LESS: DEBT SERVICE	612,107	612,107	612,107	612,107	612,107	612,107	612,107	612,107	612,107	612,107	612,107
NET CASH FLOW	\$94,243	\$69,833	\$74,954	\$79,923	\$84,728	\$105,887	\$121,067	\$128,342	\$125,379	\$109,361	\$23,928
CUMULATIVE NET CASH FLOW	\$94,243	\$164,076	\$239,030	\$318,953	\$403,681	\$892,850	\$1,470,575	\$2,101,331	\$2,738,773	\$3,323,470	\$4,014,924
DEFERRED DEVELOPER FEE BALANCE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.15	1.11	1.12	1.13	1.14	1.17	1.20	1.21	1.20	1.18	1.04
EXPENSE/EGI RATIO	56.00%	57.54%	58.06%	58.58%	59.11%	61.84%	64.71%	67.72%	70.88%	74.20%	81.34%

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Amendment for Steeple Chase Farms in Sherman (File No. 10079)

RECOMMENDED ACTION

WHEREAS, Steeple Chase Farms received an award of 9% Housing Tax Credits in 2010 to construct 156 multifamily units in Sherman;

WHEREAS, the Development Owner is requesting approval to increase the number of residential buildings resulting in a change of the building plans, unit layout, and site plan;

WHEREAS, Board approval is required for any change that would materially alter a Development and the Owner has complied with the amendment requirements in Texas Government Code §2306.6712 and 10 TAC §10.405(a)(4); and

WHEREAS, the changes to the building plans, unit layout, and site plan have been evaluated by staff and do not impact the viability of the transaction or the amount of tax credits awarded;

NOW, therefore, it is hereby

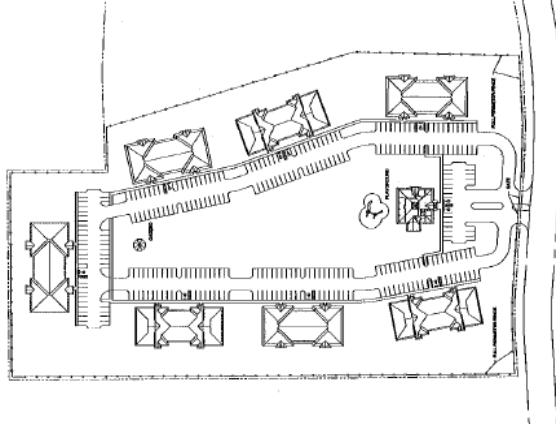
RESOLVED, that the amendment of the Housing Tax Credit application for Steeple Chase Farms is approved as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Steeple Chase Farms was approved during the 2010 competitive cycle to construct 156 new multifamily units in Sherman, Texas. In a letter dated April 10, 2013, the Development Owner requested approval for an increase to the number residential buildings as well as changes to the building plans, unit layout and site plan. The amendment request was reviewed in conjunction with the final cost certification for the development to determine the impact, if any, to the development's feasibility and final credit recommendation.

Changes to the development are summarized in the tables and site plans reflected below:

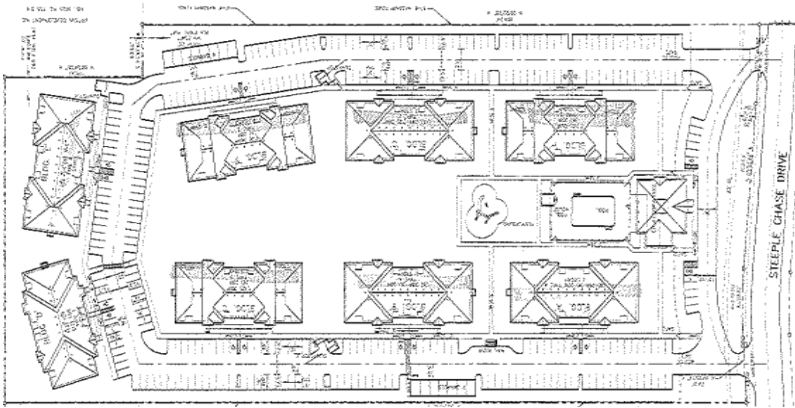
SITE PLAN and BUILDING CONFIGURATION AT APPLICATION



Building Type	A	B	C																	Total Buildings	
Floors/Stories	3	3	2&3																		
Number	1	3	3																		7

BR/BA	SF	Units										Total Units	Total SF										
1	1	839	12																		12	10,068	
2	2	1,060	11	12	12																	83	87,980
3	2	1,167	1	12	8																	61	71,187
Units per Building			24	24	20																	156	169,235

SITE PLAN and BUILDING CONFIGURATION AS BUILT



Building Type	A	B	C	D																																				Total Buildings
Floors/Stories	3	3	3	2																																				
Number	1	1	3	3																																				8

BR/BA	SF	Units										Total Units	Total SF																													
1	1	850	12																																					12	10,200	
2	2	1,072	9	12	12	8																																		81	86,832	
2	2	1,185	2																																						2	2,370
3	2	1,185	1	12	8	8																																		61	72,285	
Units per Building			24	24	20	16																																		156	171,687	

The original development plan consisted of one, two, and three-bedroom units contained within all three story residential building structures. However, at the equity investor's request the Development Owner has incorporated slightly larger one, two and three-bedroom units to be contained within a mixture of two and three story residential buildings. According to the Development Owner the surrounding market comparables indicated that a mixture of two and three story buildings would lease up better than the originally proposed plan. Overall the total net rentable square footage increased by approximately 1.45% than that originally underwritten and approved.

Review of the final as built unit and building floor plans revealed that there are two units classified as a "larger two-bedroom with den" but are the exact square footage as the three-bedroom units. The latest rent roll for the property confirms that these two units are being charged the two-bedroom rent. The den space in the larger two-bedroom units has no door and show a built in bookcase in the area that would be the closet. Discussions with Compliance staff regarding these two units concluded that the owner may continue to designate these units as two-bedroom so long as the owner does not charge more than the two-bedroom rent, and the Land Use Restriction Agreement ("LURA") identifies the unit numbers of these larger two bedroom units for monitoring purposes. Therefore, if the proposed amendment is approved staff recommends amending the LURA to specifically identify the unit numbers of the larger two-bedroom unit w/den.

The changes described in this write up do not change any point related or other tax credit award factors. Staff has reviewed the changes requested in conjunction with the final cost certification and the analysis concludes that no negative impact to the financial feasibility of the development will result from the changes made. The previously awarded tax credit allocation continues to be supported.

Staff recommends approval to amend the tax credit application for Steeple Chase Farms.

April 10, 2013

Ms. Raquel Morales
Housing Specialist, Multifamily Finance Production Division
P.O. Box 13941
Austin, TX 78711-3941

RE: Steeple Chase Farms- Request to Amend LIHTC Application-Project # 10079

Dear Ms. Morales,

Dischinger Development, LLC developer of Steeple Chase Farms ("Steeple Chase") is seeking approval for two modification request to Steeple Chase LIHTC application. Specifically, Dischinger Development is requesting approval to increase the number of residential buildings resulting in a change of building plans, unit layout, and site plan. Secondly we are requesting change in the unit numbers that are currently identified in the LURA as mobility accessible and hearing or visual accessible because the current units listed do not reflect the appropriate unit that has been built to meet the UFAS requirements. Our requests does not impact the financial assumptions, underwriting, scoring of the original application, number of units, nor amenities.

Steeple Chase Farms original application contained a building design configuration and site plan which incorporated all residential buildings to be built as three story buildings. After tax credit receipt of reservation from TDHCA, Stratford Capital and Dischinger Development came to a conclusion a mixture of two and three story buildings would be more ideal for the primary market area. The surrounding market comparables indicated a two story residential building with three bedroom units on the top floor leased up significantly better than a three story building with three bedroom units on the top floor.

Dischinger Development modified the building plans, unit layout plans, and site plan design by adding (3) two story buildings containing 16 total units in each building, (3) two story and three story building combination containing 20 total units in each building, (1) three story building containing 24 total units in each building and (1) three story building containing 24 total units in each building with (2) two large bedroom units including a dining area. Steeple Chase Farms will have (8) residential buildings and (1) clubhouse. The unit square footage for the one bedroom is 850 sq.ft, two bedroom square footage is 1,072 sq.ft, and three bedroom square footage is 1,185 sq.ft totaling 171,687 total net rentable square footage. The number of uncovered parking spaces has increased to 315 from the original amount stated in application of 283 uncovered parking spaces. The number of garages is unchanged. (15 garages)

Steeple's Chase Farm LURA request the following changes to the mobility accessible and hearing or visual accessible units. Mobility units remove unit numbers 4103, 4105, 6103, 8103, 6107, and 8107. Replace those units with unit number 4104, 8102, 4106, 6106, 8108, and 6102. For the Hearing or Visual units remove the following unit numbers 4104 and 8102. Add the two additional units as Hearing or Visual assessable units 4102 and 5102. The requested unit changes to the LURA meets all UFAS requirements.

We firmly believe the changes made to this project will increase marketability of the project, improve the living environment of the residents, and provide greater assurance the project will achieve long term success as an affordable multifamily community in Sherman.

Sincerely,



Chris Dischinger
Manager, Dischinger Development, LLC

1k

BOARD ACTION REQUEST
ASSET MANAGEMENT
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on an amendment to the Land Use Restriction Agreement (“LURA”) for Spanish Park Apartments.

RECOMMENDED ACTION

WHEREAS, Spanish Park Apartments was financed with 9% housing tax credits in 1993 for the rehabilitation of 362 units in Arlington, Texas, and the LURA requires that the Project Owner shall lease 100% of the units in the Project to individuals or households whose income is 60% or less of the area median gross income;

WHEREAS, the property does not have adequate space for a centralized maintenance shop and management office to provide for leasing and various services that are made available to the tenants and has been using two units for these purposes for more than ten years;

WHEREAS, the property suffered a casualty loss of an additional ten (10) units which were destroyed by fire on August 10, 2012, and the City of Arlington did not allow the units to be rebuilt;

WHEREAS, the owner has requested an amendment to the LURA to reduce the number of low income units by a total of 12 to preserve space for a maintenance shop, management office and to account for the casualty loss suffered by the property, and the owner has complied with the amendment and notification requirements under the Department’s rule at 10 TAC §10.405(b)

NOW, therefore, it is hereby

RESOLVED, that the amendment of the Housing Tax Credit application for Spanish Park Apartments is approved as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

The Land Use Restriction Agreement for Spanish Park Apartments was executed in December 1993 and amended in June 1997. The LURA requires “that the Project Owner shall lease 100% of the units in the Project to individuals or families whose income is 60% or less of the area median gross income...” In a letter from the Department dated July 19, 2013, which addressed the status of outstanding noncompliance issues identified during previous monitoring reviews of the development, one of the issued was that unit #C126 was designated by the owner as a maintenance shop. As a result, this unit was not available for rent, which is a violation of the LURA. The owner responded on July 30, 2013,

with a request to amend the LURA for Spanish Park Apartments. In that letter, the owner requests the Department's approval to amend the LURA to reduce the number of low income units to be leased to qualified tenants from 362 to 350, a reduction of twelve (12) units. According to the owner who acquired the property and signed an Agreement to Assume and Comply with the existing LURA in 2007, units C126 and C118 have been used as the maintenance shop and management office since prior to their taking over ownership. There are no ancillary buildings existing on the site for either a leasing/management office or a maintenance shop. The owner further states that there is not adequate space on the development site to construct another building to serve as the maintenance shop or management office.

The amendment letter also explains that in August of 2012 a fire at the development destroyed residential building #428 and a total of ten (10) units. The owner was notified by the City of Arlington in a letter dated January 8, 2013, that due to the nonconforming use of the property, the demolished building would not be allowed to be reconstructed. As a result, the owner re-purposed this space with additional resident parking and play space for the tenants of Spanish Park Apartments. The city and neighborhood support the change in the use of this space. The owner has complied with the amendment and notification requirements under the Department's rule at 10 TAC §10.405(b) and is providing the opportunity for public input. The public hearing will be held on August 27, 2013, at 6:00 p.m.

The owner has committed to signing an Agreed Final Order related to file monitoring violations, which is also before the Board for consideration in this meeting. The Agreed Final Order requires all onsite staff to attend 8 hours of income eligibility training. Spanish Park Apartments must submit corrective documentation on or before September 30, 2013 to resolve the remaining outstanding file monitoring violations. If all violations are not fully resolved as indicated in the Agreed Final Order, an administrative penalty of \$1,700 will come due and payable.

Staff recommends approval, subject to no negative public comment received, to amend the LURA for Spanish Park Apartments to reduce the number of units required to be leased to low income qualified tenants from 362 to 350. Staff further recommends that final approval and drafting of the LURA amendment be contingent upon the owner's resolution of all other outstanding noncompliance issues.

July, 30 2013

RE: Request for LURA Amendment

Cooper Redevelopment LLC dba Spanish Park Apartments
420 W. Park Row
Arlington, Tx 76010
HTC File 93038 P-15
CMTS ID: 2304

RECEIVED
AUG 01 2013
BY: RBM

Item I.

Unit #C126 : traditional and current maintenance supply shop/storage to remain designated to this purpose and compliant.

Cooper Redevelopment's position:

as a revenue driven business, Cooper redevelopment LLC would like as much revenue potential as possible.

however, the ownership feels strongly, it is in the best interest of operations and resident service of Spanish Park that the "shop" space previously unit C126 be preserved as a supply shop.

1

the use of a residential unit as a centralized space for maintenance supplies arouse out of necessity at some point (at least 13 years ago -per Year 2000 onsite monitoring revenue).. and it remains apparent the Development does not have nor ever had an efficient, safe and secure space from which to Operate maintenance from.

Recently, security bars have been added to the doors, doors clearly marked, ramp installed, security cameras installed.

2

the alternatives are limited:

A

no other sufficient spaces on property to serve this function

B

no open space available for a shed type structure to be built for such purpose.

as such the negative impact on service delivery and operations in general would be significant in addition to the remodeling cost of unit C126.

3.

Spanish Park is currently at 90% occupancy and generally inline w/ surrounding comparable properties. therefore from a market demand perspective there is no shortage of LIH in the sub-market and therefore C126 remaining an admin unit or "shop" should not negatively impact the developments ability to meet its legal mission of a LIH provider in the community.

Item II.

Unit # C118 traditional and current management office to remain operational and compliant.

Unit C118 has been the Office space, leasing office and resident services location for the development at least since the prior ownership (2007).

30year Pastor from the church across the street does not recall any other office for the development.

Current office (unit C118) maintains a strategic location w visibility from Park Row drive and Oak Street allowing for access by residents and prospects, providing appropriate parking and monitoring opportunities by Security patrol, Police and community watch.

1

there is no suitable space to take over this function

2

there is no free space to build an office for this function.

3

Spanish Park is currently at 90% occupancy and generally in line w/ surrounding comparable properties. Therefore from a market demand perspective there is no shortage of LIH in the sub-market and therefore C118 remaining property management office should not negatively impact the developments ability to meet its legal mission of a LIH provider in the community.

Item III.

Unit #C161, C261, C162, C262, C163, C263, C164, C264, C165, C265

Building 428 W Park Row Drive BIN #93-02029

Destroyed by fire August 10, 2012; not allowed to rebuild per City of Arlington Texas.

Space re-purposed into additional resident Parking and Play space for children at owner expense. work completed April 2013.

negative impact on GPR: \$8,750 aprox/month.

thank you for your consideration,


-Richard Bilanceri

Owner Representative

Cooper Redevelopment, LLC

NOTICE TO RESIDENTS

SPANISH PARK APTS

420 W PARK ROW DRIVE
ARLINGTON TX 76010
817-861-2097

AUG 1 2013

TO ALL RESIDENTS OF SPANISH PARK APARTMENTS

RE:LURA Amendment request to TDHCA

Spanish Park apartments, management office, maintenance shop and demolished units

Dear Residents:

Cooper redevelopment LLC is asking the Texas Department of Housing and Community Affairs Governing Board (the "TDHCA Board") to approve an amendment to its Land Use Restrictive Agreement ("LURA") that will:

- 1.) Remove the requirement of utilizing Unit#C118 as a residential unit for a low income household in order to continue its current use as a Management Office.
- 2.) Remove the requirement of utilizing Unit#C126 as a residential unit for a low income household in order to continue its current use as a Maintenance Supply Shop.
- 3.) Remove the requirement of utilizing Units #C161, C261, C162, C262, C163, C263, C164, C264, C165, C265 Building 428 W Park Row Drive Destroyed by fire August 10, 2012; as residential units since Building was not allowed to rebuild per City of Arlington, Texas and is now resident parking.

TDHCA uniform Multifamily Rules require that notice of this request be provided to all residents of the property. This letter is to inform you that there will be a public hearing to discuss the request and we invite you to attend.

The public hearing is your opportunity to discuss the amendment request and voice your concern regarding:

- 1.) Remove the requirement of utilizing Unit#C118 as a residential unit for a low income household in order to continue its current use as a Management Office.
- 2.) Remove the requirement of utilizing Unit#C126 as a residential unit for a low income household in order to continue its current use as a Maintenance Supply Shop.
- 3.) Remove the requirement of utilizing Units #C161, C261, C162, C262, C163, C263, C164, C264, C165, C265 Building 428 W Park Row Drive Destroyed by fire August 10, 2012; as residential units since Building was not allowed to rebuild per City of Arlington, Texas and is now resident parking.

If the amendment request is not approved by the TDHCA Board, the office and maintenance shop will need to be converted into a residential units and no longer be available for use by management. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their September 12, 2013 meeting.

If you are unable to attend the public hearing and would like to submit your concerns in writing, please contact the office at 817-861-2097 or via email at spanishpark@att.net. If you have any questions or comments, please let us know.

A public hearing on this issue is scheduled at the Club house Section C:

Location: Spanish Park Club House Section C

420 W Park Row Drive

Date: 08/27/2013

Time: 6:00pm

Sincerely,

Richard Bilanceri,
Owners representative,
Spanish Park Apartments

August 1, 2013

The Honorable Senator Wendy Davis
Texas State Senator
P.O.Box 12068, Capitol Station
Austin Tx 78711

RE: Spanish Park Apartments
420 W Park Row Drive, Arlington Tx 76010
LURA Amendment Request to TDHCA

Dear Senator Davis:

Cooper Redevelopment, LLC is asking the Texas Department of Housing and Community Affairs Governing Board (the "TDHCA" Board) to approve an amendment to its Land Use Restrictive Agreement ("LURA") that will

- 1.) Remove the requirement of utilizing Unit#C118 as a residential unit for a low income household in order to continue its current use as a Management Office.
- 2.) Remove the requirement of utilizing Unit#C126 as a residential unit for a low income household in order to continue its current use as a Maintenance Supply Shop.
- 3.) Remove the requirement of utilizing Units #C161, C261, C162, C262, C163, C263, C164, C264, C165, C265 Building 428 W Park Row Drive Destroyed by fire August 10, 2012; as residential units since Building was not allowed to rebuild per City of Arlington, Texas and is now resident parking.

TDHCA Board Rules Require that notice of this request be given to the Senator for the District in which Spanish Park Apartments is located.

A public hearing on this issue is scheduled at Spanish Park Apartments:

***Location: Spanish Park Club House Section C
424 W Park Row Drive
Date: 08/27/2013
Time: 6:00pm***

You are invited to attend and offer your comments.

Sincerely,

Richard Bilanceri,
Owners representative,
Spanish Park Apartments

11

BOARD ACTION REQUEST

BOND FINANCE DIVISION

SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on Resolution No. 14-005 authorizing the sale of mortgage certificates and redemption of bonds relating to Single Family Mortgage Revenue Bonds 2004 Series A

RECOMMENDED ACTION

WHEREAS, the Department has previously issued its Single Family Mortgage Revenue Refunding Bonds, 2004 Series A pursuant to the Single Family Mortgage Revenue Bond Trust Indenture dated as of October 1, 1980 and the Thirty-Sixth Supplemental Single Family Mortgage Revenue Bond Trust Indenture dated as of April 1, 2004; and

WHEREAS, the Department desires to sell all or a portion of the 2004 A/B Mortgage Certificates or certain other Mortgage Certificates owned by the Department in order to effect the redemption of all or a portion of the outstanding 2004 Series A Bonds pursuant to the Single Family Indenture;

NOW, therefore, it is hereby

RESOLVED, the Governing Board now desires to authorize and approve (i) the sale on one or more dates of a portion of 2004 A/B Mortgage Certificates, the redemption of the 2004 Series A Bonds and the payment of any redemption premium, (ii) the payment of any costs associated with the foregoing transactions, (iii) the deposit of amounts necessary, if any, to pay accrued interest on the 2004 Series A Bonds, and (iv) the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the provisions of this Resolution; and

FURTHER RESOLVED, that Resolution No. 14-005 is hereby adopted in the form presented to this meeting.

BACKGROUND

Bond Finance has affirmed the feasibility of executing a mortgage certificate sale and redemption of the Single Family Mortgage Revenue Bonds Series 2004A. Amounts are outlined in the following table:

Series	Bonds Outstanding as of September 1, 2013	Mortgage Certificates Outstanding as of August 31, 2013
Single Family 2004A	\$26.630 Million	
Single Family 2004B	\$53.000 Million	Not being redeemed
Total	\$79.630 Million	\$76 million

Given the current market conditions, these transactions will generate a present value benefit to the Single Family indentures.

The Department would accomplish this transaction by selling a portion of the Mortgage Certificates sufficient to affect the required redemptions.

The Department may also choose to liquidate mortgage certificates that are currently held as investments in single family related general funds.

The MBS's sold under the Single Family indenture are expected to generate \$500,000 to be used to add liquidity and further strengthen the underlying indenture.

It is important to note that the Department's ability to undertake a partial sale of Mortgage Certificates in this transaction is a direct result of the Private Letter Ruling Request undertaken by staff last year. As a result of the hard work of staff and Department's Bond Counsel firm (Bracewell & Giuliani LLP), the Department received a favorable ruling on that request earlier this year.

The Department would accomplish this transaction by selling all or a portion of the Mortgage Certificates so long as the weighted average price received is equal to or greater than 104.00% (for 4.49% pass-through Certificates) and 107.00% (for 5.00% pass-through Certificates).

RESOLUTION NO. 14-005

RESOLUTION APPROVING THE SALE OF MORTGAGE CERTIFICATES RELATING TO SINGLE FAMILY MORTGAGE REVENUE REFUNDING BONDS, 2004 SERIES A; APPROVING THE REDEMPTION OF 2004 SERIES A BONDS; 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 "Governing 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, the Department has previously issued its (i) Single Family Mortgage Revenue Refunding Bonds, 2004 Series A (the "2004 Series A Bonds") pursuant to the Single Family Mortgage Revenue Bond Trust Indenture dated as of October 1, 1980 (as heretofore amended, collectively, the "Single Family Master Indenture") between the Department, as successor to the Texas Housing Agency, and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Single Family Trustee"), and the Thirty-Sixth Supplemental Single Family Mortgage Revenue Bond Trust Indenture dated as of April 1, 2004 (the "Thirty-Sixth Supplemental Indenture") between the Department and the Single Family Trustee; and

WHEREAS, the Department desires to sell all or a portion of the 2004 A/B Mortgage Certificates (as defined in the Thirty-Sixth Supplemental Indenture) or certain other Mortgage Certificates owned by the Department in order to effect the redemption of all or a portion of the outstanding 2004 Series A Bonds pursuant to the Single Family Indenture; and

WHEREAS, the Governing Board now desires to authorize and approve (i) the sale on one or more dates of a portion of 2004 A/B Mortgage Certificates, identified on Exhibit A hereto, the redemption of the 2004 Series A Bonds and the payment of any redemption premium, (ii) the payment of any costs associated with the foregoing transactions, (iii) the deposit of amounts necessary, if any, to pay accrued interest on the 2004 Series A Bonds, and (iv) the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the provisions of this Resolution; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE I

SALE OF MORTGAGE CERTIFICATES

Section 1.1 Sale of 2004 A/B Mortgage Certificates. The sale on one or more dates of up to \$23,000,000 of 2004 A/B Mortgage Certificates identified on Exhibit A hereto at a weighted average price of no less than 104.00% (for the 4.49% pass-through Mortgage Certificates) and 107.00% (for the 5.00% pass-through Mortgage Certificates) of the outstanding principal balance thereof is hereby authorized, all under and in accordance with the Single Family Indenture and subject to compliance with the terms of the Single Family Indenture. 2004 A/B Mortgage Certificates may be sold in an amount sufficient to (i) redeem the outstanding 2004 Series A Bonds, (ii) pay any costs of the transaction, including the deposit of accrued interest, if any, and (iii) achieve tax compliance or maintain the ratings for bonds issued under the Single Family Indenture.

Section 1.2 Sale of Other Mortgage Certificates. The Governing Bond acknowledges that certain other mortgage certificates identified on Exhibit B hereto may be sold in an amount sufficient to pay the redemption price of the 2004 Series A Bonds or the transaction costs described in Section 1.1(ii) of this Resolution, or for any other allowable purpose under the Act.

Section 1.3 Redemption of 2004 Series A Bonds. The Authorized Representatives of the Department named in this Resolution are hereby authorized and directed: (i) to instruct the Single Family Trustee to redeem the outstanding 2004 Series A Bonds in accordance with the Single Family Indenture and (ii) to take all other actions necessary to cause such redemption to occur including payment of any redemption premium for the 2004 Series A Bonds.

Section 1.4 Execution and Delivery of Documents. The Authorized Representatives are each hereby authorized to execute, attest, affix the Department's seal to and deliver such agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, 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 1.5 Authorized Representatives. The following persons are each hereby named as authorized representatives of the Department for purposes of executing and delivering the documents and instruments referred to in this Article I: the Chair of the Governing Board; the Vice Chair of the Governing Board; the Executive Director of the Department; the Director of Bond Finance of the Department; and the Secretary or any Assistant Secretary to the Governing 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 Authorization to Pay Costs and Amounts Due, if any, for Accrued Interest. The use of an amount not to exceed \$400,000 of the sales proceeds of the 2004 A/B Mortgage Certificates is authorized to be used to pay costs of the transactions authorized by this Resolution or accrued interest on the 2004 Series A Bonds.

Section 1.7 Authorization to Invest Funds. The Authorized Representatives are hereby authorized to invest any remaining proceeds from the sale of the 2004 A Mortgage Certificates in accordance with the Single Family Indenture.

ARTICLE II

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Engagement of Other Professionals. The Executive Director or the Director of Bond Finance of the Department is authorized to engage an accounting firm to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Single Family Indenture and the requirements of Bracewell & Giuliani LLP, Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law.

Section 2.2 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the 2004 A/B Mortgage Certificates are hereby ratified and confirmed.

ARTICLE III

GENERAL PROVISIONS

Section 3.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing 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 Governing Board.

Section 3.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 12th day of September, 2013.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

Exhibit A
2004A/B Mortgage Certificates

CUSIP	Type	Pool	Coupon	Rem. Term	Issue Date	Original Face	Current Factor	Current Face	Ftr Date	Mtg Rate	Sub Totals
31405H2P2	FNMA	790182	4.49	224	8/1/2004	485,000	0.54821299	265,883.30	8/1/2013	4.99%	
31405JCH5	FNMA	790372	4.49	231	8/1/2004	378,540	0.19651804	74,389.94	8/1/2013	4.99%	
31405JQV9	FNMA	790768	4.49	242	8/1/2004	354,585	0.5976285	211,910.10	8/1/2013	4.99%	
31405JPG8	FNMA	799723	4.49	252	10/1/2004	305,011	0.35112507	107,097.01	8/1/2013	4.99%	
31405JZC6	FNMA	800039	4.49	234	11/1/2004	385,238	0.50501417	194,550.65	8/1/2013	4.99%	
31406GUG2	FNMA	809783	4.49	252	2/1/2005	275,348	0.48703517	134,104.16	8/1/2013	4.99%	
31406NV84	FNMA	815239	4.49	237	4/1/2005	358,386	0.49263769	176,554.45	8/1/2013	4.99%	
31407CH83	FNMA	826555	4.49	228	7/1/2005	165,896	0.78986492	131,035.43	8/1/2013	4.99%	
31407PTU2	FNMA	836763	4.49	253	10/1/2005	405,683	0.52448308	212,773.87	8/1/2013	4.99%	
31408EHT2	FNMA	849042	4.49	252	12/1/2005	420,797	0.57736654	242,954.11	8/1/2013	4.99%	
31410PSY0	FNMA	893435	4.49	266	8/1/2006	79,207	0.86371293	68,412.11	8/1/2013	4.99%	
31413HXK1	FNMA	946294	4.49	278	8/1/2007	758,962	0.50167766	380,754.28	8/1/2013	4.99%	2,200,419.41
31405UPH6	FNMA	799724	5.00	253	10/1/2004	260,508	0.28489762	74,218.11	8/1/2013	5.50%	
31405VFE2	FNMA	800365	5.00	251	11/1/2004	284,538	0.65859924	187,396.51	8/1/2013	5.50%	
31406GV87	FNMA	809824	5.00	251	2/1/2005	467,482	0.09656154	45,140.78	8/1/2013	5.50%	
31406NHD9	FNMA	814828	5.00	206	3/1/2005	255,339	0.5176503	132,176.31	8/1/2013	5.50%	
31407BYS2	FNMA	826121	5.00	243	6/1/2005	301,896	0.47491669	143,375.45	8/1/2013	5.50%	
31407CUC2	FNMA	826559	5.00	263	7/1/2005	76,450	0.86668869	66,258.35	8/1/2013	5.50%	
31407PEK0	FNMA	836338	5.00	264	9/1/2005	366,993	0.41862095	153,630.96	8/1/2013	5.50%	
31407XTA9	FNMA	843945	5.00	229	10/1/2005	332,484	0.57667834	191,736.32	8/1/2013	5.50%	
31407YKH1	FNMA	844596	5.00	246	11/1/2005	326,618	0.51489149	168,172.83	8/1/2013	5.50%	
31408DWR1	FNMA	848556	5.00	264	12/1/2005	308,869	0.86771062	268,008.91	8/1/2013	5.50%	
31408EHV7	FNMA	849044	5.00	263	12/1/2005	1,009,166	0.47812748	482,510.00	8/1/2013	5.50%	
31409AFA3	FNMA	865129	5.00	264	1/1/2006	126,411	0.8692666	109,884.86	8/1/2013	5.50%	
31409AM71	FNMA	865382	5.00	262	1/1/2006	495,539	0.47100359	233,400.65	8/1/2013	5.50%	
31409AU98	FNMA	865608	5.00	268	2/1/2006	405,718	0.31291434	126,954.98	8/1/2013	5.50%	
31409AZ51	FNMA	865764	5.00	269	2/1/2006	551,453	0.36079274	198,960.24	8/1/2013	5.50%	
31409BAV9	FNMA	865920	5.00	267	2/1/2006	1,152,372	0.436723	503,267.36	8/1/2013	5.50%	
31409DTH6	FNMA	868252	5.00	268	3/1/2006	667,811	0.21141236	141,183.50	8/1/2013	5.50%	
31409DXQ1	FNMA	868387	5.00	254	3/1/2006	1,013,871	0.33322633	337,848.51	8/1/2013	5.50%	
31409D4C4	FNMA	868519	5.00	270	3/1/2006	504,319	0.15621039	78,779.87	8/1/2013	5.50%	
31409EAG6	FNMA	868607	5.00	256	3/1/2006	650,297	0.49142144	319,569.89	8/1/2013	5.50%	
31409EG54	FNMA	868820	5.00	270	4/1/2006	353,106	0.23881378	84,326.58	8/1/2013	5.50%	
31409EQX2	FNMA	869070	5.00	268	4/1/2006	316,424	0.87414087	276,599.15	8/1/2013	5.50%	
31409ICG3	FNMA	872271	5.00	251	4/1/2006	312,229	0.84440279	263,647.04	8/1/2013	5.50%	
31409IER7	FNMA	872344	5.00	236	5/1/2006	289,993	0.20809085	60,344.89	8/1/2013	5.50%	
31409JKX7	FNMA	872510	5.00	238	5/1/2006	265,011	0.78068469	206,890.03	8/1/2013	5.50%	
31410AGT7	FNMA	883210	5.00	268	6/1/2006	539,253	0.55163087	297,468.60	8/1/2013	5.50%	
31410EDN5	FNMA	886709	5.00	274	8/1/2006	268,582	0.36869773	99,098.09	8/1/2013	5.50%	
31410QC74	FNMA	893894	5.00	259	9/1/2006	199,951	0.86146896	172,251.58	8/1/2013	5.50%	
31411AGK5	FNMA	902102	5.00	274	10/1/2006	543,321	0.31388365	170,539.58	8/1/2013	5.50%	
31411ETA5	FNMA	906045	5.00	230	12/1/2006	371,482	0.57472645	213,500.53	8/1/2013	5.50%	
31411JYH6	FNMA	909716	5.00	278	2/1/2007	489,614	0.51491097	252,107.62	8/1/2013	5.50%	
31411S4F0	FNMA	914422	5.00	247	3/1/2007	151,875	0.83932675	127,472.75	8/1/2013	5.50%	
31411YGM9	FNMA	918304	5.00	264	5/1/2007	73,463	0.87041477	63,943.28	8/1/2013	5.50%	
31413HXW3	FNMA	946293	5.00	284	8/1/2007	197,408	0.46924385	92,632.49	8/1/2013	5.50%	6,343,296.60
36291KDU8	GNMA II	630215	4.49	236	7/1/2004	1,548,002	0.44355434	686,623.01	8/1/2013	4.99%	
36291KEE3	GNMA II	630233	4.49	239	7/1/2004	1,171,607	0.31691874	371,304.21	8/1/2013	4.99%	
36291KQV6	GNMA II	630571	4.49	245	6/1/2004	990,991	0.11484457	113,809.94	8/1/2013	4.99%	
36291PEB8	GNMA II	633830	4.49	242	9/1/2004	1,589,211	0.42898005	681,739.81	8/1/2013	4.99%	
36291PE44	GNMA II	633855	4.49	239	9/1/2004	2,205,615	0.40660477	896,813.58	8/1/2013	4.99%	
36291PLG4	GNMA II	633903	4.49	241	9/1/2004	3,133,952	0.38786374	1,215,546.34	8/1/2013	4.99%	
36291PG42	GNMA II	633919	4.49	246	9/1/2004	995,482	0.53236577	529,960.54	8/1/2013	4.99%	
36291PH82	GNMA II	633955	4.49	247	9/1/2004	1,691,099	0.4128474	698,165.83	8/1/2013	4.99%	
36291PKD7	GNMA II	633992	4.49	238	10/1/2004	2,720,723	0.39278419	1,068,656.98	8/1/2013	4.99%	
36291PLE4	GNMA II	634025	4.49	240	7/1/2004	2,463,071	0.5712901	1,407,128.08	8/1/2013	4.99%	
36291PMA1	GNMA II	634053	4.49	239	7/1/2004	2,197,462	0.28912869	635,349.31	8/1/2013	4.99%	
36291PNG7	GNMA II	634091	4.49	230	7/1/2004	2,747,097	0.3340754	917,737.53	8/1/2013	4.99%	
36291PN44	GNMA II	634111	4.49	241	8/1/2004	3,706,660	0.28492044	1,056,103.20	8/1/2013	4.99%	
36291PP67	GNMA II	634145	4.49	240	8/1/2004	4,142,786	0.29886833	1,238,147.53	8/1/2013	4.99%	
36291PRF5	GNMA II	634186	4.49	241	8/1/2004	3,977,216	0.50445688	2,006,333.97	8/1/2013	4.99%	
36291PRT5	GNMA II	634198	4.49	244	8/1/2004	1,921,849	0.59269141	1,139,063.39	8/1/2013	4.99%	
36291S2U3	GNMA II	637187	4.49	243	12/1/2004	1,117,841	0.56388823	630,337.38	8/1/2013	4.99%	
36291S3H1	GNMA II	637200	4.49	244	12/1/2004	387,333	0.82078191	317,915.92	8/1/2013	4.99%	
36291S4W7	GNMA II	637237	4.49	241	12/1/2004	1,070,154	0.48249072	516,339.37	8/1/2013	4.99%	
36291TEV6	GNMA II	637448	4.49	252	10/1/2004	1,652,363	0.45920451	758,772.54	8/1/2013	4.99%	
36291TGS1	GNMA II	637509	4.49	249	10/1/2004	1,498,563	0.49334784	739,312.82	8/1/2013	4.99%	
36291THE1	GNMA II	637529	4.49	251	10/1/2004	795,980	0.53047889	422,250.59	8/1/2013	4.99%	
36291TIC3	GNMA II	637559	4.49	249	11/1/2004	1,902,860	0.66947903	1,273,924.87	8/1/2013	4.99%	
36291TIW9	GNMA II	637577	4.49	239	11/1/2004	1,201,735	0.52906636	635,797.56	8/1/2013	4.99%	
36291TLD8	GNMA II	637624	4.49	239	11/1/2004	994,488	0.45815801	455,632.64	8/1/2013	4.99%	
36291TMJ4	GNMA II	637661	4.49	247	11/1/2004	1,953,818	0.42497188	830,317.71	8/1/2013	4.99%	
36291VSK5	GNMA II	639950	4.49	241	12/1/2004	528,211	0.65400874	345,454.61	8/1/2013	4.99%	

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CUSIP	Type	Pool	Coupon	Rem. Term	Issue Date	Original Face	Current Factor	Current Face	Ftr Date	Mtg Rate	Sub Totals
36291V6V0	GNMA II	639984	4.49	256	12/1/2004	389,810	0.2450777	95,533.74	8/1/2013	4.99%	
36291V7G2	GNMA II	639995	4.49	252	1/1/2005	763,352	0.58337251	445,318.57	8/1/2013	4.99%	
36291WB7I	GNMA II	640050	4.49	242	1/1/2005	910,438	0.30158514	274,574.57	8/1/2013	4.99%	
36291WC2H	GNMA II	640072	4.49	245	1/1/2005	654,484	0.45342856	296,761.74	8/1/2013	4.99%	
36291WCR0	GNMA II	640080	4.49	254	1/1/2005	514,691	0.60964245	313,777.48	8/1/2013	4.99%	
36291WXE6	GNMA II	640677	4.49	249	2/1/2005	2,097,243	0.28277241	593,042.46	8/1/2013	4.99%	
36291WYH8	GNMA II	640712	4.49	249	2/1/2005	1,473,764	0.54234643	799,290.64	8/1/2013	4.99%	
36291WZJ3	GNMA II	640745	4.49	247	2/1/2005	577,598	0.61259142	353,831.58	8/1/2013	4.99%	
36291WZZ7	GNMA II	640760	4.49	242	2/1/2005	385,619	0.30341187	117,001.38	8/1/2013	4.99%	
36291W2P5	GNMA II	640782	4.49	239	3/1/2005	386,590	0.58199183	224,992.22	8/1/2013	4.99%	
36291W5G2	GNMA II	640847	4.49	246	3/1/2005	604,082	0.6316513	381,569.18	8/1/2013	4.99%	
36292AK23	GNMA II	643013	4.49	171	3/1/2005	114,036	0.65423971	74,606.88	8/1/2013	4.99%	
36292AL48	GNMA II	643047	4.49	248	4/1/2005	821,935	0.57520798	472,783.57	8/1/2013	4.99%	
36292ANR5	GNMA II	643100	4.49	256	4/1/2005	336,117	0.65102179	218,819.49	8/1/2013	4.99%	
36292AP19	GNMA II	643134	4.49	233	5/1/2005	1,097,921	0.26931196	295,683.26	8/1/2013	4.99%	
36292AQK7	GNMA II	643158	4.49	251	5/1/2005	673,235	0.46234952	311,269.88	8/1/2013	4.99%	
36292CJF9	GNMA II	645082	4.49	260	7/1/2005	349,504	0.85201872	297,783.95	8/1/2013	4.99%	
36292CVT8	GNMA II	645126	4.49	256	5/1/2005	292,150	0.84320596	246,342.62	8/1/2013	4.99%	
36292CWJ9	GNMA II	645149	4.49	260	6/1/2005	242,079	0.53811545	130,266.45	8/1/2013	4.99%	
36292EWL0	GNMA II	646951	4.49	263	9/1/2005	161,364	0.85589084	138,109.97	8/1/2013	4.99%	
36292EQ06	GNMA II	647051	4.49	256	7/1/2005	362,811	0.64238562	233,064.57	8/1/2013	4.99%	
36292EJ28	GNMA II	647077	4.49	255	7/1/2005	3,904,801	0.39901309	1,558,066.71	8/1/2013	4.99%	
36292E5G1	GNMA II	647147	4.49	263	8/1/2005	293,037	0.42317847	124,006.95	8/1/2013	4.99%	
36292FBG1	GNMA II	647239	4.49	234	8/1/2005	457,062	0.52711103	240,922.42	8/1/2013	4.99%	
36292HTJ2	GNMA II	649553	4.49	264	10/1/2005	222,420	0.44585874	99,167.90	8/1/2013	4.99%	
36292HVQ3	GNMA II	649623	4.49	259	9/1/2005	212,774	0.50691518	107,858.37	8/1/2013	4.99%	
36292JYM5	GNMA II	650616	4.49	264	11/1/2005	252,380	0.85993284	217,029.85	8/1/2013	4.99%	
36292KAK2	GNMA II	650810	4.49	258	12/1/2005	221,354	0.8489328	187,914.67	8/1/2013	4.99%	
36292KCE4	GNMA II	650869	4.49	222	1/1/2006	96,873	0.77804507	75,371.56	8/1/2013	4.99%	
36292LX25	GNMA II	652397	4.49	269	2/1/2006	187,459	0.31875824	59,754.10	8/1/2013	4.99%	
36292MNV7	GNMA II	654121	4.49	267	3/1/2006	303,335	0.36298119	110,104.90	8/1/2013	4.99%	
36294PPZ0	GNMA II	655740	4.49	272	5/1/2006	63,718	0.87343561	55,653.57	8/1/2013	4.99%	
36294PU92	GNMA II	655908	4.49	270	7/1/2006	306,847	0.54214182	166,354.59	8/1/2013	4.99%	
36294TWC5	GNMA II	659543	4.49	273	9/1/2006	127,820	0.87575951	111,939.58	8/1/2013	4.99%	
36294VWJ5	GNMA II	661349	4.49	265	11/1/2006	197,529	0.86185851	170,242.05	8/1/2013	4.99%	
36295JDC7	GNMA II	671599	4.49	275	7/1/2007	317,867	0.57664614	183,296.78	8/1/2013	4.99%	
36295MR35	GNMA II	674706	4.49	273	8/1/2007	407,018	0.87583114	356,479.04	8/1/2013	4.99%	31,727,126.50
36291PRJ7	GNMA II	634189	5.00	251	8/1/2004	281,941	0.84224533	237,463.49	8/1/2013	5.50%	
36291PRW8	GNMA II	634201	5.00	251	8/1/2004	88,403	0.84642557	74,826.56	8/1/2013	5.50%	
36291SZY5	GNMA II	637191	5.00	226	12/1/2004	306,640	0.61401497	188,281.55	8/1/2013	5.50%	
36291S3L2	GNMA II	637203	5.00	249	12/1/2004	220,153	0.59861124	131,786.06	8/1/2013	5.50%	
36291S4V9	GNMA II	637236	5.00	251	12/1/2004	349,609	0.32838937	114,807.88	8/1/2013	5.50%	
36291TE20	GNMA II	637453	5.00	226	10/1/2004	1,040,708	0.42822396	445,656.10	8/1/2013	5.50%	
36291TGP7	GNMA II	637506	5.00	243	10/1/2004	1,362,420	0.37282076	507,938.46	8/1/2013	5.50%	
36291THD3	GNMA II	637528	5.00	250	10/1/2004	495,147	0.28916914	143,181.23	8/1/2013	5.50%	
36291TJ25	GNMA II	637581	5.00	249	11/1/2004	548,777	0.56690672	311,105.37	8/1/2013	5.50%	
36291TME5	GNMA II	637657	5.00	250	11/1/2004	414,494	0.44735692	185,426.76	8/1/2013	5.50%	
36291V5J8	GNMA II	639949	5.00	245	12/1/2004	420,417	0.83104981	349,387.47	8/1/2013	5.50%	
36291V6J2	GNMA II	639983	5.00	254	12/1/2004	568,182	0.3917915	222,608.88	8/1/2013	5.50%	
36291WYM7	GNMA II	640716	5.00	242	2/1/2005	2,006,851	0.21236769	426,190.31	8/1/2013	5.50%	
36291WZK0	GNMA II	640746	5.00	251	2/1/2005	611,296	0.31840509	194,639.76	8/1/2013	5.50%	
36291W2N0	GNMA II	640781	5.00	253	3/1/2005	430,632	0.6309568	271,710.19	8/1/2013	5.50%	
36291W3H2	GNMA II	640800	5.00	258	3/1/2005	285,486	0.58215678	166,197.61	8/1/2013	5.50%	
36292AKY3	GNMA II	643011	5.00	256	3/1/2005	439,385	0.33447498	146,963.29	8/1/2013	5.50%	
36292ALD8	GNMA II	643024	5.00	247	3/1/2005	192,213	0.83886262	161,240.30	8/1/2013	5.50%	
36292AL30	GNMA II	643046	5.00	259	4/1/2005	257,752	0.45305674	116,776.28	8/1/2013	5.50%	
36292ANN4	GNMA II	643097	5.00	243	4/1/2005	547,451	0.3150789	172,490.26	8/1/2013	5.50%	
36292AN79	GNMA II	643114	5.00	255	4/1/2005	402,167	0.46618313	187,483.47	8/1/2013	5.50%	
36292AQJ4	GNMA II	643156	5.00	253	5/1/2005	227,932	0.40887545	93,195.80	8/1/2013	5.50%	
36292ARE0	GNMA II	643185	5.00	257	5/1/2005	133,358	0.85348461	113,819.00	8/1/2013	5.50%	
36292CJF2	GNMA II	645081	5.00	262	7/1/2005	342,627	0.31497678	107,919.55	8/1/2013	5.50%	
36292CVS0	GNMA II	645125	5.00	247	5/1/2005	132,799	0.83817943	111,309.39	8/1/2013	5.50%	
36292CWH3	GNMA II	645148	5.00	248	6/1/2005	270,584	0.51214643	138,578.63	8/1/2013	5.50%	
36292CXW9	GNMA II	645193	5.00	240	6/1/2005	313,979	0.82289389	258,371.40	8/1/2013	5.50%	
36292EVS4	GNMA II	646989	5.00	258	9/1/2005	750,055	0.4537565	340,342.33	8/1/2013	5.50%	
36292EYL8	GNMA II	647015	5.00	265	9/1/2005	201,767	0.87006968	175,551.35	8/1/2013	5.50%	
36292EZT0	GNMA II	647054	5.00	254	7/1/2005	111,870	0.17923259	20,050.75	8/1/2013	5.50%	
36292E4F4	GNMA II	647122	5.00	254	8/1/2005	201,061	0.11580943	23,284.76	8/1/2013	5.50%	
36292E5V8	GNMA II	647160	5.00	256	8/1/2005	999,033	0.27599798	275,731.09	8/1/2013	5.50%	
36292FBJ5	GNMA II	647241	5.00	253	8/1/2005	210,334	0.24631106	51,807.59	8/1/2013	5.50%	
36292FRQ9	GNMA II	647247	5.00	239	8/1/2005	220,631	0.82078801	181,091.28	8/1/2013	5.50%	
36292HTH6	GNMA II	649552	5.00	264	10/1/2005	669,586	0.60132864	402,641.24	8/1/2013	5.50%	
36292HVJ9	GNMA II	649617	5.00	263	9/1/2005	154,742	0.41056397	63,531.49	8/1/2013	5.50%	
36292HV14	GNMA II	649619	5.00	263	9/1/2005	175,273	0.86720476	151,997.58	8/1/2013	5.50%	

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CUSIP	Type	Pool	Coupon	Rem. Term	Issue Date	Original Face	Current Factor	Current Face	Ftr Date	Mtg Rate	Sub Totals
36292JR68	GNMA II	650409	5.00	246	12/1/2005	641,686	0.51898376	333,024.61	8/1/2013	5.50%	
36292JV55	GNMA II	650525	5.00	265	12/1/2005	1,643,359	0.44218838	726,674.25	8/1/2013	5.50%	
36292JWS4	GNMA II	650557	5.00	260	11/1/2005	567,823	0.28613644	162,474.85	8/1/2013	5.50%	
36292JYP8	GNMA II	650618	5.00	262	11/1/2005	1,114,306	0.66458767	740,554.03	8/1/2013	5.50%	
36292JZS1	GNMA II	650653	5.00	267	11/1/2005	286,584	0.34299769	98,297.65	8/1/2013	5.50%	
36292JZE8	GNMA II	650673	5.00	262	11/1/2005	1,537,118	0.73834556	1,134,924.25	8/1/2013	5.50%	
36292ISX3	GNMA II	650762	5.00	265	12/1/2005	1,609,745	0.49370438	794,738.16	8/1/2013	5.50%	
36292KAF3	GNMA II	650806	5.00	252	12/1/2005	1,731,469	0.27895942	483,009.59	8/1/2013	5.50%	
36292KA22	GNMA II	650825	5.00	263	1/1/2006	1,438,155	0.50398843	724,807.54	8/1/2013	5.50%	
36292KBB8	GNMA II	650863	5.00	259	1/1/2006	342,693	0.29438299	100,882.99	8/1/2013	5.50%	
36292KCB0	GNMA II	650866	5.00	268	1/1/2006	875,127	0.61152922	535,165.73	8/1/2013	5.50%	
36292LS88	GNMA II	652243	5.00	261	3/1/2006	4,097,145	0.32935536	1,349,416.67	8/1/2013	5.50%	
36292LTN4	GNMA II	652257	5.00	239	3/1/2006	1,149,834	0.20894859	240,256.19	8/1/2013	5.50%	
36292LX41	GNMA II	652261	5.00	213	3/1/2006	198,393	0.47677191	94,588.21	8/1/2013	5.50%	
36292LU28	GNMA II	652301	5.00	256	1/1/2006	1,764,149	0.27321529	481,992.48	8/1/2013	5.50%	
36292LUG9	GNMA II	652305	5.00	265	1/1/2006	1,606,648	0.48785826	783,816.50	8/1/2013	5.50%	
36292LUR3	GNMA II	652308	5.00	243	1/1/2006	213,025	0.52567516	111,981.95	8/1/2013	5.50%	
36292LW34	GNMA II	652366	5.00	255	2/1/2006	3,644,455	0.49342023	1,798,247.82	8/1/2013	5.50%	
36292LX41	GNMA II	652399	5.00	263	2/1/2006	1,679,720	0.41228555	692,524.28	8/1/2013	5.50%	
36292LX66	GNMA II	652401	5.00	263	2/1/2006	119,549	0.86780408	103,745.11	8/1/2013	5.50%	
36292LYU2	GNMA II	652423	5.00	263	2/1/2006	4,000,726	0.36408489	1,456,603.89	8/1/2013	5.50%	
36292LZU1	GNMA II	652455	5.00	266	2/1/2006	2,707,079	0.3526487	954,647.89	8/1/2013	5.50%	
36292LZK9	GNMA II	652478	5.00	267	2/1/2006	1,865,218	0.4457491	831,419.24	8/1/2013	5.50%	
36292MA16	GNMA II	652611	5.00	252	5/1/2006	483,692	0.31628737	152,985.67	8/1/2013	5.50%	
36292MA36	GNMA II	652626	5.00	269	5/1/2006	670,588	0.20125655	134,960.23	8/1/2013	5.50%	
36292MBQ4	GNMA II	652647	5.00	271	5/1/2006	996,542	0.36900358	367,727.57	8/1/2013	5.50%	
36292NU00	GNMA II	654080	5.00	265	3/1/2006	1,594,493	0.21328449	340,080.63	8/1/2013	5.50%	
36292NV22	GNMA II	654122	5.00	258	3/1/2006	1,679,887	0.56151241	943,277.40	8/1/2013	5.50%	
36292NWB2	GNMA II	654142	5.00	265	3/1/2006	184,524	0.59554687	109,892.69	8/1/2013	5.50%	
36292NWE6	GNMA II	654145	5.00	266	3/1/2006	1,342,487	0.50264336	674,792.18	8/1/2013	5.50%	
36292NW29	GNMA II	654164	5.00	270	4/1/2006	1,514,717	0.26942702	408,105.69	8/1/2013	5.50%	
36292NY80	GNMA II	654206	5.00	255	4/1/2006	829,583	0.28222479	234,128.89	8/1/2013	5.50%	
36292NZF6	GNMA II	654274	5.00	270	4/1/2006	234,073	0.65076032	152,325.42	8/1/2013	5.50%	
36292N2G4	GNMA II	654275	5.00	262	4/1/2006	1,848,358	0.2569332	474,904.54	8/1/2013	5.50%	
36292N3E8	GNMA II	654297	5.00	269	4/1/2006	1,652,413	0.41566797	686,855.16	8/1/2013	5.50%	
36292N4L1	GNMA II	654327	5.00	261	5/1/2006	1,567,665	0.38909733	609,974.27	8/1/2013	5.50%	
36292N4P2	GNMA II	654330	5.00	223	5/1/2006	192,643	0.38040142	73,281.67	8/1/2013	5.50%	
36294PP23	GNMA II	655741	5.00	265	5/1/2006	902,407	0.15978821	144,194.00	8/1/2013	5.50%	
36294PP31	GNMA II	655742	5.00	217	5/1/2006	146,993	0.77847006	114,429.65	8/1/2013	5.50%	
36294PQV8	GNMA II	655768	5.00	257	6/1/2006	1,100,957	0.70713971	778,530.41	8/1/2013	5.50%	
36294PQ97	GNMA II	655780	5.00	219	6/1/2006	620,965	0.20496485	127,276.00	8/1/2013	5.50%	
36294PSV6	GNMA II	655832	5.00	271	6/1/2006	228,164	0.88160376	201,150.24	8/1/2013	5.50%	
36294PSW4	GNMA II	655833	5.00	273	6/1/2006	1,118,999	0.10270205	114,923.49	8/1/2013	5.50%	
36294PT86	GNMA II	655875	5.00	266	6/1/2006	1,215,738	0.60672776	737,621.99	8/1/2013	5.50%	
36294PUA9	GNMA II	655877	5.00	271	6/1/2006	271,188	0.49300747	133,697.71	8/1/2013	5.50%	
36294PUB3	GNMA II	655907	5.00	270	7/1/2006	1,678,552	0.46577051	781,820.02	8/1/2013	5.50%	
36294PWR0	GNMA II	655956	5.00	270	7/1/2006	519,215	0.32864896	170,639.47	8/1/2013	5.50%	
36294PK73	GNMA II	656002	5.00	270	7/1/2006	1,166,526	0.34680516	404,557.24	8/1/2013	5.50%	
36294PYN7	GNMA II	656017	5.00	270	7/1/2006	68,799	0.87917353	60,486.26	8/1/2013	5.50%	
36294PZY8	GNMA II	656091	5.00	271	7/1/2006	514,498	0.23632827	121,590.42	8/1/2013	5.50%	
36294TN35	GNMA II	659310	5.00	273	8/1/2006	684,870	0.54413611	372,662.50	8/1/2013	5.50%	
36294TRY3	GNMA II	659403	5.00	271	8/1/2006	1,021,626	0.45104366	460,797.93	8/1/2013	5.50%	
36294TS30	GNMA II	659438	5.00	270	9/1/2006	958,618	0.49384205	473,405.88	8/1/2013	5.50%	
36294TTW5	GNMA II	659465	5.00	270	9/1/2006	617,182	0.76455114	471,867.20	8/1/2013	5.50%	
36294TWD3	GNMA II	659544	5.00	255	9/1/2006	64,764	0.8545533	55,344.29	8/1/2013	5.50%	
36294TWG6	GNMA II	659547	5.00	271	9/1/2006	585,901	0.64003158	374,995.14	8/1/2013	5.50%	
36294TW27	GNMA II	659565	5.00	264	9/1/2006	237,005	0.86867821	205,881.08	8/1/2013	5.50%	
36294VRZ5	GNMA II	661204	5.00	274	10/1/2006	948,276	0.36863633	349,568.98	8/1/2013	5.50%	
36294VWH9	GNMA II	661348	5.00	273	11/1/2006	967,026	0.56119047	542,685.78	8/1/2013	5.50%	
36294VWL0	GNMA II	661351	5.00	275	11/1/2006	66,761	0.88743773	59,246.23	8/1/2013	5.50%	
36294VYS3	GNMA II	661421	5.00	275	11/1/2006	572,242	0.88802645	508,166.03	8/1/2013	5.50%	
36294V2V1	GNMA II	661488	5.00	279	12/1/2006	313,480	0.29684921	93,056.29	8/1/2013	5.50%	
36294VY7	GNMA II	663519	5.00	276	1/1/2007	73,685	0.89309181	65,807.47	8/1/2013	5.50%	
36294YKA1	GNMA II	663689	5.00	279	2/1/2007	433,573	0.63423696	274,988.02	8/1/2013	5.50%	
36295EW52	GNMA II	668568	5.00	272	4/1/2007	205,886	0.88590249	182,394.92	8/1/2013	5.50%	35,744,255.04

172,705,107

76,015,097.55

76,015,097.55

Exhibit B
Other Mortgage Certificates

CUSIP	Type	Pool	Coupon	Rem. Term	Issue Date	Original Face	Current Factor	Current Face	Ftr Date	Mtg Rate
36178LVM2	GNMA I	AB1520	3.70%	347	9/1/2012	1,458,357	0.98225674	1,432,480.99	8/1/2013	4.20%
36179H5Y3	GNMA I	AC8063	3.25%	351	1/1/2013	4,479,891	0.98867610	4,429,161.16	8/1/2013	3.75%
						5,938,248		5,861,642.15		

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BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the repeal of 10 TAC Chapter 1, §1.24, Foreclosure Data Collection, and directing its publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the 83rd Regular Session of the Texas Legislature passed Senate Bill 109 which amended Chapter 52 of the Property Code by repealing §51.0022 requiring the collection of certain data regarding foreclosures of residential property across the state, and

WHEREAS, because of the repeal, 10 TAC Chapter 1, §1.24, Foreclosure Data Collection, is no longer required by law.

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 1, §1.24, Foreclosure Data Collection, is hereby approved for publication, together with the preambles presented to this meeting, that the Executive Director and his designees be and each of them is hereby authorized, empowered and directed, for and on behalf of the Department, to cause the proposed repeal, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The repeal of §51.0022 allows the Department to discontinue the collection of forms from county clerks used by lien holders across the State when filing foreclosure notices against residential properties and by sheriffs and trustees conducting foreclosure sales of residential properties. The Department is no longer required to submit the information received from the county clerks to the Legislature on a quarterly basis.

This proposed rule applies to notices of sale filed on or after September 1, 2013. Upon approval of the Board, the Department will release this rule for a 30-day public comment period from approximately September 27, 2013, to October 28, 2013.

Attachment A: Preamble and Proposed Repeal of 10 TAC Chapter 1, §1.24, Foreclosure Data Collection

PROPOSED REPEALED RULE

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 1, §1.24, concerning **Foreclosure Data Collection**. The purpose of the proposed repeal is to implement and comply with Senate Bill 109 of the 83 Regular Legislative Session.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal will save the state and local governments administrative funds.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a cost savings for state and county government. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013, to October 28, 2013, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email at elizabeth.yevich@tdhca.state.tx.us or by fax to (512) 475-0070. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 28, 2013.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§1.24. Foreclosure Data Collection.

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BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22 and proposed new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22, concerning Providing Contact Information to the Department, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, having the most current contact information for persons or entities that the Department does business saves time and duplication of work;

WHEREAS, 10 TAC Chapter 1 §1.22 is not inclusive on who needs to provide contact information or how to provide contact information to the Department, so it is proposed to be repealed;

WHEREAS, a new 10 TAC Chapter 1 §1.22 is proposed with clarifications on who provides contact information and how to provide that information;

NOW, therefore, it is hereby

RESOLVED, that the Executive 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 proposed repealed rule and proposed new rule, in the form presented to this meeting, to be published in the Texas Register for review and public comment, and in connection therewith, make such non-substantive technical corrections as they deem necessary to effectuate the foregoing.

BACKGROUND

The purpose of the proposed repeal of §1.22 is to establish a new rule to set forth more complete policies and procedures governing the provision of contact information to the Department. The proposed new 10 TAC Chapter 1, §1.22, Providing Contact Information to the Department, will be published concurrently with the repeal in the *Texas Register*.

Attachment A: Proposed Repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22, concerning Providing Contact Information to the Department

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22 concerning Providing Contact Information to the Department. The purpose of the proposed repeal is to establish a new rule to set forth policies and procedures governing the provision of contact information to the Department. The proposed new 10 TAC Chapter 1, §1.22, Providing Contact Information to the Department, is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal, is to establish a proposed new rule which will increase efficiency and consistency among the Department’s Single Family Programs. There will be no economic cost to any individuals required to comply with the new rule.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4 to November 4, 2013 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0070. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The repealed section is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules.

The proposed repealed rule affects no other code, article, or statute.

§1.22. Providing Contact Information to the Department.

Attachment B: Proposed New 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22, concerning Providing Contact Information to the Department

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedure, §1.22, concerning Providing Contact Information to the Department. The purpose of this proposed new section is to ensure that contact information is provided to the Department for all business matters.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section will be in effect, enforcing or administering the proposed new rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section will be in effect, the public benefit anticipated as a result of the new rule will be greater efficiency for the Department when contacting the entities or individuals when conducting business.

ADVERSE IMPACT ON SMALL AND MICRO BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013 to November 4, 2013 to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0070. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules governing the administration of the Department and its programs.

CROSS REFERENCE TO STATUTE. The proposed new section affects no other code, article, or statute.

§1.22. Providing Contact Information to the Department.

(a) Any person or entities doing business with the Department shall notify the Department, of any change in contact information, including names, addresses, telephone numbers, electronic mail addresses and fax numbers. In addition, the notification shall include all Departments contract numbers, project numbers or property names of any type. The notification shall be made as described in paragraphs (1) and (2) of this subsection:

(1) by mail: Texas Department of Housing and Community Affairs, Contact Information Update, P.O. Box 13941, Austin, Texas 78711-3941; or

(2) by electronic mail: contactinformationupdate@tdhca.state.tx.us.

(b) All persons or entities doing business with the Department are responsible for keeping their contact information current pursuant to subsection (a) of this section and as required by other Department rules. The Department is entitled to rely solely on the most recent contact information on file with the Department at the time any notice or other communication is sent.

(c) The notification requirements of this section are in addition to any other change of contact information notification requirements of the Department.

10

BOARD ACTION REQUEST
HOME PROGRAM DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on proposed amendments to all sections of 10 TAC Chapter 23, Single Family HOME Program; Subchapter A, General Guidance, Purpose; Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds; Subchapter C, Homeowner Rehabilitation Assistance; Subchapter D, Homebuyer Assistance Program; Subchapter E, Contract for Deed Conversion Program; Subchapter F, Tenant-Based Rental Assistance Program; Subchapter G, Single Family Development Program; and the proposed repeal of Subchapter H, Application Procedures for Certification of Community Housing Development Organization (CHDO), and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Governing Board of the Texas Department of Housing and Community Affairs (the “Department”) adopted 10 TAC Chapter 23, concerning HOME rules on October 9, 2012, and those rules became effective on October 31, 2012, and further amended for clarity and direction, effective June 2, 2013; and

WHEREAS, the U. S. Department of Housing and Urban Development published the HOME Investment Partnerships Program amended HOME Final Rule at 24 CFR Part 92 on July 24, 2013, in the *Federal Register*; and

WHEREAS, The Department is revising by amending and repealing sections of 10 TAC Chapter 23, Single Family HOME Program, to conform with the federal HOME Program regulations at 24 CFR Part 92, as amended on July 24, 2013 and to add clarity to the State HOME Rule;

NOW, therefore, it is hereby

RESOLVED, that the Executive 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 proposed amendments of 10 TAC Chapter 23, Single Family HOME Program; Subchapter A, General Guidance; Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds; Subchapter C, Homeowner Rehabilitation Assistance; Subchapter D, Homebuyer Assistance Program; Subchapter E, Contract for Deed Conversion Program; Subchapter F, Tenant-Based Rental Assistance Program;

Subchapter G, Single Family Development Program, and proposed repeal of Subchapter H, Application Procedures for Certification of Community Housing Development Organization (CHDO), and directing their publication for public comment in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The purpose of amending the State HOME Rule is to revise language to conform the State HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, to repeal Subchapter H, and to clarify certain program requirements. The following are significant changes made to the State HOME Rule at 10 TAC Chapter 23:

23.2 Definitions

Included the definition of Affiliate and Homeownership, updated the definition of Persons with Special Needs, and deleted the definition of General Requirements as it is an obsolete reference.

23.23 Reservation System Participant Review Process

Amended so that Administrators with a current Reservation System Participant (RSP) Agreement may only request recertification to administer HOME Activities if, at least one household has been assisted under that Activity under a current RSP Agreement.

23.24 General Threshold and Selection Criteria

Relocated the Match requirement for each HOME Activity to this subchapter. The Match requirement is waived until December 31, 2014.

23.26 Reservation System Participant (RSP) Agreements

Amended to require for all set-ups be submitted twenty (20) days prior to the RSP Agreement expiration date. This will allow sufficient time to complete the execution of required documents prior to the RSP Agreement expiration date. Clarified that construction activities must be completed within nine (9) months. Also, amended to allow a one-time six (6) month extension for household commitment contracts.

23.29 Resale and Recapture Provisions

Revised to allow a low income purchaser to assume the existing recapture obligation if no additional HOME assistance is provided to the Homebuyer. If homebuyer needs HOME assistance in excess of the HOME Loan, the original HOME subsidy must be recaptured, and a separate HOME subsidy with a new affordability period established with the new homebuyer. Provisions revised to conform to the new federal HOME Final Rule.

23.31 Homeowner Rehabilitation Assistance (HRA) Program Requirements

Revised to facilitate rebuilding efforts after disasters when housing may no longer be standing on the site; permits reconstruction of units that are not standing on the site at the time of Project commitment, provided that HOME funds are committed within twelve (12) months of the date of destruction. Reconstruction is defined as rehabilitation for purposes of the HOME Program.

Amended loan terms for assistance to Households under the HRA Program to a grant agreement with a five (5) year affordability period, and removed loan requirements for households with income levels between sixty (60) and eighty (80) percent of the area median family income (AMFI) for rehabilitation or reconstruction activities.

Revised to allow up to a total of \$5,000 in Direct Project Costs for additional site, elevation, and accessibility features.

23.51 Contract for Deed Conversion (CFDC) Program Requirements.

Revised to allow up to a total of \$5,000 in Direct Project Costs for additional site, elevation, and accessibility features.

23.61 Tenant-Based Rental Assistance (TBRA) Program Requirements.

Amended to allow soft costs to be charged under the TBRA Program specifically for determining household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. The HOME Program conducted a survey which was sent to TBRA Administrators relative to these costs, and compiled pertinent information. As a result, staff is proposing to allow a maximum soft cost per Household for TBRA at \$1,200 per unit, including recertification.

Subchapter H. Application Procedures for Certification of Community Housing Development Organization (CHDO)

The entire subchapter is proposed to be repealed. The purpose of the proposed repeal is to streamline the CHDO certification process, and eliminate reiterating the CHDO requirements in 24 CFR Part 92.

Attached are the proposed preambles and the proposed amendments and proposed repeal to sections under to 10 TAC Chapter 23.

Attachment 1: Preamble and amendment of SUBCHAPTER A. GENERAL GUIDANCE

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter A, §§ 23.1 – 23.2, concerning General Guidance. The purpose of the proposed amendments is to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, to add clarity to the State HOME Rule, to define Affiliate and Homeownership, update the definition of Persons with Special Needs, and delete the definition of General Requirements as it is an obsolete reference.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013 to November 4, 2013, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.1. Purpose.

This chapter governs the administration of HOME Single Family Activities~~[contracts and activities]~~. This chapter clarifies the use and administration of all Single Family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24

CFR, Part 92 as amended. Chapter 20 of this title (relating to Single Family Programs Umbrella Rule) will apply to all Single Family activities, including Single Family development ~~[involving rental or ownership]~~. All provisions of this chapter apply to any Application including Recertification received on or after the date of adoption of this chapter, unless otherwise noted herein or required by law. Existing Agreements~~[Contracts]~~ executed within the preceding twelve (12) months from the date of adoption of this chapter or current pending Applications may be amended in writing at the request of the ~~[Contract]~~ Administrator ~~[(CA)]~~ or Applicant, and with Department approval, so that all provisions of this chapter apply to the Agreement or Application.~~[to subject the Contract or Application to all provisions of this chapter]~~ Amendments proposing only partial adoption of this chapter are prohibited and no amendment adopting this chapter shall be granted if, in the discretion of the Department, any of the provisions of this chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement ~~[Contract]~~ was awarded or Application was submitted. All Administrators ~~[CAs]~~ with an active Agreement ~~[Contract]~~ may become Reservation System Participants (RSPs), at the written request of the Administrator ~~[CA]~~ without the submission of an Application, and with Department approval, subject to all applicable provisions of this chapter. The State's HOME Program is designed to:

- (1) focus on the areas with the greatest housing need described in the State Consolidated Plan;
- (2) provide funds for home ownership and rental housing through acquisition, new construction, rehabilitation, and tenant-based rental assistance;
- (3) promote partnerships among all levels of government and the private sector, including non-profit and for-profit organizations; and
- (4) provide low, very low, and extremely low income families with affordable, decent, safe, and sanitary housing.

§23.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional ~~[Other]~~ definitions may be found in Texas Government Code, Chapter 2306 or Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

(1) Affiliate--If, directly or indirectly, either one controls or has the power to Control the other or a third person Controls or has the power to Control both. The Department may determine Control to include, but not be limited to:

(A) interlocking management or ownership;

(B) identity of interests among family members;

(C) shared facilities and equipment;

(D) common use of employees; or

(E) a business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2)~~(1)~~ Affiliated Party--A Person with a contractual relationship with the ~~[Contract]~~ Administrator through an ~~[on a]~~ Agreement ~~[Contract]~~ with the Department.

- (3)~~(2)~~ Application Submission Procedures Manual (ASPM)--The manual that sets forth the procedures, forms, and instructions for the completion and submission of an Application to the Department.
- (4)~~(3)~~ CFR--Code of Federal Regulations.
- (5)~~(4)~~ Commitment of Funds--Occurs when the Activity or a Project is approved by the Department and set up in the Integrated Disbursement and Information System (IDIS)~~[disbursement and information system]~~ established by U.S. Department of Housing and Urban Development (HUD).
- (6)~~(5)~~ Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership or voting securities, by contract or otherwise, including ownership of more than 50 percent of the General Partner interest in a limited partnership, or designation as a managing member of a limited liability company or managing General Partner of a limited partnership or any similar member.
- (7)~~(6)~~ Development Site--The area, or if scattered site, areas on which the development~~[Development]~~ is proposed to be located.
- (8)~~(7)~~ Direct Project Costs--The total of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs, rental and utility subsidy and deposits, and Match funds.
- ~~[(8) General Requirements--An allowance for the General Contractor's on-site overhead expenses. General Requirements shall be limited as prescribed in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy) and must follow the standards published by the Construction Specifications Institute.]~~
- (9) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.
- (10) Homeownership--Ownership in fee simple title in a 1 to 4 unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made) is not Homeownership.
- (11)~~(10)~~ Match--Funds contributed to a Project that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to a Project or Activity does not include mortgage revenue bonds, HOME-match eligible projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.
- (12)~~(11)~~ Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.
- (13)~~(12)~~ Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs [~~consistent with 42 U.S.C. §§12701, et seq. and~~] as provided in the Consolidated Plan and the State's One Year Action Plan [~~may include any Households composed of one or more persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, elderly, victims of domestic violence, persons with HIV/AIDS, homeless populations, migrant farm workers, and public housing residents~~].
- (14)~~(13)~~ Predevelopment Costs--Costs related to a specific eligible Project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(15) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a 10 percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

~~(16)~~~~(15)~~ Project--A single housing unit with a unique physical address. A Project may also refer to an individual Project, Development, or site.

~~(17)~~~~(16)~~ Reservation System Participant (RSP)--Administrator who has ~~[whose]~~ executed a written agreement with the Department that allows for participation in the Reservation System.

~~(18)~~~~(17)~~ Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement ~~[Contract]~~ that the Administrator ~~[CA or RSP]~~ will serve.

~~(19)~~~~(18)~~ Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of rehabilitation~~[-new construction, and acquisition].~~

~~(20)~~~~(19)~~ Third Party--A Person who is not:

(A) an Applicant, Administrator ~~[CA, RSP]~~, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) an Affiliate, Affiliated Party to the Applicant, Administrator ~~[CA]~~, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) a Person receiving any portion of the administration, contractor fee, or developer fee.

Attachment 2: Preamble and amendment of SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, concerning Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §§23.20 – 23.29. The purpose of the proposed amendments is to revise language to conform the State HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, limit approval of a recertification request to Administrators that have at least one household assisted under that current RSP Agreement, relocate the Match requirement to this subchapter, require all set-ups be submitted twenty (20) days prior to the RSP Agreement expiration date, clarify that construction activities must be completed within nine (9) months, allow a one-time six (6) month extension for household commitment contracts, and to allow a low income purchaser to assume the existing recapture obligation if no additional HOME assistance is provided to the Homebuyer.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013, to November 4, 2013, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.20. Availability of Funds and Regional Allocation Formula

Funds subject to regional allocation shall be made available as described in paragraphs (1) - (3) of this section:

- (1) Applicants applying in response to a competitive application cycle [~~Competitive Application Cycle~~] will be ranked highest to lowest by region and subregion. Funding that remains available after awarding all available eligible Applications in each region and subregion shall collapse and be directed to the next Application in the most underserved region and subregion. If funding is made available to multiple Activities under one NOFA, the funds remaining after awarding all eligible Applications by Activity shall collapse and be directed to the next Application in the most underserved region and subregion regardless of Activity;
- (2) Funds made available through an open application cycle [~~Open Application Cycle~~] and subject to regional allocation shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide; and
- (3) In the event of a tie between two or more Applicants, the Department reserves the right to determine which Application will receive a recommendation for funding, or as otherwise specified in the NOFA. Tied Applicants may also receive a partial recommendation for funding.

§23.21. Application Forms and Materials and Deadlines.

(a) The Department will develop and publish an Application, which if completed by an eligible Applicant, would satisfy the Department's requirements to administer HOME activities [~~for requesting funds from the Department~~]. The Department will also issue an Application Submission Procedures Manual (ASPM) to provide guidance on proper completion of the Application.

(b) Applicants must submit an Application for a Contract award by the deadline date specified in the NOFA. All Applications must be received during business hours, Monday through Friday, 8:00 a.m. - 5:00 p.m., Austin local time, except for holidays observed by the State of Texas.

§23.22. Contract Award Application Review Process.

(a) An Application received by the Department in response to an open application cycle [~~Open Application Cycle~~] NOFA will be assigned a "Received Date" based on the date it is received by the HOME Division. An Application will be prioritized for review based on its "Received Date." An Application with outstanding administrative deficiencies [~~Administrative Deficiencies~~] may be held from further review until all administrative deficiencies [~~Administrative Deficiencies~~] have been cured. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies [~~Administrative Deficiencies~~] at the time Board materials are prepared, regardless of Received Date. If all funds available under a

NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(b) For Applications received by the Department in response to a Competitive Application Cycle NOFA, the Department will accept Applications on an ongoing basis during the application acceptance period as specified in the NOFA. Applications will be prioritized for review based upon the score of the Application.

(c) An administrative deficiency~~[Administrative Deficiency]~~ may not be cured if it would, in the Department's determination, ~~[require]~~ substantially change~~[changing]~~ an Application or if the Applicant provides any new unrequested information to cure the deficiency ~~[Deficiency]~~. An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, increase the award request amount, or revise the unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an administrative deficiency~~[Administrative Deficiency]~~ as further described in this chapter or by amendment of an Application after the Board approval of a HOME award. The curative time periods allowable for administrative deficiencies ~~[Administrative Deficiencies]~~ are: for Applications received under an open application cycle ~~[Open Application Cycle]~~ NOFA, administrative deficiencies ~~[Administrative Deficiencies]~~ not cured within five (5) business days will be terminated. Applicants that have been terminated may reapply for funds; or for Applications received under a Competitive Application Cycle NOFA, if administrative deficiencies ~~[Administrative Deficiencies]~~ are not cured to the satisfaction of the Department within five (5) business days of the deficiency notice date, then one (1) point~~[five (5) points]~~ shall be deducted from the selection score for each additional day the administrative deficiencies ~~[Administrative Deficiencies]~~ remains unresolved. If administrative deficiencies ~~[Administrative Deficiencies]~~ are not clarified or corrected within seven (7) business days from the deficiency notice date, then the Application shall be terminated. ~~[An Applicant may not adjust the self-score without a request from the Department as a result of an Administrative Deficiency.]~~

§23.23. Reservation System Participant Review Process.

(a) In order for an Applicant to participate in the Reservation System, the Department must review and approve an Application to become a Reservation System Participant (RSP). Applications will be reviewed and, if the Application is not terminated in accordance with subsection (c) of this section, a Reservation System Participation Agreement will be drafted and presented to the Executive Director or his/her authorized representative for approval in the order in which they are received.

(b) Applications for recertification may be submitted ninety (90) days before ~~[prior to the end of the]~~ RSP Agreement~~[agreement]~~ term ends and will be required to demonstrate that all Application requirements are met. Administrators may request a one-time recertification as a Reservation System Participant if the RSP Agreement is not expired. Administrator may only be recertified to administer

those Activities which the Administrator has used to assist at least one household under the RSP Agreement that is not expired.

(c) Administrative deficiencies [~~Administrative Deficiencies~~] must be cured within five (5) [~~ten (10)~~] business days of the date of the deficiency notice. If administrative deficiencies [~~Administrative Deficiencies~~] are not clarified or corrected within five (5) [~~ten~~] business days from the deficiency notice date, the Application may be terminated.

§23.24. General Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with:

(1) an Applicant certification of compliance with state and federal laws, rules and guidance governing the HOME Program;

(2) a resolution signed and dated within the six (6) months preceding the Application submission date from the Applicant's direct governing body which includes:

(A) authorization of the submission of the Application;

(B) commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement[~~agreement~~] term;

(C) source of funds for Match obligation and Match dollar amount, if applicable.;

(i) Except for Match that is proposed to meet Application threshold criteria or is otherwise proposed to be provided, the Match requirement is not in effect until January 1, 2015. Any Projects submitted to the Department under a RSP Agreement or Contract award prior to January 1, 2015 will not be required to provide Match as outlined in §§23.30 and 23.40 of this chapter. Agreements under the Persons with Disabilities set-aside, Disaster Relief set-aside, and Tenant-Based Rental Assistance program are exempt from the Match requirement.

(ii) An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match, is required at the time of Application submission.

(iii) For Applications submitted to become an RSP, the Department may withhold disbursements if, after every four reservation of funds, sufficient Match documentation has not been provided.

(iv) The Department shall use population figures from the most recently available U.S. Census to determine the applicable tier for an Application. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria in the NOFA and may be different for each Activity.

(D) name and title of the person authorized to represent the organization; and

(E) name and title of the person with signature authority to execute a contract and loan documents, where applicable;

(3) any Applicant requesting \$25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number. [~~Applicants requesting funds for multifamily housing development and that are "to be formed" are not required to~~

~~submit a CCR or DUNS number until after award but prior to Contract execution.]~~ If the property will be owned by a partnership, the partnership must be the registrant. If a partnership will be receiving funds under the CHDO set-aside, the partnership and the CHDO must both be registered;

(4) an Application fee, to be defined in the NOFA or in this chapter;

(5) to be eligible for a new Contract award, an Applicant must have committed funds to at least 80 percent of the total number of contractually required Households or has committed at least 80 percent of the total Project funds on their current Contract for the same Activity. This provision shall not apply to Applications submitted for disaster relief funding or those with an exclusively different Service Area;

(6) an Application must be substantially complete when received by the Department. An Application will be terminated if an entire volume of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency [~~Administrative Deficiency~~]. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application; and

(7) the Department may incentivize or provide preference to Applicants targeting very low and extremely low income Households or to Applicants that have successfully executed a previous HOME Contract with the Department. Such incentives may be established in the form of threshold or selection criteria in the NOFA and may be different for each Activity.

§23.25. Contract [~~Award~~] Limitations.

(a) Project Funds Limits. Project funds for Contract awards are limited to \$510,000 per [~~Contract~~] Administrator for Homeowner Rehabilitation and Contract for Deed Conversion Activity Applicants and \$300,000 per [~~Contract~~] Administrator for Homebuyer Assistance and Tenant-Based Rental Assistance Activity Applicants. The Contract award limits [~~for Project funds~~] for Single Family Development Activity Applicants will be established in the NOFA. [~~for these Activities.~~]

(b) Contract Award Terms. With the exception of Tenant-Based Rental Assistance, all Activity Contract awards will have a Contract term of twenty-four (24) months exclusive of any applicable affordability period or Loan[~~loan~~] term. Tenant-Based Rental Assistance Activity Contract awards will have a Contract term of thirty-six (36) months.

(c) Contract Award Benchmarks. All Contract Administrators must submit to the Department complete Project setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within twelve (12) months from the effective date of the Contract. All remaining funds will be [~~automatically~~] deobligated and returned to the Department unless an amendment has been requested in writing prior to this date and is approved.

(d) Voluntary deobligation. The [~~Contract~~] Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The [~~Contract~~] Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for Administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. [~~Contract~~] Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result an administrative deficiency[~~Administrative Deficiency~~] and ultimately in termination of the Contract by the Department.

(f) Pre-Award Costs. Before the effective date of the HOME Contract, the [~~Contract~~] Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory training required by the Department as a condition of receiving a HOME award and Contract. Department authorized pre-award costs for predevelopment costs, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be paid if incurred before the effective date of the Contract if the costs are in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

§23.26. Reservation System Participant (RSP) Agreements Limitations.

(a) Terms of Agreement[~~agreement~~]. RSP Agreement[~~agreement~~] will have a twenty-four (24) month term for all Activities. Execution of an RSP Agreement[~~agreement~~] does not guarantee the availability of funds under a reservation system.

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time. All required documentation for the reservation of funds must be submitted to the Department twenty (20) days prior to the end of RSP Agreement term.

(c) Extremely Low-Income Households. Except for Households served with disaster relief, homebuyer assistance, or single family development funds, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30% area median family income (AMFI) for the county in which they reside or have an income that is

lower than the statewide extremely low-income limit as defined by the U.S. Department of Housing and Urban Development (HUD).

(d) Match. ~~[The requirements of this subsection are waived until December 31, 2013. Any Projects submitted to the Department under a Reservation Agreement prior to December 31, 2013, will not be required to provide Match as outlined in this section, except for Match that is proposed to meet Application threshold criteria.]~~ An RSP must meet the tiered Match requirements per Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four Households.

(e) Completion of Construction. For Projects involving construction, an RSP must complete construction ~~[and submit all requests for disbursement]~~ within nine (9) months from the Commitment of Funds for the Project.

(f) Extensions. The Executive Director or his/her designee may approve up to a cumulative six (6) ~~[one three (3)]~~ month time extension to the Commitment of Funds to allow for the completion of construction ~~[and submission of requests for disbursement]~~.

(g) An RSP must remain in good standing with the Department, the state of Texas, and HUD. If an RSP is not in good standing, participation in the Reservation System ~~[reservation system]~~ will be suspended and may result in termination of the RSP Agreement~~[agreement]~~.

§23.27. Procurement of Contractor.

The Department may procure a contractor or contractors to provide services for the administration of the HOME Program. A contractor must provide services and/or administer HOME funds in accordance with state and federal rules and the HOME Program ~~[program]~~ requirements ~~[of this chapter]~~ for the applicable Activity.

§23.28. General Administrative Requirements.

Unless otherwise provided in this chapter, the Administrator ~~[CA, RSP]~~, or Developer~~[Development Owner]~~, must comply with the requirements described in paragraphs (1) - (18) of this section, for the administration and use of HOME funds:

- (1) complete training, as applicable;
- (2) provide all applicable Department Housing Contract System access request information and documentation requirements;
- (3) establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the State Auditor of Texas, the U.S. General Accounting Office,

the Comptroller of Public Accounts of the State of Texas, and the U.S. Comptroller, or any of their duly authorized representatives, throughout the applicable record retention period;

(4) for non-development Activities, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) develop and comply with written procurement selection criteria and committees;

(B) develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds and appoint a procurement officer to manage any bid process;

(C) ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) ensure that building construction contractors are procured in accordance with State and Federal regulations for Single Family HOME Activities [~~using a formal sealed bid procedure for single family New Construction, Reconstruction or Rehabilitation Projects~~];

(F) ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(G) ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract; [~~and~~]

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific selection/evaluation criteria;

(5) in instances where a potential conflict of interest exists, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, [~~and~~] a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the conflict of interest provisions;

(6) perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the Loan[~~loan~~] closing, if applicable;

- (7) develop and comply with written applicant intake and selection criteria for program eligibility that ~~[and]~~ promote and comply with Fair Housing requirements and the State's One Year Action Plan;
- (8) complete applicant intake and applicant selection. Notify each applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application. For Homeowner Rehabilitation Assistance and Contract for Deed Conversion the Administrator ~~[CA or RSP]~~ must:
- (A) provide rehabilitation ~~[Rehabilitation]~~ as an available option to Households, provide Households with a general cost estimate, and to the extent that rehabilitation ~~[Rehabilitation]~~ would not meet the program requirements, explain these program requirements;
 - (B) unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and
 - (C) explain relocation as an available option to any Households located within the 100-year floodplain and present the costs associated with flood insurance;
- (9) determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609;
- (10) except for Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household;
- (11) for single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this title (relating to Single Family Programs Umbrella Rule) ~~[and at least four (4) progress inspections]~~. Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and the Administrator ~~[CA or RSP]~~;
- (12) submit requests for the Commitment or Reservation of Funds, Loan ~~[loan]~~ closing preparation, and disbursements and all required information and verification documentation in the Housing Contract System. A request will not be reviewed by the Department until the Administrator or Developer ~~[CA, RSP, or Development Owner]~~ has submitted all required documentation. If, during review, the Department identifies administrative deficiencies ~~[Administrative Deficiencies]~~, the Department will allow a cure period of ten (10) business days beginning at the start of the first business day following the date the Administrator or Developer ~~[CA, RSP or Development Owner]~~ is notified of the deficiency. If any administrative deficiencies ~~[Administrative Deficiencies]~~ remain after the cure period, the Department, in its sole discretion, shall disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds;
- (13) not proceed or allow a contractor to proceed with construction, including demolition, on any Project or development ~~[Development]~~ without first completing the required environmental clearance

procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or Loan~~[loan]~~ closing with the Department, whichever is applicable;

(14) submit any Program Income received by the Administrator or Developer~~[CA, RSP or Development Owner]~~ to the Department within ten (10) business days of receipt. Return any refunds to the Department's accounting division and include a written explanation of the return of funds, the Contract number, name of Administrator or Developer~~[CA, RSP, or Development Owner]~~, Project address and Project number referenced on the check;

(15) submit required documentation, for project completion reports no later than sixty (60) days after the completion of the Project;

(16) for Contract awards, submit certificate of Contract Completion within ten (10) business days of the Department's request;

(17) submit to the Department reports or information regarding the operations related to HOME funds provided by the Department; and

(18) if required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer ~~[CA, RSP, or Development Owner]~~ in connection with a HOME award.

§23.29. Resale and Recapture Provisions.

(a) The Department has elected to utilize the recapture provision under 24 CFR §92.254(a)(5)(ii) as its primary method of recapturing HOME funds.

(b) The Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection to ensure affordability as defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented or leased, or otherwise ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease and the entire HOME investment is subject to recapture.

(2) In the event that a federal affordability period is required and the unit is sold, including through a short sale or foreclosure, prior to the end of the affordability period, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and as outlined in the State's One Year Action ~~[Consolidated]~~ Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a subsequent low-income purchaser of a HOME-assisted homeownership unit, the low-income purchaser may assume the existing HOME Loan and recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the subsequent homebuyer. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME Loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the Loan[~~loan~~] shall be forgiven as outlined in the State's applicable One Year Action [Consolidated] Plan.

(c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, or the initial Household is no longer occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or is otherwise ceases to be the Principal Residence of the initial Household, the entire HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold, foreclosed, or transferred in lieu of foreclosure to a qualified low income buyer at an affordable price, the HOME Loan[~~loan~~] balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of Loan[~~loan~~] closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low income homebuyers that will occupy the home as their Primary Residence. Affordable to a reasonable range of low-income buyers is defined as targeting households that have a family income between 70 and 80 percent of the area median family income and, meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the Loan[~~loan~~], and any documented capital improvements in excess of \$500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's initial investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer. The balance of appreciated value shall be paid to the Department.

(7) The property purchased by the initial homebuyer will be encumbered with a lien [deed restriction] for the full affordability period.

(d) In the event that a federal affordability period is not required and the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of

installment payments under the Loan~~[loan]~~ may continue until maturity or the grant amount under the conditional grant agreement may be forgiven, if the heir or remainderman Household qualifies for assistance in accordance with this subchapter~~[chapter]~~.

(e) Forgiveness of installment payments under the Loan~~[loan]~~ may continue until maturity or the grant amount under conditional grant agreement may be forgiven if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this chapter.

Attachment 3: Preamble and amendment of SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, §§23.30 – 23.32, concerning Homeowner Rehabilitation Assistance. The purpose of the proposed amendments is to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, to add clarity to the State HOME Rule, facilitate rebuilding efforts after disasters when housing may no longer be standing on the site, amend loan terms for assistance to Households under the HRA Program to a grant agreement with a five (5) year affordability period, remove loan requirements for households with income levels between sixty 60 and eighty 80 percent of the area median family income (AMFI) for rehabilitation or reconstruction activities, and allow up to a total of \$5,000 in additional costs for site work and accessibility features.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013, to November 4, 2013, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.30. Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria.
All Applicants and Applications must submit or comply with this section.

(1) ~~[The requirements of this section are not effective until December 31, 2013. Any Projects submitted to the Department under a Reservation Agreement or Contract awarded prior to December 31, 2013 will not be required to provide Match as outlined in this section, except for Match that is proposed to meet Application threshold criteria. An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match is required at the time of submission. For Applications submitted to become an RSP, the Department may withhold disbursements if after every four reservations sufficient Match documentation has not been provided. The Department shall use population figures from the most recently available U.S. Census to determine the applicable tier for an Application. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Activity.]~~ Except for Applications for disaster relief, Match shall be required based on the tiers described in subparagraphs (A) - (C) of this paragraph:

(A) zero percent of Project funds is required as Match~~[match]~~ if serving a city of less than 5,000 Persons or an unincorporated area of a county whose population in the total unincorporated area of the county is less than 25,000 Persons;

(B) one percent Match for every 1,000 in population to a maximum of 12 percent Match~~[match]~~ for projects in or contracts serving cities with a population greater than 5,000; and

(C) one percent Match for every 10,000 in population in the total unincorporated area of the county to a maximum of 12 percent Match~~[match]~~ for projects in or contracts serving the unincorporated area of a county.

(2) Documentation of a commitment of at least \$80,000 or for a Contract award 80 percent of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in subparagraph (A) of this paragraph; or

(C) the Certified Public Accountant (CPA) opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(3) Housing proposed to be constructed under this Activity must~~[Housing construction plans must]~~ meet the requirements of Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

(A) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA [~~Notice of funding Availability (NOFA)~~] may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.31. Homeowner Rehabilitation Assistance (HRA) Program Requirements.

(a) Eligible Projects are limited to:

(1) the Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of a Manufactured Housing Unit (MHU) is not an eligible Project;

(2) the New Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

(3) the replacement of existing owner-occupied housing with an MHU or New Construction of site-built housing on another site contingent upon written approval of the Department;

(4) if a housing unit is uninhabitable, within the previous five (5) years from requested assistance, as a result of a natural or man-made disaster or a condemnation order from the unit of local government, or presents an imminent threat to the life, health, or safety of occupants as determined by the local government with jurisdiction over the property, the Household is eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification. If a housing unit is destroyed due to a disaster (housing unit may no longer be standing on the site), that unit is eligible for reconstruction provided that the HOME funds are committed within twelve (12) months of the date of destruction; or

(5) if allowable under the NOFA [~~Notice of funding Availability (NOFA)~~], the refinance of an existing mortgage meeting the federal requirements at 24 CFR §92.206(b) and any additional requirements in the NOFA.

(b) If a housing unit has an existing mortgage Loan [~~loan~~] and Department funds are provided in the form of a Loan[loan], the Department will require a first lien if the loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) a federal affordability period is required; or

(2) any existing mortgage has been in place for less three (3) years from the date the Household applies for assistance; or

(3) the HOME Loan[loan] is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a Loan[loan], the property cannot have any existing home equity loan liens.

(d) Direct Project Costs, exclusive of Match funds, and are limited to:

- (1) Reconstruction and New Construction of site-built housing: the lesser of \$78 per square foot or \$85,000, or for Households of six or more Persons the lesser of \$78 per square foot or \$90,000;
- (2) replacement with an MHU: \$65,000;
- (3) rehabilitation that is not Reconstruction: \$40,000; and
- (4) refinancing of existing mortgages: in addition to the costs limited under paragraphs (1) - (3) of this subsection, the cost to refinance an existing mortgage is limited to \$35,000. To qualify, a Household's current total housing payment must be greater than 30 percent of their monthly gross income or their total monthly recurring debt payments must be greater than 45 percent of their gross monthly income.

(e) In addition to the Direct Project Costs allowable under subsection (d) of this section, up to a total of \$5,000 will be allowed in Direct Project Costs for any of the following items or a combination of these items: [~~additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.~~]

- (1) additional sitework if the unit will be located more than 50 feet from the nearest paved roadway; and
- (2) if the unit is being elevated above the floodplain; and
- (3) homeowner requests for accessibility features.

(f) Project soft costs are limited to:

- (1) Reconstruction or New Construction: no more than \$9,000 per housing unit;
- (2) replacement with an MHU: no more than \$3,500 per housing unit;
- (3) rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based paint remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977; and
- (4) third-party Project soft costs related to [~~loan-closing~~] requirements under this section, such as appraisals, title reports or insurance, tax certificates, recording fees, and surveys are not subject to a maximum per Project.

(g) Funds for Administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(h) In the instances described in paragraphs (1) - (4) of this subsection, the assistance to an eligible Household shall be in the form of a Loan[~~loan~~] in the amount of the Direct Project Costs excluding Match funds. [~~If the Household is at or below 60 percent area median family income (AMFI),~~] The Loan[~~the loan~~] will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. [~~If the Household is above 60 percent AMFI but at or below 80 percent AMFI, the assistance to the Household will be a zero percent interest repayable with a 30-year term.~~]

- (1) An MHU being replaced with newly constructed housing (site-built) on the same site;
- (2) Any housing unit being replaced on an another site;

- (3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (a)(4) of this section; and
- (4) Any Project that requires a federal affordability period.

(i) For any Project involving refinancing described in subsection (d)(4) of this section, the HOME funds used for refinancing shall be structured as a fully amortizing, repayable Loan[~~loan~~] at zero percent interest. The Loan[~~loan~~] term shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to 20 percent of the Household's gross monthly income. The term shall not exceed thirty (30) years. Total debt service (back-end ratio) may not exceed 45 percent. Any Direct Project Costs, exclusive of refinancing costs and Match funds, shall be structured as a deferred, forgivable Loan[~~loan~~] with a 15-year term.

(j) In all other instances not described in subsections (h) and (i) of this section, the assistance to an eligible Household will be in the form of a grant agreement with a 5-year affordability period. [~~may be in the form of a loan or grant agreement in the amount of the Direct Project Costs exclusive of Match funds with an affordability term based on the Household's AMFI as reflected in Figure: 10 TAC §23.31(j).~~]

[~~Attached Graphic
Figure: 10 TAC §23.31(j)~~]

AMFI	Form of Assistance
≤30 percent AMFI	zero percent interest, 5-year deferred, forgivable loan, or grant
>30 percent and ≤50 percent AMFI	zero percent interest, 10-year deferred, forgivable loan, or grant
>50 percent and ≤60 percent AMFI	zero percent interest, 15-year deferred, forgivable loan, or grant
>60 percent and ≤80 percent AMFI	zero percent interest, 15-year affordability period, 30-year term

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with this chapter. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

§23.32. Homeowner Rehabilitation Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator [~~Contract Administrator (CA) or Reservation System Participant (RSP)~~] must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

- (1) head of Household name and address of housing unit for which assistance is being requested;
- (2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Project Cost and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) verification of environmental clearance;
- (4) a copy of the Household's intake application on a form prescribed by the Department;
- (5) certification of the income eligibility of the Household signed by the Administrator [~~CA or RSP~~] and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;
- (6) when assistance is provided in the form of a Loan[~~loan~~], provide written consent from all Persons who have a valid lien or ownership interest in the Property for the rehabilitation or reconstruction Projects;
- (7) in the instance of relocation and in accordance with §23.31(a)(3) of this chapter (relating to Homeowner Rehabilitation Assistance (HRA) Program Requirements), the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Project funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Project under this paragraph, the Administrator[~~CA or RSP~~] Match obligation may be reduced by the cost of such demolition without any Contract amendment;
- (8) identification of any Lead-Based Paint (LBP);
- (9) for housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;
- (10) consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's Loan, if applicable;
- (11) if applicable, documentation to address or resolve any potential conflict of interest, identity of interest, duplication of benefit, or floodplain mitigation;
- (12) a title commitment or policy or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ninety-nine (99) year leasehold. For assistance provided in the form of a grant agreement, a title report may be submitted in lieu of a title commitment or policy. In instances of an MHU, a Statement of

Ownership and Location (SOL) must be submitted. Together, these documents must evidence the definition of Homeownership is met;

(13) tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(14) appraisal or other valuation method approved by the Department which establishes the post rehabilitation or reconstruction value of improvements for Projects involving construction; and

(15) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Loan closing or grant agreement. The Administrator~~[CA or RSP]~~ must comply with or submit the documents described in paragraphs (1) - (3) of this subsection, with a request for the preparation of Loan~~[loan]~~ closing or grant agreement as applicable, with the request for the Commitment or Reservation of Funds:

(1) a title commitment ~~[or title policy]~~ that expires prior to execution of closing must be updated at closing and must not have any adverse changes in order to close. An updated title report is not required for grant agreements;

(2) in the instances of replacement with an MHU, information necessary to draft Loan~~[loan]~~ documents or grant agreements to issue SOL; and

(3) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship.

(c) Disbursement of funds. The Administrator~~[CA or RSP]~~ must comply with all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's~~[CA's or RSP's]~~ compliance with requirements described in paragraphs (1) - (11) of this subsection, may be required with a request for disbursement:

(1) for construction costs associated with a Loan~~[loan]~~, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) ~~[thirty (30)]~~ days after the date of construction completion;

(2) for construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment ~~[lien waiver]~~ must be dated at least forty (40) ~~[thirty (30)]~~ days after the date of construction completion;

(3) if applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator~~[CA or RSP]~~ must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(4) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator~~[CA or RSP]~~;

- (5) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;
- (6) the executed grant agreement or original, executed, legally enforceable Loan~~[loan]~~ documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;
- (7) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator~~[CA or RSP]~~ to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator~~[CA or RSP]~~ as may be necessary or advisable for compliance with all Program Rules;
- (8) the request for funds for Administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;
- (9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) ~~[thirty (30)]~~ days after completion of construction;
- (10) for final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the Loan~~[loan]~~ or grant agreement, if applicable, and evidence of floodplain mitigation; and
- (11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Agreement~~[Contract]~~ in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

Attachment 4: Preamble and amendment of SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, §§23.40 – 23.42, concerning Homebuyer Assistance Program. The purpose of the proposed amendments is to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, and to add clarity to the State HOME Rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013 to November 4, 2013, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amended section affects no other code, article, or statute.

§23.40. Homebuyer Assistance (HBA) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with this section.

~~(1) [The requirements of this section are waived until August 31, 2013. Any Projects submitted to the Department under a Reservation Agreement or Contract awarded prior to December 31, 2013 will not be required to provide Match as outlined in this section, except for Match that is proposed to meet Application threshold criteria. An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match must be submitted. The Department may not require~~

~~such support at the time an Application is submitted when the funds are made available under a reservation system.]~~ Except for Applications for disaster relief and Persons with Disabilities set-asides, the amount of Match required must be at least 5 percent of Project funds requested. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this section. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Activity.

(2) Documentation of a commitment of at least \$80,000 or for a Contract award, 100 percent of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in subparagraph (A) of this paragraph; or

(C) the Certified Public Accountant (CPA) opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

§23.41. Homebuyer Assistance (HBA) Program Requirements.

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

(b) The Household must complete a homebuyer counseling program/class.

(c) First lien purchase loans must comply with the requirements described in paragraphs (1) - (7) of this subsection:

(1) No adjustable rate mortgage loans or temporary interest rate buy-down loans are allowed;

(2) No first lien mortgage loans with a total loan to value equal to or greater than 100 percent are allowed;

(3) No subprime mortgage loans [~~Subprime Mortgage Loans~~] are allowed;

(4) For conforming [~~Nonconforming~~] mortgage loans [~~Mortgage Loans~~], the debt to income ratio (back-end ratio) may not exceed 45 percent;

(5) Fees charged by third party mortgage lenders are limited to the greater of 2 percent of the mortgage loan amount or \$3,500, including but not limited to origination, application, and/or underwriting fees. Fees associated with the origination of Single Family Mortgage Revenue Bond and Mortgage Credit Certificate programs will not be included in the limit. Fees paid to parties other than the first lien lender

and reflected on the HUD-1 will not be included in the limit. Fees collected by the first lien lender at closing to be paid to other parties by the first lien lender that are supported by an invoice and reflected on the HUD-1 will not be included in the limit;

(6) No identity of interest relationship between the lender and the Household is allowed; and

(7) If an identity of interest exists between the Household and the seller, the Department may require additional documentation that evidences that the sales price is equal to or less than the appraised value of the property as documented by a Third-Party appraisal ordered by the first lien lender. If an identity of interest exists between the builder and Administrator~~[Contract Administrator (CA) or Reservation System Participant (RSP)]~~, the Administrator~~[CA or RSP]~~ must provide documentation that evidences that the sales price does not provide for a profit of more than 15 percent of the total hard construction costs and does not exceed the current appraised value as documented by a Third-Party appraisal ordered by the first lien lender.

(d) Direct Project Costs, exclusive of Match funds, are limited to:

(1) acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 20 percent of the Household's gross monthly income based on a thirty (30) year amortization schedule. If the estimated housing payment will be less than 20 percent, the Department shall reduce the amount of downpayment assistance to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income; or

(2) closing costs and downpayment: the lesser of \$6,000 or the total estimated settlement charges shown on the good faith estimate that are paid by the buyer at closing which are not paid by the buyer's contribution. Households assisted under this paragraph who, at the time of application, have assets which may be liquidated without a federal income tax penalty and which exceed three months of estimated principal, interest, property tax, and property insurance payments for the unit to be purchased as shown in the truth-in-lending statement must contribute the excess funds to the total estimated settlement charges as shown on the good faith estimate; and

(3) rehabilitation for accessibility modifications: \$20,000~~;~~ ~~and~~

~~[(4) the amount necessary to acquire the home and make accessibility modifications.]~~

~~(4)~~~~(5)~~ No funds shall be disbursed to the assisted Household at closing. The HOME assistance shall be reduced in the amount necessary to prevent the Household's direct receipt of funds if the HUD-1 settlement statement shows funds to be provided to the buyer at closing.

~~(5)~~~~(6)~~ Total assistance to the Household must be in an amount of no less than \$1,000. Households who are not eligible for at least \$1,000 in total homebuyer assistance are ineligible for assistance under this subchapter.

(e) Project soft costs are limited to:

(1) acquisition and closing costs: no more than \$1,500 per housing unit; and

(2) rehabilitation for accessibility modifications: \$5,000 per housing unit.

(f) Funds for Administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(g) The assistance to an eligible Household shall be in the form of a Loan~~[loan]~~ in the amount of the Direct Project Costs, excluding Match funds. The Loan~~[loan]~~ will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(h) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(i) To ensure affordability, the Department will impose the recapture provisions established in this chapter.

(j) Housing units that will be rehabilitated with HOME funds must meet or exceed the Texas Minimum Construction Standard (TMCS), as applicable and all applicable codes and standards. In addition, housing that is Rehabilitated under this chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§23.42. Homebuyer Assistance (HBA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator~~[CA or RSP]~~ must submit true and complete information, certified as such, with a request for the Commitment or Reservation of Funds, as described in paragraphs (1) - (11) of this subsection:

- (1) Head of Household name and address of housing unit for which assistance is being requested;
- (2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) Verification of environmental clearance;
- (4) A copy of the Household's intake application on a form prescribed by the Department;
- (5) Certification of the income eligibility of the Household signed by the Administrator~~[CA or RSP]~~, and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent area median family income, all documentation used to determine the income of the Household;

- (6) Identification of Lead-Based Paint (LBP);
- (7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;
- (8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;
- (9) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, or duplication of benefit;
- (10) Appraisal which includes post rehabilitation or reconstruction improvements for Projects involving construction; and
- (11) Any other documentation necessary to evidence that the Project meets the program requirements.

(b) Loan closing. The Administrator~~[CA or RSP]~~ must submit the documents described in paragraphs (1) and (2) of this subsection, with a request for the preparation of Loan~~[loan]~~ closing with the request for the Commitment or Reservation of Funds:

- (1) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and
- (2) A good faith estimate that is, or letter from the lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien mortgage loan requirements, and the requirements of this chapter.

(c) Disbursement of funds. The Administrator~~[CA or RSP]~~ must comply all of the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's~~[CA's or RSP's]~~ compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

- (1) For construction costs that are a part of a Loan~~[loan]~~ subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) ~~[thirty (30)]~~ days after the date of construction completion;
- (2) If applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator~~[CA or RSP]~~ must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;
- (3) The property inspection must be signed and dated by the inspector and the Administrator or Developer ~~[CA, RSP, or Development Owner]~~;
- (4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made

promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable Loan~~[loan]~~ documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the Loan~~[loan]~~ closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator~~[CA or RSP]~~ to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator~~[CA or RSP]~~ as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for Administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated Loan~~[loan]~~ closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's ~~[Development Owner's]~~ authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) For Activities involving Rehabilitation, include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) ~~[thirty (30)]~~ days after completion of construction and until submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

Attachment 5: Preamble and amendment of SUBCHAPTER E. CONTRACT FOR DEED CONVERSION PROGRAM

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, §§23.50 – 23.52, concerning Contract for Deed Conversion Program. The purpose of the proposed amendments are to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, to add clarity to the State HOME Rule, and to allow up to a total of \$5,000 in additional costs for site work and accessibility features.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013, to November 4, 2013, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments section affects no other code, article, or statute.

§23.50. Contract for Deed Conversion (CFDC) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with this section.

(1) Documentation of a commitment of at least \$80,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in subparagraph (A) of this paragraph; or

(C) the CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(2) Housing proposed to be constructed under this Activity must [~~Housing construction plans must~~] meet the requirements in Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.51. Contract for Deed Conversion (CFDC) Program Requirements

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units.

(b) A new Manufactured Housing Unit (MHU) is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 60 percent area median family income (AMFI) and the Household must complete a homebuyer counseling program/class.

(d) The Department will require a first lien position.

(e) Direct Project Costs, exclusive of Match funds, are limited to:

(1) acquisition and closing costs: \$35,000. In the case of a contract for deed conversion housing unit that involves the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of \$78 per square foot or \$85,000, or for Households of six or more Persons the lesser of \$78 per square foot or \$90,000;

(3) replacement with an MHU: \$65,000; and

(4) rehabilitation that is not Reconstruction: \$40,000.

(f) In addition to the Direct Project Costs allowable under subsection (d) of this section, up to a total of \$5,000 will be allowed in Direct Project Costs for any of the following items or a combination of these

~~items: [additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.]~~

- (1) additional sitework if the unit will be located more than 50 feet from the nearest paved roadway; and
- (2) if the unit is being elevated above the floodplain; and
- (3) homeowner requests for accessibility features.

(g) Project soft costs are limited to:

- (1) acquisition and closing costs: no more than \$1,500 per housing unit;
- (2) Reconstruction or New Construction: no more than \$9,000 per housing unit;
- (3) replacement with and MHU: no more than \$3,500 per housing unit; and
- (4) rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(h) Funds for administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(i) The assistance to an eligible Household shall be in the form of a Loan~~[loan]~~ in the amount of the Direct Project Costs excluding Match funds. The Loan~~[loan]~~ will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(j) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro rata basis until maturity of the Loan.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§23.52. Contract for Deed Conversion (CFDC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator [~~Contract Administrator (CA) or Reservation System Participant (RSP)~~] must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds:

- (1) head of Household name and address of housing unit for which assistance is being requested;
- (2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) verification of environmental clearance;
- (4) a copy of the Household's intake application on a form prescribed by the Department;
- (5) certification of the income eligibility of the Household signed by the Administrator [~~CA or RSP~~] and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;
- (6) identification of Lead-Based Paint (LBP);
- (7) for housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;
- (8) if applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation;
- (9) appraisal which includes post rehabilitation or reconstruction improvements for Projects involving construction; and
- (10) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Loan closing. The Administrator [~~CA or RSP~~] must submit the documents described in paragraphs (1) - (4) of this subsection, with a request for the preparation of Loan [~~loan~~] closing with the request for the Commitment or Reservation of Funds:

- (1) a title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;
- (2) in the instances of replacement with an MHU, information necessary to draft Loan [~~loan~~] documents and issue Statement of Ownership and Location (SOL);
- (3) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship; and
- (4) A copy of the recorded contract for deed and a current payoff statement.

(c) Disbursement of funds. The Administrator~~[CA or RSP]~~ must comply all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's~~[CA's or RSP's]~~ compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) ~~[thirty (30)]~~ days after the date of construction completion;

(2) if applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator~~[CA or RSP]~~ must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator~~[CA or RSP]~~;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable Loan ~~[loan]~~ documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the Loan~~[loan]~~ closing;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request the Administrator or Developer ~~[CA, RSP, or Development Owner]~~ to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator~~[CA or RSP]~~ as may be necessary or advisable for compliance with all program requirements;

(7) the request for funds for Administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(8) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated Loan~~[loan]~~ closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's ~~[Development Owner's]~~ authorization for disbursement of funds to the title company,

request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) [~~thirty (30)~~] days after completion of construction;

(10) for final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the Loan[~~loan~~] or grant agreement, if applicable, and evidence of floodplain mitigation; and

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

Attachment 6: Preamble and amendment of SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, §§23.60 – 23.62, concerning Tenant-Based Rental Assistance Program. The purpose of the proposed amendments is to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships (HOME) Program regulations at 24 CFR Part 92, as amended on July 24, 2013, to add clarity to the State HOME Rule, and to allow eligible soft costs to be charged under the TBRA Program.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013, to November 4, 2013, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us enter Rule Comments in the Subject line. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.**

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.60. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

All Applicants and Applications must submit Documentation of a commitment of at least \$15,000 for in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

- (1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or
- (2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in paragraph (1) of this section; or
- (3) the Certified Public Accountant (CPA) opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program Activity[~~award~~].

§23.61. Tenant-Based Rental Assistance (TBRA) Program Requirements.

- (a) The Household must participate in a self-sufficiency program.
- (b) The amount of assistance will be determined using the Housing Choice Voucher method [Method].
- (c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.
- (d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.
- (e) Project funds are limited to:
 - (1) rental subsidy: The rental subsidy term is limited to no more than twenty-four (24) months under a contract award. Households served under a reservation agreement may be granted a twelve (12) month extension, for a period of assistance not to exceed thirty-six (36) month cumulatively. A household may be eligible for an additional twenty-four months of assistance, for a period of assistance not to exceed sixty (60) months cumulatively, if:
 - (A) the Household [~~household~~] has applied for a Section 8 Housing Choice Voucher and is placed on a waiting list during their TBRA participation tenure; and
 - (B) the Household [~~household~~] has not been removed from the Section 8 Housing Choice Voucher waiting list due to failure to respond to required notices or other ineligibility factors; and
 - (C) the Household [~~household~~] has not been denied participation in the Section 8 Housing Choice Voucher program while they were being assisted with HOME TBRA; and
 - (D) the Household [~~household~~] did not refuse to participate in the Section 8 Housing Choice Voucher program when a voucher was made available;
 - (2) security deposit: no more than the amount equal to two (2) month's rent for the unit.
 - (3) utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard must be the current U.S. Department of Housing and Urban Development (HUD) "Fair Market Rent for the Housing Choice Voucher Program" at the time the household is income certified (or the rental coupon is executed). In instances where the area rents exceed the established Fair Market Rent, the Administrator [~~Contract Administrator (CA) or Reservation System Participant (RSP)~~] may submit a written request to the Department for approval of a higher payment standard. The request must be evidenced by a market study. For HOME-assisted units, the payment standard must be the current HOME rent applicable for the unit.

(g) The lease agreement start date must correspond to the date of the TBRA rental coupon contract. The dates may be different only upon prior approval of the Executive Director or his/her designee.

(h) Project soft costs are limited to \$1,200 per Household assisted for determining household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's service area.

~~(i)~~[(h)] Funds for Administrative costs are limited to ~~4~~[8] percent of Direct Project Costs, excluding Match funds. Funds for Administrative costs may be increased an additional 1 percent of Direct Project Costs if Match is provided in an amount equal to 5 percent or more of Direct Project Costs.

~~(j)~~[(+)] Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with Housing Quality Standards established by HUD.

§23.62. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator[~~CA or RSP~~] must submit the documents described in paragraphs (1) - (8) of this subsection, with a request for the Commitment or Reservation of Funds:

- (1) head of Household name and address of housing unit for which assistance is being requested;
- (2) a budget that includes the amount of Direct Project Costs, Project soft costs and, Administrative costs requested, Match to be provided, evidence that Direct Project Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) verification of environmental clearance;
- (4) a copy of the Household's intake application on a form prescribed by the Department;
- (5) certification of the income eligibility of the Household signed by the Administrator [~~CA or RSP~~], and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator[~~CA or RSP~~] must submit documentation used to determine the income and rental subsidy of the Household;
- (6) identification of Lead-Based Paint (LBP);
- (7) if applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit; and

(8) any other documentation necessary to evidence that the Project meets the Program Rules.

(b) Disbursement of funds. The Administrator [~~CA or RSP~~] must comply with all of the requirements described in paragraphs (1) - (8) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator [~~CA's or RSP's~~] compliance with requirements described in paragraphs (1) - (8) of this subsection may be required with a request for disbursement.

(1) If required or applicable, up to 50 percent of Direct Project Costs for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator [~~CA or RSP~~] must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Project Costs disbursed;

(2) The property inspection must be signed and dated by the inspector and Administrator [~~CA or RSP~~];

(3) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(4) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator [~~CA or RSP~~] to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer [~~CA, RSP, or Development Owner~~] as may be necessary or advisable for compliance with all Program Requirements;

(5) With the exception of up to 25 percent of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(6) Requests may come in up to ten (10) days in advance of the first day of the following month;

(7) For final disbursement requests, submission of documentation required for Project completion reports; and

(8) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

Attachment 7: Preamble and amendment of SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT PROGRAM

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter G, §§23.70 – 23.71, concerning Single Family Development Program. The purpose of the proposed amended section is to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, and to add clarity to the State HOME Rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013, to November 4, 2013, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us enter Rule Comments in the Subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.70 .Single Family Development (SFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with this section.

- (1) An Application for Community Housing Development Organization (CHDO) certification.
- (2) If the total of the Department’s [~~Department~~] Loan[~~loan~~] equals more than 50 percent of the total development cost, except for developments also financed with U.S. Department of Agriculture (USDA) funds, the Applicant must provide:

(A) evidence of a line of credit or equivalent tool ~~of [equal to]~~ at least \$80,000 ~~[10 percent of the total development cost]~~ from a financial institution that will be ~~[is]~~ available for use during the proposed development activities; or

(B) a letter from a third party Certified Public Accountant (CPA) verifying the capacity of the owner or developer to provide at least \$80,000~~[10 percent of the total development cost]~~ as a short term loan for development; and

(C) a letter from the developer's or owner's bank(s) confirming funds amounting to at least \$80,000 ~~is [10 percent of the total development cost are]~~ available.

(3) A proposed development plan that is consistent with the requirements of this chapter, all other federal and state rules, and includes:

(A) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(B) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(C) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(D) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least one hundred-twenty (120) days from the date of application submission; and

(E) an "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an identity of interest must comply with the identity of interest transfer requirements in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy).

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

§23.71. Single Family Development (SFD) Program Requirements.

(a) Eligible activities include the acquisition and New Construction or acquisition and Rehabilitation of single family housing. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254.

(b) This Activity is a CHDO-eligible activity.

(c) The Household's income must not exceed 80 percent area median family income (AMFI) and the Household must complete a homebuyer counseling program/class.

(d) Each unit must meet the design and quality requirements described in paragraphs (1) - (5) of this subsection:

(1) for New Construction and Reconstruction, current applicable International Residential Code, local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the 24 CFR §92.251(a);

(2) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(3) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(4) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(5) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(e) The total hard construction costs are limited as described in paragraphs (1) and (2) of this subsection:

(1) Reconstruction and New Construction of site-built housing: The hard construction costs are limited to \$78 per square foot and \$85,000 or for Households of 6 or more Persons \$90,000; and

(2) Rehabilitation that is not Reconstruction: \$40,000.

(f) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs.

(g) Construction period financing for each unit shall be structured as a zero [0] percent interest Loan[~~loan~~] with a six (6) month term. The maximum construction Loan[~~loan~~] amount may not exceed the total sales price less developer fees/profit, homebuyer closing costs, and other ineligible Project costs. Prior to construction Loan[~~loan~~] closing, a sales contract must be executed with a qualified homebuyer.

(h) In the instance that the Combined Loan to Value equals more than 100 percent of the appraised value, the portion of the sales price that exceeds 100 percent of the appraised value will be granted to the

developer to buy down the purchase price if the homebuyer is receiving downpayment assistance or a first lien mortgage from the Department.

(i) The HOME assistance to the homebuyer shall be structured as a first and/or second lien Loan(s) [~~loan(s)~~]:

(1) the downpayment assistance is limited to \$20,000 and shall be structured as a ten (10) [~~fifteen (15)~~] year deferred, forgivable Loan [~~loan~~] with a subordinate lien; and

(2) a first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements applicable to §23.41 of this chapter (relating to Homebuyer Assistance (HBA) Program Requirements). If the Department is providing the first lien mortgage with HOME financing, the Loan [~~loan~~] will be fully amortizing with a thirty (30) year term. The Department will require a debt to income ratio (back-end ratio) not to exceed 45 percent. The total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 20 percent and no greater than 30 percent of the Household's gross monthly income. Should the estimated housing payment be less than 20 percent of the Household's gross income, the Department shall reduce the amount of downpayment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5 percent. The Department shall use to the Household's income certification to make this determination.

(j) Earnest money is limited to no more than \$500, which will be credited to the homebuyer at closing. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(k) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within ninety (90) days of the end of the construction period, all additional funding closings and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(l) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(m) To ensure affordability, the Department will impose resale or recapture provisions established in this chapter.

§23.72. Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator [~~Contract Administrator (CA) or Reservation System Participant (RSP)~~] must submit the documents described in paragraphs (1) - (10) of this subsection, with a request for the Commitment or Reservation of Funds:

- (1) head of Household name and address of housing unit for which assistance is being requested;
- (2) a budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) verification of environmental clearance;
- (4) a copy of the Household's intake application on a form prescribed by the Department;
- (5) certification of the income eligibility of the Household signed by the Administrator [~~CA or RSP~~] and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;
- (6) identification of Lead-Based Paint (LBP);
- (7) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;
- (8) if applicable, documentation to address or resolve any potential conflict of interest, identity of interest, duplication of benefit, or floodplain mitigation;
- (9) appraisal, which includes post rehabilitation or reconstruction improvements for Projects involving construction; and
- (10) any other documentation necessary to evidence that the Project meets the Program Rules.

(b) Loan closing. The Administrator or Developer [~~CA, RSP, or Development Owner~~] must submit the documents described in paragraphs (1) - (3) of this subsection, with a request for the preparation of Loan [~~loan~~] closing with the request for the Commitment or Reservation of Funds:

- (1) a title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;
- (2) within ninety (90) days after the Loan [~~loan~~] closing date, the Administrator or Developer [~~Contract Administrator or Development Owner~~] must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the Loan closing date will result in the Department withholding payment for disbursement requests; and
- (3) a draft settlement statement that is consistent with the executed sales contract, the first lien mortgage loan requirements (as applicable), and the terms of this Contract will be provided to Department.

(c) Disbursement of funds. The Administrator~~[CA or RSP]~~ must comply with the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with requirements described in paragraphs (1) - (10) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) ~~[thirty (30)]~~ days after the date of construction completion;

(2) if required or applicable, up to 50 percent of Direct Project Costs for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator~~[CA or RSP]~~ must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and the Administrator or Developer ~~[CA, RSP, or Development Owner]~~;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable Loan~~[loan]~~ documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request the Administrator or Developer ~~[CA, RSP, or Development Owner]~~ to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer ~~[CA, RSP, or Development Owner]~~ as may be necessary or advisable for compliance with all Program Requirements;

(7) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated Loan~~[loan]~~ closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's ~~[Development Owner's]~~ authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(8) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) ~~[thirty (30)]~~ days after completion of construction;

(9) for final disbursement requests, submission of documentation required for Project completion reports; and

(10) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

ATTACHMENT 8: Preamble and repeal of SUBCHAPTER H. APPLICATION PROCEDURES FOR CERTIFICATION OF COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 23, Single Family HOME Program, Subchapter H, §23.80, concerning Application Procedures for Certification of Community Housing Development Organization (CHDO). The purpose of the proposed repeal section is to streamline the CHDO certification process, and eliminate reiterating the CHDO requirements in 24 CFR Part 92.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be to improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013, to November 4, 2013, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§23.80. Application Procedures for Certification of Community Housing Development Organization (CHDO).

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements, and a proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs and

WHEREAS, staff proposes clarifications and changes to the existing rules to better serve the post award and asset management requirements of multifamily developments awarded funds under various Department programs;

Now, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements and a proposed new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements are hereby approved, together with the preambles presented to this meeting, for publishing in the *Texas Register* for public comment and

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the draft repeal of and new 10 TAC Chapter 10, Subchapter E, Post Award and Asset Management Requirements, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

At the November 13, 2012 meeting, the TDHCA Board approved for publication in the Texas Register the final adoption of the new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408 and the repeal of 10 TAC §1.9, and §1.25, in the form presented to that meeting. The Asset Management Division has been working under the adopted rule.

Attachment A: Preamble and Proposed repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408, General Provisions, Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408. The new 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408 is being proposed concurrently with this repeal. The purpose of the repeal is to clarify and correct information in all sections of the adopted rule to provide for the adoption of new rules that will ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the adoption of new rules to enhance the State’s ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held until October 21, 2013 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia, or by email to cari.garcia@tdhca.state.tx.us or by FAX to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 21, 2013.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. The proposed repeal affects no other code, article or statute.

§10.400. Purpose.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

§10.403. Direct Loans.

§10.404. Reserve for Replacement Requirements.

§10.405. Amendments and Extensions.

§10.406. Ownership Transfers (§2306.6713).

§10.407. Right of First Refusal.

§10.408. Qualified Contract Requirements.

Attachment B: Preamble and Proposed new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408. The purpose of the new rule is to clarify and correct information in all sections of the adopted rule to ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will enhance the State's ability to provide decent, safe, sanitary and affordable housing. There will not be any new, increased economic cost to any individuation required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be until October 21, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia, or by email to cari.garcia@tdhca.state.tx.us or by FAX to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 21, 2013.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed new sections affect no other code, article or statute.

§10.400. Purpose.

The purpose of this chapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This chapter is designed to ensure that Developers and

Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific subsection of this chapter, any uncorrected issues of noncompliance outside of the Corrective Action Period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved before a request for any post award activity described in this subchapter will be completed.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless staff makes a recommendation that is clearly documented to the Board based on the need to fulfill the goals of the applicable multifamily program as expressed herein and other applicable Department rules, and the Board accepts the recommendation.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all provision of law and rule, including compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, completion of underwriting and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract or any other matters.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of

Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) the Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

(e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. Department staff may choose to issue an "Award Letter" in lieu of a Commitment in instances in which a Federal Commitment cannot be made until loan closing or until all financing is secured. An Award Letter is subject to all of the same terms and conditions as a Commitment except that it may not constitute a Federal Commitment. For HOME Direct Loans, an actual Federal Commitment may not occur in the HUD IDIS system until all financing is secured or loan closing, whichever comes first, at which time all terms and conditions will be included in the loan documents. The Award Letter shall list an expiration date no earlier than 30 days from the date issued by the Department unless signed and returned. To the extent the terms reflected in an Award Letter are amended, a new Award Letter would be issued by the Department.

§10.402.Housing Tax Credit and Tax Exempt Bond Developments.

(a) Commitment. For Competitive HTC Developments the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended without prior Board approval for good cause.

(b) Determination Notices. For Tax Exempt Bond Developments the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified

therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for under the Certificate of Reservation by which the Application was approved or if the financing or Development changes significantly as determined by the Department.

(c) The amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director. Increases to the tax credit amount are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) evidence of satisfaction of any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan (as further described in the Tax Exempt Bond Process Manual);

(B) certifications that the Development Owner or management company has attended Department-approved Fair Housing training, relating to leasing and management issues, for at least five (5) hours;

(C) certifications that the Development architect or engineer responsible for Fair Housing compliance for the Development has attended Department-approved Fair Housing training, relating to design issues, for at least five (5) hours;

(D) evidence that the financing has closed, such as an executed settlement statement; and

(E) if the Development has an existing LURA with the Department, a fully executed and recorded Agreement of Assignment and Assumption of LURA (aka “Agreement to Comply”).

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than two (2) years from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination staff is directed to award the credits to other qualified Applicants based on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control must be identical to the Development Site that was submitted at the time of Application submission as determined by the Department.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, the Development Owner must incur more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10 Percent Test Documentation Delivery Date as identified in §11.2 of this title. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (5) of this subsection, along with all information outlined in the Post Carryover Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (5) of this subsection as well as all other conditions placed upon the Application in the Commitment. Documentation to be submitted includes:

(1) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site;

(2) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties or other conditions on or affecting the Development that would materially and adversely impact the ability to acquire, develop and operate as set forth in the Application. Copies of such supporting documents will be provided upon request;

(4) certification confirming attendance of the Development Owner or management company at Department-approved Fair Housing training, relating to leasing and management issues, for at least five (5) hours and of the Development architect or engineer responsible for Fair Housing compliance at Department-approved Fair Housing training, relating to design issues, for at least five (5) hours on or before the time the 10 Percent Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10 Percent Test Documentation; and

(5) a Certification from the lender and syndicator identifying all Guarantors known at that time.

(h) Construction Status Report. Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection unless changes to the original submissions of paragraphs (1) and (2) of this subsection have occurred, in which case such amendments shall also be submitted with the subsequent report. Construction status reports shall be due by the tenth day of the month following each quarter end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete and all units are placed in service, evidenced by the Development Owner's request of a Final Construction Inspection or submission of the cost certification package. The construction status report submission consists of:

- (1) the executed partnership agreement with the investor (identifying all Guarantors) or other documents setting forth the legal structure and ownership;
- (2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;
- (3) the most recent AIA G702 and G703 certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and
- (4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Department will generate a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to, specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. The executed LURA and all exhibits will be sent to the Development Owner whereupon the Development Owner will then execute the LURA and have the fully-executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, in writing, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director.

(j) Cost Certification. The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and subchapter D of this Title relating to Underwriting and Loan Policy to make a final determination on the allocation of Housing Tax Credits. The

requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxii) of this subparagraph, and pursuant to the Post Carryover Activities Manual. If any item on this list is determined to be deficient or inconsistent with the cost certification review completed by the Department, a Request for Information ("RFI") will be sent to the Development Owner. Failure to respond to the requested information within a 30 day period, the cost certification review may result in the termination of the request for 8609s and require a new request to be submitted with a Cost Certification Extension Fee as described in subchapter G of this title.

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;

(ii) Development Owner's Statement of Certification;

(iii) Development Owner Summary;

(iv) Evidence of Nonprofit and CHDO Participation;

(v) Evidence of Historically Underutilized Business (HUB) Participation;

(vi) Development Summary with Architect Certification (including a list of unit and common amenities);

(vii) As-Built Survey;

(viii) Closing Statement;

(ix) Title Policy;

(x) Evidence of Placement in Service;

(xi) Independent Auditor's Reports;

(xii) Total Development Cost Schedule;

- (xiii) AIA Form G702 and G703, Application and Certificate for Payment;
- (xiv) Rent Schedule;
- (xv) Utility Allowance;
- (xvi) Annual Estimated Operating Expenses and 15-Year Pro forma;
- (xvii) Current Annual Operating Statement and Rent Roll;
- (xviii) Final Sources of Funds;
- (xix) Executed Limited Partnership Agreement;
- (xx) Permanent Loan Agreement(s) or Firm Commitment and lender's closing timeline;
- (xxi) Architect's Certification of Fair Housing Requirements; and
- (xxii) TDHCA Compliance Workshop Certificate.

(C) received written notice from the Department that all deficiencies noted during the final construction inspection have been resolved in accordance with Subchapter F of this chapter (relating to Compliance Monitoring);

(D) informed the Department of and received written approval for all amendments and ownership transfers relating to the Development in accordance with §10.405 of this chapter (relating to Amendments) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713 and §2306.6731(b)))

(E) submitted to the Department the recorded LURA in accordance with subsection (i) of this section;

(F) paid all applicable Department fees, including any past due fees; and

(G) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued Form 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee, or conditionally accepted by the Compliance Committee.

§10.403.Direct Loans.

(a) Loan Closing. The loan closing must occur no more than six (6) months from the date the Department's Governing Board approves the Direct Loan, which may be extended in accordance with the provisions in this subchapter. In preparation for closing any Direct Loan the Development Owner must submit the items described in paragraphs (1) - (10) of this subsection:

(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward

without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(3) Owner/General Contractor agreement and Owner/architect agreement;

(4) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(5) if layered with Competitive Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(6) a revised development cost schedule, sources and uses, operating proforma, planned cost categories for the use of Direct Loan funds, updated written financial commitments/term sheets and any additional budget schedules that have changed since the time of application. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of:

(A) environmental clearance;

(B) verification of HUD Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Act and any other relocation requirements that may apply; and

(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement, LURA, and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliate grants the Department any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the program's requirements. Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project

completion; termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1) - (9) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:

(1) except for disbursements for acquisition and closing or disbursement requests made for soft costs only, a down-date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion;

(2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) the Department may require that sufficient funds be held back from initial disbursement to allow for periodic disbursements as may be necessary to meet federal requirements. For HOME Direct Loans: The initial draw request for the development must be entered no later than ten business days prior to the one year anniversary of the commitment date (as defined in 24 CFR Part 92) or funds may be cancelled in HUD's IDIS system;

(4) if applicable, up to 90 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match in the form of a formal services contract or commitment clearly delineating the donated portion of the contract price, third party invoicing showing the forgiven amount, or other equally verifiable third party documentation prior to release of the final 10 percent of funds. If funds are requested on the day of closing, a formal executed services contract specifying the terms of the Match must be provided;

(5) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met,

developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement of developer fees if it is determined that the Development is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements. For HOME Direct Loans: Pre-award costs for predevelopment activities, as specified in the loan documents, are allowable only if they were incurred less than 24 months prior to the commitment date (as defined in 24 CFR Part 92) and were associated with the Application Round in which the project was awarded;

(7) table funding requests will not be considered unless:

(A) a Federal Commitment has been made, if applicable; and

(B) ten (10) days prior to anticipated closing, all table funding draw documentation has been completed and submitted to the Department.

(8) Each Development Owner must schedule a progress inspection with Department staff once the property passes 25% construction completion based on the AIA G702. Only up to 50% of the HOME award will be released prior to receipt of documentation that the progress inspection has occurred;

(9) include the withholding of 10 percent of the construction contract for retainage. Retainage will be held until at least thirty (30) calendar days after all of the items described in subparagraphs (A) - (D) of this paragraph are received:

(A) completion of construction;

(B) a final inspection, after which receipt, a clearance is issued by the Department;

(C) labor standards final wage compliance report;

(D) receipt of certificates of occupancy for New Construction or a certification of completion from the Development architect for Rehabilitation; and

(10) for final disbursement requests, the Development Owner must submit documentation required for Development completion reports which may include documentation of full compliance with the Uniform Relocation Act and any other applicable relocation requirements.

§10.404.Reserve Accounts

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing

and maintaining a reserve for replacement account for the Development in accordance with Texas Government Code, §2306.186. The reserve account must be established, in accordance with paragraphs b), c) and d) of this subsection, and maintained through annual deposit, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other workout request, and the Development does not have an existing replacement reserve account sufficient to meet future capital expenditure needs of the Development, the Development Owner will be required to establish and maintain a replacement reserve account regardless of the # of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section.

- (1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:
 - (A) date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied or
 - (B) the date when the permanent loan is executed and funded.
 - (2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:
 - (A) date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;
 - (B) date on which the Development is demolished;
 - (C) date on which the Development ceases to be used as a multifamily rental property; or
 - (D) end of the Affordability Period specified by the LURA or the end of the repayment period of the first lien loan.
- (b) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (a)(2) of this section.

- (1) For New Construction Developments, not less than \$250 per Unit; or
- (2) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(3) For all Developments, a Property Condition Assessment (“PCA”) will be conducted at appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA will be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department.

(c) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in subsection (b) of this chapter. In addition, the Department should be listed as a party to be notified in the event of any activity involving escrow agreements for the maintenance of reserve funds. The Development Owner shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a statement describing:

(1) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(2) compliance with the first lien lender requirements outlined in (1) of this subsection; and

(3) if the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements.

(d) Where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(e) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in Non-Compliance, may be taken when:

(1) a Reserve Account, as described in this section, has not been established for the Development;

(2) the Department is not a party to the escrow agreement for the Reserve Account, if required;

- (3) money in the Reserve Account:
 - (A) is used for expenses other than necessary repairs, including property taxes or insurance or
 - (B) falls below mandatory deposit levels;
 - (4) Development Owner fails to make a required deposit;
 - (5) Development Owner fails to contract for the Third-Party Property Condition Assessment as required under this section; or
 - (6) Development Owner fails to make necessary repairs in accordance with the third party property condition assessment or §10.616 of this chapter (relating to Property Condition Standards).
- (f) Department-Initiated Repairs. The Department or its agent may make repairs to the Development if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:
- (1) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer or
 - (2) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.
- (g) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.
- (h) Operating Reserve Account. The Department will consider a reasonable operating reserve account deposit in the analysis of total development cost or balance sheet. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it

is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender or syndicator if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees or other similar costs.

- (i) Special Reserve Account. If the funding program requires the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with the program's written agreement with the Development Owner.
 - a. The Special Reserve Account is generally funded annually through an agreed upon percentage of net cash flow generated by the Development or as otherwise set forth in the written agreement. All disbursements from the account must be approved by the Department. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made for related party loans. For those financial institutions that are unable to set up the account with Department approval authority for disbursements, a Special Reserve Account Agreement will be drafted and executed by the Department, Development Owner and financial institution representative.
 - b. Use of the funds in the Special Reserve Account is determined by a plan that is preapproved by the Department. The owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.
- (j) Other Reserve Accounts: Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender or syndicator.

§10.405.Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) Recording or amendments that do not result in a change to the LURA. (§2306.6712) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development and for Competitive HTC Applications, and reallocates the credits to other Applicants on the waiting list.

(1) If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.

(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(5) of this chapter (relating to Required Documentation for Application Submission). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of 3 percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least 5 percent;

(G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;

(H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score

and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued feasibility of the Development; and

(B) if it is determined by the Department that an allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee or conditionally accepted by the Compliance Committee. LURAs will not be amended if the Development Owner owes fees to the Department. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11

of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement or loan modification or other condition recommended by the Department's Asset Review Committee. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:

(1) the Development Owner must submit a written request accompanied by an amendment fee as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;

(2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;

(3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;

(4) at least seven (7) business days before the Board meeting when the Development Owner would like the Board to consider their request, the Development Owner must hold a public hearing. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and

(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(c) Amendments to Direct Loan Terms. An Applicant may request a change to the terms of a loan Requests for changes to the loan post closing will be processed as a loan modification and may require additional approval by the Department's Asset Review Committee pursuant to 10 TAC, §1.20. The Executive Director or authorized designee may approve amendments to loan terms as described in paragraphs (1) - (5) of this subsection prior to closing. Board approval is necessary for any other changes prior to closing. A post closing loan modification that is the result of a Department work out arrangement or other condition recommended by the Department's Asset Review Committee will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff.

(1) extensions of up to twelve (12) months to the loan closing date specified in §10.403(a) of this chapter. An Applicant must document good cause, which may include constraints in arranging a multiple-source closing.

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term.

(3) extensions of up to six (6) months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing.

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;

(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and

(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2) and 10 TAC, §11.9(f). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of the Development. Transfers that are the result of an

involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. 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, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to §60.309 of this title (relating to Debarment). 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 §1.5 of this title, prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development, except for changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer, except where the transfer is an Affiliate of the Development Owner, if such entity contains no new members, or a non-Controlling Related Party for estate planning purposes. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than to an Affiliate or non-Controlling Related Party for estate planning purposes included in the ownership structure) will not be approved 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) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a qualified non-profit organization within the ownership entity, the replacement non-profit entity must adhere to the requirements in paragraphs (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, pursuant to §42(h)(5) of the Code, the Owner must comply with Code requirements and affirmatively document that the allocation would have been made to the

Development Owner regardless of the set-aside election or, the Owner will be required to meet the additional requirements for application in the non-profit set-aside outlined in 2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, pursuant to §42(h)(5) of the Code and §2306.6706 of the Texas Government Code, the Owner must comply with both regulatory requirements.

(e) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

- (1) a written explanation outlining the reason for the request;
- (2) a list of the names of transferees and Related Parties;
- (3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10% or greater;
- (4) evidence and certification that the tenants in the Development have been notified in writing of the transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department.

(f) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(g) 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 (5) years prior to the transfer request date.

(h) Penalties. 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 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.

(i) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407.Right of First Refusal.

(a) General. This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal to a Qualified ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c) or tenant organizations. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization without going through the ROFR process outlined in this subsection. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for Right of First Refusal (ROFR) submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract until the requirements outlined in this section have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, ownership transfers to a non-profit organization during the ROFR period are subject to 10 TAC, Chapter 1, Subchapter A, Rule §1.5 Previous Participation Reviews. Properties that have been determined by staff to have a pattern of non-compliance that wish to pursue the acquisition of a Department-administered Property may appeal to the Board regarding the denial of such transfer by the Executive Director. Satisfying the ROFR requirement does not terminate the LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request) of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement;

(2) the Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to a for-profit entity, the Development Owner shall provide a notice of intent to the Department and to such other parties as the Department may direct at that time.

(A) If the LURA identifies a Qualified Nonprofit Organization or tenant organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property. The Department will determine from this documentation whether the ROFR requirement has been met. In the event that this organization is not operating or in existence when the ROFR is to be made, the ROFR must be provided to another Qualified Nonprofit Organization. Upon review and approval of the notice of intent and denial of offer letter, the Department may notify the Development Owner in writing that the ROFR requirement has been satisfied. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) documentation verifying the ROFR offer price of the property;

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (regarding Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) the most recent Physical Needs Assessment, pursuant to Texas Government Code, §2306.186(e), conducted by a Third-Party and in the Development Owner's possession;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within five (5) business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property for the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ROFR Organization, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ROFR Organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) and (2) of this subsection:

(1) if the LURA requires a ninety (90) day ROFR posting period, within ninety (90) days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if an bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if an bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met;

(C) if an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ninety (90) day period;

(D) if no bona fide offers are received during the ninety (90) day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted within two (2) years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a tenant organization approved by the Department; and

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department;

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ROFR Organization or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.

(e) Closing the Transaction. The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Carryover Activities Manual, the final settlement statement and final sales contract with all amendments. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved. (2) If the closing price is materially less than the amount identified in the sales contract or appraisal that submitted in accordance with subsection (c)(2)(A) - (E) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this 24 month period.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

- (1) the best interests of the residents of the Development;
- (2) the impact the decision would have on other Developments in the Department's portfolio;
- (3) the source of the data used as the basis for the Development Owner's appeal;
- (4) the rights of nonprofits under the ROFR;

- (5) any offers from an eligible nonprofit to purchase the Development; and
- (6) other factors as deemed relevant by the Executive Director.

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. Development Owners who received an allocation of credits on or after January 1, 2002 are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service. (§2306.185) Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Property does not have any uncorrected issues of noncompliance outside the Corrective Action Period;

(B) there is a Right of First Refusal (ROFR) connected to the Property that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(D) the Development Owner has all of the necessary documentation to submit a Request.

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the property (non-TDHCA); and

(D) local code compliance report, TDHCA UPCS Inspection Report, or HUD-certified REAC or UPCS inspection within the last twelve (12) months..

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within three months prior to the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent property condition assessment of the property consistent with Subchapter D of this chapter and in accordance with the requirement described in 2306.186(e) of the Texas Government Code;

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month;

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price; and

(4) the QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with 10 TAC, Chapter 10, Subchapter G, §10.902.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. The Department will assess if the prospective purchaser is a Qualified Purchaser during the Ownership Transfer review process. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

- (1) allow access to the Property and tenant files;
- (2) keep the Department informed of potential purchasers; and
- (3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter to be created by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Property.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will implement modified compliance monitoring policies and procedures. Refer to the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to Compliance Monitoring) for more information.

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BOARD ACTION REQUEST
COMPLIANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on proposed amendment to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §10.1003, and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, §§ 10.1004 - 10.1005, concerning Income and Rent Limits, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Department makes available income and rent limits for multifamily rental programs administered by the Department;

WHEREAS, the procedures for calculating these limits are predominately federally mandated; however, some of the process has been developed by staff;

WHEREAS, the US Department of Housing and Urban Development (“HUD”) does not publish all of the income limits used by Department funded developments (for example, HUD does not publish at 40% income limit);

WHEREAS, HUD does not publish rent limits for all of the rental programs administered by the Department; and

WHEREAS, it is appropriate for the Department to adopt a rule outlining the procedures for calculating income and rent limits.

NOW, therefore, it is hereby

RESOLVED that the Executive 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 publication of the proposed amendment to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §10.1003, and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, §§ 10.1004 - 10.1005, concerning Income and Rent Limits, for public comment in the *Texas Register*, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The Compliance Division makes available income and rent limits for the multifamily rental programs administered by the Department. The source of the limits is HUD. However, the limits

published by HUD do not include all of the income limits used by Department assisted developments. In addition, rent limits are not published by HUD (other than the High and Low HOME rent limits). This rule codifies that process the Department has consistently utilized in calculating such restrictions.

Although there are no changes proposed to §10.1001 or §10.1002, they are shown below for reader ease.

Attachment 1. Preamble, amendment of 10 TAC Chapter 10, Subchapter H, §10.1003

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits §10.1003, concerning Tax Exempt Bond Developments. The proposed amendments detail the calculation used for determining the income limits for the Tax Exempt Bond program based on the data released by HUD.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated, as a result of the amendments, will be improved compliance and clarity regarding requirements. There will not be any additional economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013 through November 4, 2013 to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.**

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

Attachment 2. Preamble, proposed new 10 TAC Chapter 10, Subchapter H, §§ 10.1004 - 10.1005

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits §§ 10.1004 - 10.1005, concerning the Housing Tax Credit, TCAP, Exchange, HTF, HOME and NSP programs. The proposed new sections codify which properties can use the rural income limits and details the calculation used for determining the income and rent limits for the Housing Tax Credit, Exchange, HTF, TCAP, HOME and NSP Developments administered by the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections in effect, the public benefit anticipated, as a result of the new sections, will be improved compliance and clarity regarding requirements. There will not be any additional economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013 through November 4, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affects no other code, article, or statute.

§10.1001. Purpose.

The purpose of this subchapter is to codify the income and rent limits applicable to the multifamily programs administered by the Texas Department of Housing and Community Affairs (the "Department"). The Department may, but is not required to, calculate and provide income and rent limits for programs administered by the Department. Income and rent limits will be derived from data released by Federal agencies including the U.S. Department of Housing and Urban Development (HUD).

§10.1002. Definitions.

(a) Unless otherwise defined here terms have the meaning in §10.3 of this chapter (relating to Definitions), or federal or state law.

(b) Multifamily Tax Subsidy Program Imputed Income Limit--Using the income limits provided by HUD pursuant to §142(d), the imputed income limit is the income limitation which would apply to individuals occupying the unit if the number of individuals occupying the unit were as described in paragraphs (1) and (2) of this subsection:

(1) In the case of a unit which does not have a separate bedroom, 1 individual; or

(2) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

§10.1003. Tax Exempt Bond Developments Properties.

(a) Tax Exempt Bond Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50% and 60% Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50% and HERA Special 60% income limit by household size. These higher limits can only be used if at least one building in the Project was placed in service on or before December 31, 2008.

(b) If HUD releases a 30%, 40%, 60% or 80% income limit in the MTSP charts the Department will make that data available without any calculations. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

(1) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(2) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(3) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(4) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(c) ~~(a)~~ The Land Use Restriction Agreement (LURA) for some, but not all, Tax Exempt Bond properties restricts the amount of rent the Development Owner is permitted to charge. If the LURA restricts ~~rents rent limits~~, rent limits will be calculated in accordance with subsection §1004(e) of this subchapter. ~~rents will be calculated as 30 percent of the applicable Multifamily Tax Subsidy Program Imputed Income Limit, but never less than the limit taking into consideration the gross rent floor provided in accordance with Revenue Procedure 94-57.~~

(d) ~~(b)~~ Tax Exempt Bond LURAs are hereby amended to be consistent with this section.

(e) ~~(c)~~ The Department will make available a memorandum in a recordable form reflecting the applicable rent limits in accordance with this section and the legal description of the affected property. The owner of the property will bear any costs associated with recording such memorandum in the real property records for the county in which the property is located.

(f) ~~(d)~~ Nothing in this section prevents a Development Owner from pursuing a Material Amendment to their LURA in accordance with the procedures found in §10.405 of this chapter (relating to Amendments and Extensions).

§10.1004. Housing Tax Credit Properties, TCAP, Exchange and HTF.

(a) Except for certain rural properties, Housing Tax Credit, TCAP, Exchange, and HTF Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50% and 60% Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50% and HERA Special 60% income limit by household size. These higher limits can only be used if at least one building in the Project (as defined on line 8b on Form 8609) was placed in service on or before December 31, 2008.

(b) If HUD releases a 30%, 40%, 60% or 80% income limit in the MTSP charts the Department will use that data. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

(1) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(2) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(3) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(4) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(c) Treatment of Rural Properties: §42(i)(8) of the Code permits certain Housing Tax Credit, Exchange and Tax Credit Assistance properties to use the national non-metropolitan median income limit when the area median gross income limit for a place is less than the national non-metropolitan median income. The Department will make the determination if a place qualifies as rural using the following process:

(1) When HUD releases MTSP income limits, the Compliance Division will review the most current listing of places on the Housing Tax Credit Site Demographic Characteristics Report found on the Department's website, which classifies each place as Rural or Urban. This determination is made in accordance with §10.3(a)(116) of this Chapter relating to Definitions. For the purposes of determining places that are eligible to use the rural income and rent limits, the following places will be removed from the list:

(A) Urban places.

(B) Places with a population in excess of 20,000 as of the 2010 census.

(C) Places with a population between 10,000 and 20,000 as of the 2010 census that are in a Metropolitan Statistical Area.

(D) Places that have an income limit greater than the national non-metropolitan income limit.

(2) All remaining places will be eligible to use the national non-metropolitan median income.

(3) Generally, HUD only releases the national non-metropolitan median income by household size for the 50% AMGI. The Department will calculate the additional income limits in accordance with subsection (b) of this section.

(4) The Department allows the use of rural income limits for HTF multifamily rental Developments that are considered rural using the process described in subparagraphs (A) through (D) of paragraph (1) of this section.

(e) Rent limits are a calculation of income limits and cannot exceed 30% of the applicable Imputed Income Limit. Rent limits are published by bedroom size and will be rounded down to the nearest dollar.

Example 1004(1): To calculate the 30% 1 bedroom rent limit:

(1) Determine the imputed income limited by multiplying the bedroom size by 1.5: 1 bedroom x 1.5 persons = 1.5.

(2) To calculate the 1.5 person income limit, average the 1 person and 2 person income limits: If the 1 person 30% income limit is \$12,000 and the 2 person 30% income limit is \$19,000, the imputed income limit would be \$15,500 ($\$12,000 + \$19,000 = \$31,000 / 2 = \$15,500$).

(3) To calculate the 30% 1 bedroom rent limit, multiply the imputed income limit of \$15,500 by 30%, then divide by 12 months and round down. In this example, the 30% 1 bedroom limit is \$387. (\$15,500 times 30 percent divided by 12 = \$387.50 per month. Rounded down the limit is \$387).

Example 1004 (2): to calculate the 50% 2 bedroom rent limit:

(1) Determine the imputed income limited to be calculated by multiplying the bedroom size by 1.5: 2 bedrooms x 1.5 persons = 3.

(2) The 3 person income limit is already published; for this example the applicable 3 person 50% income limit is \$27,000.

(3) To calculate the 50% 2 bedroom rent limit, multiply the \$27,000 by 30%, then divide by 12. In this example, the 50% 2 bedroom limit is \$675. (\$27,000 times 30 percent divided by 12 = \$675. No rounding is needed since the calculation yields a whole number.

(f) The Department releases rent limits assuming that the gross rent floor is set by the date the Housing Tax Credits were allocated.

(1) For a 9% Housing Tax Credit, the allocation date is the date the Carryover Agreement is signed by the Department.

(2) For a 4% Housing Tax Credit, the allocation date is the date of the Determination Notice.

(3) For TCAP, the allocation date is the date the accompanied credit was allocated

(4) For Exchange, the allocation date is the effective date of the Subaward agreement

(g) Revenue Procedure 94-57 permits, but does not require, owners to set the gross rent floor to the limits that are in effect at the time the Project (as defined on line 8b on Form 8609) places in service. However this election must be made prior to the Placed in Service Date. A Gross Rent Floor Election form is available on the Department's website. Unless otherwise elected, the initial date of allocation described in subsection (f) of this section will be used.

(h) For the HTF program, the date the LURA is executed is the date that sets the gross rent floor.

(i) Held Harmless Policy. In accordance with Section 3009 of the Housing and Economic Recovery Act of 2008, once a Project (as defined on line 8b on Form 8609) places in service, the income limits shall not be less than those in effect in the preceding year.

(1) Unless other guidance is received from the U.S. Treasury Department, in the event that a place no longer qualifies as rural, a Project that was placed in service prior to loss of rural designation can continue to use the rural income limits that were in effect before the place lost

such designation. However, if in any subsequent year the rural income limits increase, the existing project cannot use the increased rural limits. [Example 1004(3): Project A was placed in service in 2010. At that time, the place was classified as Rural. In 2012 that place lost its rural designation. The rural income limits increased in 2013. Project A can continue to use the rural income limits in effect in 2012 but cannot use the higher 2013 rural income limits. Any Project that places in service in this place after the loss of the rural designation must use the applicable MTSP limits published by HUD.]

§10.1005. HOME and NSP.

(a) HOME Developments must use the HOME Program Income and Rent Limits that are calculated annually by HUD's Office of Policy Development and Research (PDR). The limits are made available for each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas (PMSA) and Area, District or County by State.

(1) Upon publication, the Department will determine which counties are in each MSA, PMSA, Area or District.

(2) Generally, PDR publishes income limits in tables identifying the following Area Median Gross Income (AMGI) by household size:

(A) 30% Limits;

(B) Very Low-Income Limits which are generally 50% of median income, but not less than the State non-metropolitan median which will be shown as the 50% limit in the Department's income limits;

(C) 60% Limits;

(D) Low-Income Limits which are generally 80% of the median income, but capped at the national median income with some exceptions which will be shown as the 80% limits in the Department's income limits.

(3) If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by PDR:

(A) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(B) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(C) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(b) PDR publishes High and Low HOME rent limits by bedroom size.

(c) PDR does not publish a 30% or 40% rent limits that certain HOME Developments are required to use. These limits will be calculated using the same formulas described in subsection §1004 of this subchapter.

(d) In the event that PDR publishes rent limits after the HOME program income limits, the Department permits HOME Developments to delay the implementation of the 30% and 40% rent limits until the High and Low HOME rent limits must be used.

(e) NSP income limits are published annually by HUD for each county with tables identifying the 50% AMGI and 120% AMGI for household size.

(1) If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by HUD:

(A) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(B) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(C) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(D) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(f) If the LURA for an NSP Development restricts rents, the amount of rent the Development Owner is permitted to charge will be the High or Low HOME rent published by PDR or calculated in the same manner described in §1004 of this section using the HOME income limits.

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BOARD ACTION REQUEST
COMPLIANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on proposed new 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, concerning Community Affairs Compliance Monitoring Rules, and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the responsibility to monitor for compliance with Community Affairs programs has been transferred from the program area to the Compliance Division; and

WHEREAS, the sections of the Community Affairs rules that addressed compliance monitoring procedures have been repealed and it is appropriate for the Department to set forth monitoring procedures.

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered and directed, for and on behalf of the Department, to approve the proposed new 10 TAC Chapter 5, Subchapter L §5.2101 concerning Compliance Monitoring for public comment and publication in the *Texas Register* for review and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

A staff draft of these rules was made available on the Department's website on August 15, 2013. Staff attended the Texas Association of Community Action Agencies Board meeting on August 15, 2013, to discuss the proposed rules and an online discussion forum was available from August 20 to September 2, 2013.

The majority of the feedback has been incorporated into the rule presented to the Board. However, this suggestion: "*The Subrecipient will be given an opportunity to discuss and resolve a new finding(s) and/or observation(s) before the final monitoring report is released.*" has not been included. As noted in the Internal Audit review of the Compliance Division, timeliness of monitoring reports is an issue. Therefore, staff cannot commit to review documentation and/or explanations before the release of a report. However, the Subrecipient has the opportunity to clarify issues during the corrective action period and as noted in §5.2101(h). If the Subrecipient supplies evidence establishing continual compliance the issue of noncompliance will be rescinded.

Staff recommends approval of this rule for publication in the *Texas Register* for public comment.

Attachment 1. Preamble and proposed new 10 TAC Chapter 5, Subchapter L §5.2101 concerning Compliance Monitoring.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 5, Subchapter L, §5.2101 concerning Compliance Monitoring. The purpose of this proposed new Subchapter is to set forth a procedure for monitoring the Department’s Community Affairs programs. This rule establishes the scope and nature of monitoring the Compliance Division will conduct for Subrecipients of community affairs programs.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated, as a result of the new section, will be improved compliance with Department programs. There will not be any increased economic cost to any individuals required to comply with the new section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will not be an economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 4, 2013 to November 4, 2013, to receive input on the proposed new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3140. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 4, 2013.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

§5.2101 Purpose and Overview

(a) This subchapter provides the procedures that will be followed for monitoring for compliance with the community affairs programs administered by the Texas Department of Housing and Community Affairs (the “Department”). As of the date of the adoption of these rules, those programs include the Community Services Block Grant program (CSBG), the Low Income Home Energy Assistance Program

(LIHEAP) (including the two (2) programs utilizing this funding source: the LIHEAP Weatherization Assistance Program (LIHEAP WAP) and the Comprehensive Energy Assistance Program (CEAP)), the Department of Energy Weatherization Assistance Program (DOE WAP), the Emergency Solutions Grant (ESG), and the Homeless Housing and Services Program (HHSP).

(b) Any entity administering any or all of the programs enumerated in subsection a, of this section is a "Subrecipient." A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of community affairs programs under these rules.

(c) Frequency of reviews, information collection. In general, Subrecipients will be scheduled for monitoring based on federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of contracts administered by the Subrecipient, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients will have an onsite review and which may have a desk review.

(d) The Department will provide a Subrecipient with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient by email to the Subrecipient's chief executive officer at the email address most recently provided to the Department by the Subrecipient. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §5.21 of this chapter, regarding Subrecipient Contact Information, and Title 10, Part 1, Chapter 1, §1.22, regarding Providing Contact Information to the Department.

(e) Upon request, Subrecipients must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include:

- (1) Minutes of the governing board and any committees thereof, together with all supporting materials;
- (2) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;
- (3) Procurement documentation;

- (4) The Subrecipient's Board approved operating budget;
- (5) The Subrecipient's strategic plan or comparable document if applicable;
- (6) Correspondence to or from any independent auditor;
- (7) Contracts with any third party Subrecipients of goods or services and files documenting compliance with any applicable procurement and property disposition requirements;
- (8) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);
- (9) Applicable client files with all required documentation;
- (10) Applicable human resources records;
- (11) Monitoring reports from other funding entities;
- (12) Client files regarding complaints, appeals and termination of services; and
- (13) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, United States Department of Housing and Urban Development ("HUD") requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD limited English proficiency requirements, requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(f) Post Monitoring Procedures. After the monitoring review is completed, the Subrecipient will be briefed on the initial findings and/or observations through an exit briefing, which may be in person or through a conference call. The Subrecipient will be notified via conference call or email of any finding(s) and/or observation(s) not discussed during the exit briefing. In general, within 30 days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed and sent through the U.S. Postal Service to the Board Chair and the Subrecipient's Executive Director. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Subrecipient response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 days, from the date of the email, to respond which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that the Subrecipient believes justifies the extension. The Department will approve or deny the extension request within 3 business days.

(h) Monitoring close out. Within 45 days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Subrecipient may be unable to secure documentation to resolve a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not resolved but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient in noncompliance, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a program requirement or prohibition Subrecipients may contact the applicable federal program officer for guidance or request that TDHCA contact applicable federal program officer for guidance without identifying the Subrecipient.

(2) If the issue is related to application of a provision of the contract or a requirement of the Texas Administrative Code, or the application of a provision of an OMB Circular, the Subrecipient may request review by the Department's Compliance Committee, as set out in subsection (j) of this section.

(3) Subrecipients may request Alternative Dispute Resolution (ADR). A Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to 10 TAC §1.17.

(j) Compliance Committee.

(1) The Compliance Committee is a committee of three to five persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Division will not be appointed to the committee but will be available to provide guidance to Department staff.

(2) Informal discussion with Compliance Monitoring staff. If the Subrecipient has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance Monitoring staff, including, as needed, the Chief of Compliance.

(3) Informal discussion with the Compliance Committee. A Subrecipient may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance Monitoring staff did not resolve the issue.

(4) Compliance Committee Process and Timeline:

(A) At any time, the Subrecipient may call or request an informal conference with the Compliance Monitoring staff and/or the Chief of Compliance.

(B) If a call or an informal conference with the Compliance Monitoring staff does not result in a resolution of the issue, the Subrecipient may, within thirty (30) days of the call or informal conference with Compliance Monitoring staff, request a meeting with the Compliance Committee.

(C) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the Subrecipient. A Subrecipient should not offer evidence, documentation, or information to the Committee that was not presented to Compliance Monitoring staff during the informal staff conference. If additional information is offered, the Committee may disallow the information or refer the matter back to Compliance Monitoring staff to allow review of the additional information prior to any consideration by the Committee.

(D) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed directly to the Board.

(k) If Subrecipients do not respond to a monitoring letter or fail to provide acceptable evidence of compliance within 6 months of notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, review for a third party review, full or partial cost reimbursement, or contract suspension.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 12, §§12.1, 12.4 – 12.6, 12.10, concerning the Multifamily Housing Revenue Bond Rules and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) is authorized to issue multifamily housing revenue bonds for the State of Texas, and;

WHEREAS, the Department has developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to an issuance of bonds, therefore;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments to 10 TAC Chapter 12, regarding the Multifamily Housing Revenue Bond Rules together with the preamble presented to this meeting, are approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed draft Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached behind this Board Action Request is the amended 2014 Multifamily Housing Revenue Bond Rules (the “Bond Rules”) which reflect staff’s recommendations for the Board’s consideration. The proposed amendments make the Bond Rules consistent with the proposed changes to the 2014 Uniform Multifamily Rules and the Qualified Allocation Plan (QAP), as applicable. Moreover, the Bond Rules clarify that any requests for waivers or pre-clearance must be requested at the time of pre-application but otherwise the general waiver/pre-clearance process pursuant to §10.207 must be followed. To the extent that there are changes made by the Board to these aforementioned rules that would coincide with the Bond program, the Uniform Multifamily Rules and QAP would take precedence over the 2014 Bond Rules as applicable.

Rule-Making Timeline: Upon Board approval, the draft Bond Rules will be posted to the Department’s website and published in the *Texas Register*. Public comment will be accepted between September 27th

and October 21st and there will be a consolidated public hearing during this time to receive public comment. The Bond Rules will be brought before the Board in November for final approval and will subsequently be published in the *Texas Register*.

Attachment 1: Proposed Amendments to Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments 10 TAC Chapter 12, §§12.1, 12.4, 12.5, 12.6 and 12.10, concerning the Multifamily Housing Revenue Bond Rules. The purpose of the proposed amended sections is to implement changes that will improve the 2014 Private Activity Bond Program.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended sections will be in effect, enforcing or administering the amended sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the amended sections will be the adoption of amended rules for multifamily housing revenue bonds; thereby enhancing the state's ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the amended sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the amended sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 21, 2013.**

STATUTORY AUTHORITY. The amended sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amended section(s) affects no other code, article, or statute.

§12.1.General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (the "Department"). The Department is authorized to issue such Bonds pursuant to Texas Government Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Texas Government Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (the "Code"), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicant's seeking a Housing Tax Credit Allocation should consult the Department's Qualified Allocation Plan (QAP) and the Uniform

Multifamily Rules for the current program year. In general, the Applicant will be required to satisfy the requirements of the QAP in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs associated with the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis.

(e) Waivers. Requests for waivers of program rules or pre-clearance relating to Undesirable Area Features pursuant to §10.101(a)(4) of this title must be made in accordance with §10.207 of this title (relating to Waiver of Rules or Pre-clearance for Applications [~~Waiver of Rules for Applications~~]) with the exception of the deadline for submission. Any requests for waivers or pre-clearance [~~and~~] must be requested at the time the pre-application is submitted.

§12.4.Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can get a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call. Prior to the submission of a pre-application, it is important that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department for any formal action regarding an inducement resolution.

(b) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as prescribed by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department. Department review at of the pre-application is limited and not all issues of eligibility and documentation submission requirements pursuant to Chapter 10 of this title (relating to Uniform

Multifamily Rules) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(c) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Texas Government Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Texas Government Code, §2306.359. In the event two or more pre-applications receive the same score, the Department will use the following tie breaker factors in the order they are presented to determine which pre-application will receive preference in consideration of an inducement resolution.

(1) Applications that meet any of the criteria under §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria).

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. The linear measurement will be performed from closest boundary to closest boundary.

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application and proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Because each Development is unique, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is presented to the Board.

§12.5.Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (10) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §10.204(10)[§10.204(9)] of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(10)[§10.204(9)] of this title at the time of Application;

(4) Zoning evidenced by the documentation required under §10.204(11)[§10.204(10)] of this title;

(5) Boundary Survey or Plat clearly identifying the location and boundaries of the subject Property;

(6) Current market information (must support affordable rents);

(7) Local area map that shows the location of the Development Site and the location of at least six (6) community assets [services] within a one mile radius (two miles if in a Rural Area). Only one community asset of each type will count towards the number of assets required. The mandatory

community assets [~~site characteristics~~] are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);

(8) Organization Chart showing the structure of the Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable;

(9) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(10) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.5705(9))). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit change [~~increase~~] of greater than 10 percent.

§12.6.Pre-Application Scoring Criteria.

The section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Texas Government Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Submission Procedures Manual. Applicant's proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of units rents capped at 60 percent AMGI; or

(ii) Set aside 15 percent of units rent capped at 30 percent AMGI and the remaining 85percent of units rent capped at 60 percent AMGI; or

(iii) Set aside 100 percent of units rent capped at 60 percent AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80 percent of the Units capped at 60 percent AMGI. (7 points)

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate units can be included under this priority. (5 points)

(2) Cost of the Development by Square Foot. (1 point) For this item, costs shall be defined as Hard Costs [~~construction costs, including Site Work, direct hard costs, contingency, contractor profit, overhead and general requirements,~~] as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. Pre-applications that do not exceed \$95 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation will automatically receive.

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) five-hundred-fifty (550) square feet for an Efficiency Unit;

(B) six-hundred-fifty (650) square feet for a one Bedroom Unit;

- (C) eight-hundred-fifty (850) square feet for a two Bedroom Unit;
- (D) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
- (E) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the Affordability Period for a Development to a total of thirty-five (35) years.

(5) Unit and Development Features [Amenities]. A minimum of (7 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The amenities selected at pre-application may change at Application so long as the overall point structure remains the same. The points selected at pre-application and/or Application and corresponding list of amenities will be required to be identified in the LURA and the points selected must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to receive points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide [Pre-applications must select] at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F[G]) of this paragraph. The common amenities include those listed in §10.101(b)(5) of this title. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from the Green Building Features as identified in §10.101(b)(5)(C)(xxxi) of this title. The amenities must be for the benefit of all tenants and made available throughout normal business hours. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the threshold requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Some amenities may be restricted to a specific Target Population. An amenity can only receive points once; therefore combined functions (a library which is part of a community room) only receive points under one category. ~~[The common amenities include those listed in §10.101(b)(5) of this title.]~~ Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and will have to identify in the LURA which amenities are at each individual site.

~~[(A) total Units equal 16 shall have (1 point);]~~

~~(A[B]) Developments with [total Units are 17] 16 to 40 Units must qualify for [shall have] (4 points);~~

~~(B[C]) Developments with [total Units are] 41 to 76 Units [shall have] must qualify for (7 points);~~

~~(C[D]) Developments with [total Units are] 77 to 99 Units must qualify for [shall have] (10 points);~~

~~(D[E]) Developments with [total Units are] 100 to 149 Units [shall have] must qualify for (14 points);~~

~~(E[F]) Developments with [total Units are] 150 to 199 Units must qualify for [shall have] (18 points); or~~

~~(F[G]) Developments with [total Units are] 200 or more Units must qualify for [shall have] (22 points).~~

(7) Tenant Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(8) Underserved Area. An Application may qualify to receive up to (2 points) for general population Developments located in a colonia, economically distressed area, or municipality, or if outside of the boundaries of any municipality, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation.

~~[(A) General Developments (2 points); or]~~

~~[(B) Qualified Elderly Developments (1 point).]~~

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 and must be received ten (10) business days prior to the date of the Board meeting at which the pre-application will be considered. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, letters that do not specifically refer to the Development or do not explicitly state support will receive (zero (0) points). A letter that does not directly express support but expresses it indirectly by inference (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) All elected members of the Governing Body of the county in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two (2) years or for which there has been a rent restriction requirement in the past ten (10) years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) If at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster under Texas Government Code, §418.014. This includes federal, state, and Governor declared disaster areas.

§12.10.Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,500 (payable to Bracewell & Giuliani, the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (BRB) pursuant to Texas Government Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees to the BRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications the

application fee shall be \$10,000 or \$30/unit, whichever is greater). Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as part of a portfolio such application fees may be reduced on a case by case basis at the discretion of the Executive Director.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds is equal to 50 basis points (0.005) of the issued principal amount of the Bonds. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds and a Bond compliance fee equal to \$25/unit (such compliance fee shall be applied to the third year following closing).

(d) Application and Issuance Fees for Refunding Applications. For refunding Applications the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for Refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the Refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) Administration Fee. The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount on its date of calculation and is paid as long as the Bonds are outstanding.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to \$25/Unit.

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**BOARD ACTION REQUEST
REAL ESTATE ANALYSIS
SEPTEMBER 12, 2013**

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter D and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter D, concerning Underwriting and Loan Policy, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs;

WHEREAS, staff proposes clarifications and changes to the existing rules to better serve the underwriting of applications submitted under various Department programs;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10, Subchapter D, concerning 2013 Underwriting and Loan Policies and a proposed new 10 TAC Chapter 10, Subchapter D, concerning 2014 Underwriting and Loan Policies for public comment and publication in the *Texas Register* is hereby ordered and is approved, together with the preambles presented to this meeting, for publishing in the *Texas Register* for public comment;

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the draft 10 TAC Chapter 10, Subchapter D, Underwriting and Loan Policies, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The draft new rules presented herein include changes resulting from both public and staff input. Six specific changes are summarized below. Other changes that are minor or clarifying in nature are not discussed herein but are included in the rule.

§10.302 Underwriting Rules and Guidelines

§10.302(e)(5) sets a minimum 5% Contingency to be used by the Underwriter in cases where the Applicant's budgeted Contingency is less than 5%. REA considers anything less than 5% to be inadequate given that REA's underwriting occurs very early in the development process (typically before construction plan drawings have been started).

(5) Contingency. All contingencies identified in the Applicant's project cost schedule including any soft cost contingency will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent limit, as applicable, but in no instance less than 5%.

§10.302(e)(9) puts forth a maximum amount of allowable reserves used by the Underwriter for analysis. Reserves required by lenders and syndicators vary widely depending on many factors relating to the characteristics of the development, sponsor's financial wherewithal and loan program policies and guidelines. Many times the required reserve amounts are comparatively excessive and increase the credit award. Nothing in the rule prevents a lender or syndicator from requiring the reserves. This change only limits the amount of reserves used for tax credit sizing purposes.

(9) Reserves. The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing assumptions acceptable to the Underwriter. In no instance will total reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions).

§10.305. Environmental Site Assessment Rules and Guidelines

§10.305(b)(8) adds a requirement that the ESA include identification and assessment of any potentially hazardous explosive activities on the site or in the general area of the site.

(8) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations.

§10.307. Direct Loan Requirements

§10.307(A)(1) HOME Match requirements moved to subchapter C.

§10.307(A)(2) adds a requirement that the loan amortization and term be no longer than six (6) months of the shortest amortization and term of any senior debt. This addition creates parity of terms with third-party lenders preventing repayment structures that could negatively impact the Department's ability to collect on debt.

(2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than

thirty (30) years and no greater than forty (40) years and both must be within six (6) months of the shortest amortization and term of any senior debt;

§10.307(B)(1)-(4) accommodates occupancy requirements and new repayment guidelines as published in the revised HOME Final Rule in 24 CFR 92. All four items reiterate the new HOME provisions for construction completion, occupancy, and repayment that appear in the revised HOME Final Rule with the singular change that the Texas Register Rule will require the Owner to repay owed funds to the Department directly, which will deposit the funds into the Department's HOME Investment Trust Fund account as required by the Final Rule in §92.503(b)

(B) HOME Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with 24 CFR 92 and as included in the HOME Direct Loan documents:

- (1) construction must be completed within eighteen (18) months of the actual date of loan closing, at which point the permanent loan period will begin. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of Federal Commitment;
- (2) initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;
- (3) repayment will be required on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; and
- (4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

Attachment A: Preamble and Proposed repeal of 10 TAC Chapter 10, Subchapter D, concerning 2013 Underwriting and Loan Policies and a proposed new 10 TAC Chapter 10, Subchapter D, concerning 2014 Underwriting and Loan Policies for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes repeal of 10 TAC Chapter 10, Subchapter D, concerning 2013 Underwriting and Loan Policies.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section(s) are in effect, enforcing or administering the repealed section(s) does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal sections are in effect, the public benefit anticipated as a result of the repealed sections will be the adoption of new rules to enhance the State’s ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuation required to comply with the repealed sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 28, 2013.

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed repeals and amendments affect no other code, article or statute.

- 1.31. General Provisions.
- 1.32. Underwriting Rules and Guidelines.
- 1.33. Market Analysis Rules and Guidelines.
- 1.34. Appraisal Rules and Guidelines.
- 1.35. Environmental Site Assessment Rules and Guidelines.
- 1.36. Property Condition Assessment Guidelines.
- 1.37. Reserve for Replacement Rules and Guidelines.

Attachment B: Preamble and Proposed new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307, Underwriting and Loan Policy for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will enhance the State’s ability to provide decent, safe, sanitary and affordable housing. The cost to produce the Environmental Site Assessment report required under §10.305 may increase as a result of the additional scope of work relating to the identification of potentially hazardous explosive activities on-site or in the general area of the site. The incremental cost is not known.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 28, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed sections and amendments affect no other code, article or statute.

§10.301. General Provisions.

(a) **Purpose.** The rules in this subchapter apply to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this chapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility [(Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d))]. Due to the unique characteristics of each Development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) **Appeals.** Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter [(relating to Appeals Process. (§2306.0321; §2306.6715))]. In addition, the Department encourages the use of Alternative Dispute Resolution (ADR) methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) **General Provisions.** Pursuant to Texas Government Code, [§2306.148 and §2306.185(b)], the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules of the Texas Government Code and the Code, resulting in a Credit Underwriting Analysis Report used by the Board in decision making with the goal to assist as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report considers all information timely provided by the Applicant. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. The Report contents will be based solely upon information that is provided in accordance with the timeframes provided in the current Qualified Allocation Plan (QAP) or Notice of Funds Availability (NOFA), as applicable.

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount based on the lesser amount calculated by the program limit method, if applicable, gap/debt coverage ratio ("DCR") method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

- (1) **Program Limit Method.** For Applicants requesting a Housing Credit Allocation, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in §10.3 of this chapter (relating to Definitions). For Applicants requesting funding through a Department program other than Housing

Tax Credits, this method is based upon calculation of the funding limit based on the current program rules or NOFA at the time of underwriting.

- (2) **Gap/DCR Method.** This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section.
- (3) **The Amount Requested.** The amount of funds that is requested by the Applicant as reflected in the original Application documentation.

(d) **Operating Feasibility.** The operating financial feasibility of developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from income to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the DCR does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may model adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

- (1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) **Rental Income.** The Underwriter will independently calculate the Pro Forma Rent for comparison to the Applicant's estimate in the Application.

- (i) **Market Rents.** The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst, and other market data sources.
- (ii) **Net Program Rents.** The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period but prior to publication of the Report, the Underwriter may adjust the Applicant's Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

- (II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.
 - (III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.
 - (IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the Total Housing Development Cost schedule.
- (iii) **Contract Rents.** The Underwriter reviews rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent with the recommendations of the Report conditioned upon receipt of final approval of such increase.
- (B) **Miscellaneous Income.** All ancillary fees and miscellaneous secondary income, including but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.
- (i) Exceptions must be justified by operating history of existing comparable properties.
 - (ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.
 - (iii) The Applicant's operating expense schedule should reflect an itemized offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.
 - (iv) Collection rates of exceptional fee items will generally be heavily discounted.
 - (v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.
- (C) **Vacancy and Collection Loss.** The Underwriter generally uses a vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.
- (D) **Effective Gross Income (EGI).** The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5 percent of the EGI calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.
- (2) **Expenses.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the Development type, the size of the Units, and the Applicant's expectations as reflected in their pro forma. Historical stabilized certified financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The TDHCA Database of properties in the same location or region as the proposed

Development also provides heavily relied upon data points; expense data from the TDHCA Database is available on the TDHCA website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority ("PHA") Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor. Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.

- (A) **General and Administrative Expense ("G&A")**--Expense for operational accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.
- (B) **Management Fee.** Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of Effective Gross Income as documented in a property management agreement. Typically, 5 percent of the Effective Gross Income is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.
- (C) **Payroll Expense.** Expense for direct on-site staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a comparable development. It does not, however, include direct security payroll or additional tenant services payroll.
- (D) **Repairs and Maintenance Expense.** Expense for repairs and maintenance, Third-Party maintenance contracts and supplies. It should not include capitalized expenses that would result from major replacements or renovations. Direct payroll for repairs and maintenance activities are included in payroll expense.
- (E) **Utilities Expense.** Utilities expense includes all gas and electric energy expenses paid by the Development.
- (F) **Water, Sewer, and Trash Expense ("WST").** Includes all water, sewer and trash expenses paid by the Development.
- (G) **Insurance Expense.** Insurance expense includes any insurance for the buildings, contents, and general liability but not health or workman's compensation insurance.
- (H) **Property Tax.** Includes real property and personal property taxes but not payroll taxes.
 - (i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.
 - (ii) Property tax exemptions or a Proposed Payment In Lieu Of Tax (PILOT) agreement must be documented as being reasonably achievable. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.
- (I) **Reserves.** An annual reserve for replacements of future capital expenses and any ongoing operating reserve requirements. The Underwriter includes minimum reserves of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the PCA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

- (J) **Other Expenses.** The Underwriter will include other reasonable and documented expenses. These include audit fees, tenant services, security expense and compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.
- (i) **Tenant Services.** Cost to the Development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant services expenses are considered in calculating the DCR.
 - (ii) **Security Expense.** Contract or direct payroll expense for policing the premises of the Development.
 - (iii) **Compliance Fees.** Include only compliance fees charged by the Department and are considered in calculating the Debt DCR.
 - (iv) **Cable Television Expense.** Includes fees charged directly to the Development Owner to provide cable services to all Units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in G&A as described in subparagraph (A) of this paragraph.
- (K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report. If the Applicant's total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.
- (3) **Net Operating Income ("NOI").** The difference between the EGI and total operating expenses. If the first year stabilized NOI figure provided by the Applicant is within 5 percent of the NOI calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's first year stabilized EGI, total expenses, and NOI are each within 5 percent of the Underwriter's estimates.
- (4) **Debt Coverage Ratio.** DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent sources of funds. Loan principal and interest payments are calculated based on the terms indicated in the term sheet(s) for financing submitted in the Application. Unusual or non-traditional financing structures may also be considered.
- (A) **Interest Rate.** The rate documented in the term sheet(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. The Underwriter may adjust the underwritten interest rate based on data collected on similarly structured transactions or rate index history.
 - (B) **Amortization Period.** The Department generally requires an amortization of not less than thirty (30) years and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

- (C) **Repayment Period.** For purposes of projecting the DCR over a 30-year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).
- (D) **Acceptable Debt Coverage Ratio Range.** The acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35.
 - (i) For Developments other than HOPE VI and USDA transactions, if the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:
 - (I) a reduction of the interest rate or an increase in the amortization period for Direct Loans;
 - (II) a reclassification of Direct Loans to reflect grants, if permitted by program rules;
 - (III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
 - (ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:
 - (I) reclassification of Department funded grants to reflect loans, if permitted by program rules;
 - (II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;
 - (III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
 - (iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the gap/DCR method described in subsection (c)(2) of this section.
 - (iv) Although adjustments in debt service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.
- (5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma.
 - (A) The Underwriter's first year stabilized pro forma is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5 percent of the Underwriter's estimates.
 - (B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for expenses.
 - (C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as determined by the Underwriter.

(e) **Total Housing Development Costs.** The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for

acquisition/Rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to Property Condition Assessment Guidelines). If the Applicant's is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) **Acquisition Costs.** The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) **Excess Land Acquisition.** In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) **Identity of Interest Acquisitions.**

- (i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and
 - (I) is the current owner in whole or in part of the Property; or
 - (II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.
- (ii) In all identity of interest transactions the Applicant is required to provide:
 - (I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and
 - (II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:
 - (-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and
 - (-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.
 - (-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date

of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

- (-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

- (iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

- (C) **Eligible Basis on Acquisition of Buildings.** Building acquisition cost, excluding acquired reserve balances, will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

- (i) the Applicant's stated eligible building acquisition cost;
- (ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;
- (iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or
- (iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

- (2) **Off-Site Costs.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.
- (3) **Site Work Costs.** The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.
- (4) **Building Costs.**

- (A) **New Construction and Reconstruction.** The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources,

historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard.

(B) Rehabilitation and Adaptive Reuse.

- (i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.
- (ii) The Underwriter will use cost data provided by the Property Condition Assessment (PCA). In the case where the PCA is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations.

- (5) **Contingency.** All contingencies identified in the Applicant's project cost schedule including any soft cost contingency will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent limit, as applicable, but in no instance less than 5%.
- (6) **Contractor Fee.** Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities and other indirect costs. Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16 percent on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18 percent on Developments with Hard Costs at \$2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.
- (7) **Developer Fee.**
- (A) For Housing Tax Credit Developments, the Developer fees and Development Consultant fees included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less.
 - (B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related

Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.

- (C) In the case of a transaction requesting acquisition Housing Tax Credits:
 - (i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and
 - (ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.
- (D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.
- (8) **Financing Costs.** Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is not included in Eligible Basis.
- (9) **Reserves.** The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing assumptions acceptable to the Underwriter. In no instance will total reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions).
- (10) **Other Soft Costs.** For Housing Tax Credit Developments, all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities and operating reserves. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.

(f) Development Team Capacity and Development Plan.

- (1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:
 - (A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in the this chapter;

- (B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;
 - (C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;
 - (D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.
- (2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.
- (g) **Other Underwriting Considerations.** The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

- (1) **Floodplains.** The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:
 - (A) the Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or
 - (B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and
 - (C) the Development must be designed to comply with the QAP, as proposed.
- (2) **Proximity to Other Developments.** The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.
- (3) **Supportive Housing.** The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:
 - (A) **Operating Income.** The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;
 - (B) **Operating Expenses.** A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter;
 - (C) **DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy

commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

- (D) **Total Housing Development Costs.** For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) **Work Out Development.** Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) **Feasibility Conclusion.** An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) **Gross Capture Rate.** The method for determining the Gross Capture Rate for a Development is defined in §10.303(d)(11)(F) of this chapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may at their discretion use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:

- (A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
- (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
- (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
- (D) targets Persons with Disabilities and the Gross Capture Rate exceeds 30 percent.
- (E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
 - (i) **Replacement Housing.** The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
 - (ii) **Existing Housing.** The proposed Development is comprised of existing affordable housing which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

- (2) **Deferred Developer Fee.** Applicants requesting an allocation of tax credits where the estimated deferred Developer fee, based on the Underwriter's recommended financing structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.
- (3) **Pro Forma Rent.** The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.
- (4) **Initial Feasibility.** The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
- (5) **Long Term Feasibility.** Any year in the first fifteen (15) years of the Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects:
 - (A) negative Cash Flow; or
 - (B) a Debt Coverage Ratio below 1.15.
- (6) **Exceptions.** The infeasibility conclusions may be excepted where either of the criteria apply.
 - (A) The requirements in this subsection may be waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.
 - (B) Developments not meeting the requirements of one or more of paragraphs (3) - (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.
 - (i) The Development will receive Project-based Section 8 Rental Assistance for at least 50 percent of the Units and a firm commitment with terms including Contract Rent and number of Units is submitted at Application.
 - (ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
 - (iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units or HOPE VI financed transactions.
 - (iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.
 - (v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. Market Analysis Rules and Guidelines.

(a) **General Provision.** A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar

conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications.** A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. [(§2306.67055)] The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

- (1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the Application Acceptance Period for which the Market Analyst must be approved. To maintain status as an approved Qualified Market Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted annually on the first Monday in February for review by the Department.
 - (A) Documentation of good standing from the Texas Comptroller of Public Accounts.
 - (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.
 - (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
 - (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.
 - (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.
 - (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.
- (2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.
 - (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.
 - (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.
- (3) The list of approved Qualified Market Analysts is posted on the Department's web site and updated within seventy-two (72) hours of a change in the status of a Market Analyst.

(d) **Market Analysis Contents.** A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

- (1) **Title Page.** Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
- (2) **Letter of Transmittal.** The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Summary Sheet.** Include the Department's Market Analysis Summary exhibit.
- (5) **Assumptions and Limiting Conditions.** Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
- (6) **Identification of the Property.** Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
- (7) **Statement of Ownership.** Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
- (8) **Secondary Market Area.** A Secondary Market Area is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Secondary Market Area definition. The entire PMA, as described in this paragraph, must be contained within the Secondary Market boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. [(\$2306.67055)]
 - (A) The Secondary Market Area will be defined by the Market Analyst with:
 - (i) size based on a base year population of no more than 250,000 people inclusive of the Primary Market Area; and
 - (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.
 - (B) The Market Analyst's definition of the Secondary Market Area must include:
 - (i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;
 - (ii) a complete demographic report for the defined SMA; and
 - (iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers, ZIP codes or places with labels as well as the location of the subject Development and all comparable Developments.
- (9) **Primary Market Area.** All of the Market Analyst's conclusions specific to the subject Development must be based on only one Primary Market Area definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. [(\$2306.67055)]
 - (A) The Primary Market Area will be defined by the Market Analyst with:
 - (i) size based on a base year population of no more than 100,000 people;
 - (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau; and
 - (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or ZIP code, and if the PMA is defined by census tract or ZIP code.
 - (B) The Market Analyst's definition of the Primary Market Area must include:
 - (i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;

- (ii) a complete demographic report for the defined PMA; and
 - (iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers, ZIP codes or places with labels as well as the location of the subject Development and all comparable Developments.
- (C) **Comparable Units.** Identify Developments in the PMA with Comparable Units. In Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:
- (i) development name;
 - (ii) address;
 - (iii) year of construction and year of Rehabilitation, if applicable;
 - (iv) property condition;
 - (v) Target Population;
 - (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
 - (I) monthly rent and Utility Allowance; or
 - (II) sales price with terms, marketing period and date of sale;
 - (vii) description of concessions;
 - (viii) list of unit amenities;
 - (ix) utility structure;
 - (x) list of common amenities; and
 - (xi) for rental developments only, the occupancy and turnover.
- (10) **Market Information.**
- (A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:
- (i) total housing;
 - (ii) rental developments (all multi-family);
 - (iii) Affordable housing;
 - (iv) Comparable Units;
 - (v) Unstabilized Comparable Units; and
 - (vi) proposed Comparable Units.
- (B) **Occupancy.** The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:
- (i) number of Bedrooms;
 - (ii) quality of construction (class);
 - (iii) Target Population; and
 - (iv) Comparable Units.
- (C) **Absorption.** State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.
- (D) **Demographic Reports.**
- (i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
 - (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

- (iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
 - (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts or ZIP codes on which the report is based.
- (E) **Demand.** Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.
- (i) **Demographics.** The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for a Qualified Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.
 - (I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
 - (II) Target. If applicable, adjust the household projections for the Qualified Elderly or Persons with Special Needs targeted by the proposed Development.
 - (III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
 - (IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:
 - (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for Qualified Elderly households; and
 - (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
 - (V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.
 - (ii) **Gross Demand.** Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.
 - (iii) **Potential Demand.** Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.
 - (I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
 - (II) For Developments targeting the general population:
 - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;

- (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.
- (III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:
 - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
 - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) Gross Demand includes both renter and owner households.
- (IV) For Qualified Elderly Developments:
 - (-a-) minimum eligible income is based on a 50 percent rent to income ratio; and
 - (-b-) Gross Demand includes all household sizes and both renter and owner households.
- (iv) **Demand from Secondary Market Area:**
 - (I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
 - (II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
 - (III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.
- (v) **Demand from Other Sources:**
 - (I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
 - (II) consideration of Demand from Other Sources is at the discretion of the Underwriter;
 - (III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
 - (IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
 - (-a-) documentation of the number of vouchers administered by the local Housing Authority; and
 - (-b-) a complete demographic report for the area in which the vouchers are distributed.
- (F) **Employment.** Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area.
- (11) **Conclusions.** Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.
 - (A) **Unit Mix.** Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.
 - (B) **Rents.** Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a

separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

- (i) The Department recommends use of HUD Form 92273.
- (ii) A minimum of three developments must be represented on each attribute adjustment matrix.
- (iii) Adjustments for concessions must be included, if applicable.
- (iv) Total adjustments in excess of 15 percent must be supported with additional narrative.
- (v) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) **Effective Gross Income.** Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) **Demand:**

- (i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
- (ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(E) **Relevant Supply.** The Relevant Supply of proposed and unstabilized Comparable Units includes:

- (i) the proposed subject Units;
- (ii) Comparable Units with priority over the subject that have made application to the Department and have not been presented to the Board for decision;
- (iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
- (iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) **Gross Capture Rate.** The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit Type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(H) **Absorption.** Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) **Market Impact.** Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. [(§2306.67055)]

(12) **Photographs.** Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) **Appendices.** Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§10.304. Appraisal Rules and Guidelines.

(a) **General Provision.** An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications.** The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents.** An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

- (1) **Title Page.** Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.
- (2) **Letter of Transmittal.** Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Disclosure of Competency.** Include appraiser's qualifications, detailing education and experience.
- (5) **Statement of Ownership of the Subject Property.** Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

- (6) **Property Rights Appraised.** Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.
- (7) **Site/Improvement Description.** Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.
 - (A) **Physical Site Characteristics.** Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.
 - (B) **Floodplain.** Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.
 - (C) **Zoning.** Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.
 - (D) **Description of Improvements.** Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.
 - (E) **Environmental Hazards.** It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.
- (8) **Highest and Best Use.** Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.
 - (A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.
 - (B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.
- (9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.
 - (A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.
 - (i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

- (ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.
 - (iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.
 - (I) Property rights conveyed.
 - (II) Financing terms.
 - (III) Conditions of sale.
 - (IV) Location.
 - (V) Highest and best use.
 - (VI) Physical characteristics (e.g., topography, size, shape, etc.).
 - (VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).
- (B) **Sales Comparison Approach.** This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.
- (i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.
 - (ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.
 - (I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.
 - (II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.
- (C) **Income Approach.** This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.
- (i) **Market Rent Estimate/Comparable Rental Analysis.** This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to

permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

- (ii) **Comparison of Market Rent to Contract Rent.** Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.
 - (iii) **Vacancy/Collection Loss.** Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.
 - (iv) **Expense Analysis.** Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.
 - (v) **Capitalization.** The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.
 - (I) **Direct Capitalization.** The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.
 - (II) **Yield Capitalization (Discounted Cash Flow Analysis).** This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.
- (10) **Value Estimates.** Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.
- (A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.
 - (B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value" inclusive of the value associated with the rental assistance. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.
 - (C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the restricted rents should be contemplated when deriving the value based on the income approach.
 - (D) For all other existing Developments, the appraisal must include the "as-is" value.

- (E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.
- (F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (“FF&E”) and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.
- (11) **Marketing Time.** Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.
- (12) **Photographs.** Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) **Additional Appraisal Concerns.** The appraiser(s) must be aware of Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. Environmental Site Assessment Rules and Guidelines.

(a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department should be conducted and reported in conformity with the standards of the American Society for Testing and Materials (“ASTM”). The initial report should conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-05 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to TDHCA as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to the Department. The ESA report should also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

- (1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
- (2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
- (3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

- (4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
 - (5) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
 - (6) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements;
 - (7) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary; and
 - (8) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations.
- (c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Development Owner must act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.
- (d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.
- (e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this subsection.

§10.306. Property Condition Assessment Guidelines.

(a) **General Provisions.** The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:

- (1) **Useful Life Estimates.** For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;
- (2) **Code Compliance.** The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property;
- (3) **Program Rules.** The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;
- (4) **Reconciliation of Scope of Work and Costs.** The PCA report must include an analysis, detailed and shown on the Department's PCA Cost Schedule Supplement, that reconciles the scope of work and immediate costs identified in the PCA with the Applicant's scope of work and costs (Hard Costs) as presented on the Applicant's development cost schedule; and
- (5) **Cost Estimates for Repair and Replacement.** It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.
 - (A) **Immediately Necessary Repairs and Replacement.** Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.
 - (B) **Proposed Repair, Replacement, or New Construction.** If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.
 - (C) **Expected Repair and Replacement Over Time.** The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values

and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subparagraphs (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

§10.307. Direct Loan Requirements.

(a) Direct Loans through the Departments must be structured according to the criteria as identified in paragraphs (1) - (5) of this section:

- (1) the interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter; (2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years and both must be within six (6) months of the shortest amortization and term of any senior debt;
- (3) the loan shall be structured with a regular monthly payment beginning at the end of the construction period and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;

- (4) the loan shall have a deed of trust with a permanent lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing. Notwithstanding the foregoing, the loan shall have a lien position that is superior to any other sources for financing that have soft repayment structures, non-amortizing balloon notes, are deferred forgivable loans or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,
 - (5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (C) of this paragraph:
 - (A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; and
 - (B) a letter from the Applicant, Developer or Development Owner's bank(s) confirming funds equal to 10 percent of the Total Housing Development Cost are available; or
 - (C) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.
- (b) HOME Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with 24 CFR 92 and as included in the HOME Direct Loan documents:
- (1) Construction must be completed within eighteen (18) months of the actual date of loan closing, at which point the permanent loan period will begin. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of Federal Commitment;
 - (2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;
 - (3) repayment will be required on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; and
 - (4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, concerning Comprehensive Energy Assistance Program, §5.430 and proposed new 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, concerning Comprehensive Energy Assistance Program, §5.430 and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the proposed repeal of 10 TAC §5.430 removes reference of existing guidance under Assurance 16 activities within program rules to clarify allowable costs under the program budget line items; and

WHEREAS, the proposed new 10 TAC §5.430 clarifies allowable uses of Comprehensive Energy Assistance Program (CEAP) funds, including administrative and program services activities and allows greater flexibility for Subrecipients within program rules;

NOW, therefore, it is hereby

RESOLVED, that the Executive 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 publication of the proposed repeal to 10 TAC, Chapter 5, Subchapter D, §5.430; and proposed new §5.430, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The proposed repeal of §5.430, Allowable Subrecipient Administrative and Assurance 16 Activities Expenditures, removes references to Assurance 16 activities within program rules to clarify allowable costs under the program budget line items.

The proposed new of §5.430 provides clarification of allowable uses of CEAP funds.

Attachment A: Preamble and proposed repeal of 10 TAC Chapter 5, Subchapter D, §5.430

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, concerning Comprehensive Energy Assistance Program, §5.430, concerning Allowable Subrecipient Administrative and Assurance 16 Activities Expenditures. The purpose of the repeal is to remove references to Assurance 16 activities within program rules to clarify allowable costs under the program budget line items. Proposed new §5.430 is being published concurrently with this repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed repeal will be in effect, enforcing or administering the proposed repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be clarification of program services costs within program rules. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments to the repeal may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 28, 2013.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

The proposed repeal affects no other code, article, or statute.

§5.430. Allowable Subrecipient Administrative and Assurance 16 Activities Expenditures.

Attachment B: Preamble and proposed new 10 TAC Chapter 5, Subchapter D, §5.430

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, Comprehensive Energy Assistance Program, §5.430, concerning Allowable Subrecipient Administrative and Program Services Costs. The purpose of the new section is to clarify allowable uses of CEAP funds and to allow greater flexibility for Subrecipients within program rules. The proposed rule identifies allowable administrative costs and program services costs, provides that the calculation will be based upon a percentage of direct services costs, and requires that any excess be paid from non-federal funds.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new section will be in effect, enforcing or administering the proposed new section does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section will be in effect, the public benefit anticipated as a result of the new section will be greater and more efficient use of funds and greater flexibility for Subrecipients within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments to the rule may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 28, 2013.**

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

The proposed new section affects no other code, article, or statute.

§5.430. Allowable Subrecipient Administrative and Program Services Costs.

(a) Allowable administrative costs for administrative activities includes costs for general administration and coordination of CEAP, including contract costs and all indirect (or overhead) cost, and activities as described in paragraphs (1) thru (13) of this subsection:

- (1) salaries and benefits of staff performing administrative and coordination functions;
- (2) activities related to eligibility determinations;
- (3) preparations of program plans, budgets and schedules;
- (4) monitoring of program and projects;
- (5) fraud and abuse units;
- (6) procurement activities;

- (7) public relations;
- (8) services related to accounting, litigation, audits, management of property, payroll and personnel;
- (9) costs of goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities and rental of office space and maintenance of office space, provided that such costs are not excluded as direct administrative costs providing program services;
- (10) travel costs incurred for official business and not excluded as a direct administrative cost for providing programs services (as described in Program Services cost);
- (11) preparing reports and other documents;
- (12) management information systems not related to tracking and monitoring of CEAP requirements; and
- (13) cost of administering Assurance 16 activities.

(b) The Department calculates funds available for Subrecipient administrative activities as a percentage of Direct Services expenditures.

(c) Any cost in excess of the maximum allowable by the CEAP contract must be paid from non-federal funds.

(d) Program services costs may include providing program information to clients, screening and assessments, salaries and benefits for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space. Other program services costs may include outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP.

REPORT ITEMS

Ra

BOARD REPORT ITEM

TEXAS HOMEOWNERSHIP DIVISION

SEPTEMBER 12, 2013

Report on Request for Proposal (RFP) for Master Servicer for the Single Family Mortgage Loan Program

Background

A Request for Proposal was posted for Master Servicer for the Single Family Mortgage Loan Program on July 12, 2013, with a due date of August 7, 2013.

Two proposals were received by the due date. The respondents included U.S. Bank Home Mortgage (U.S. Bank) and 360 Mortgage Group. U.S. Bank has numerous years experience and is currently Master Servicer for 24 state Housing Finance Agencies (“HFAs”), numerous local HFAs and is currently the servicer for the Department. 360 Mortgage Group has been retaining servicing and purchasing mortgage loans from other correspondent lenders since October 2011 but does not currently serve as a Master Servicer for any HFA programs.

Based on a team review comprised of Department staff, the Master Servicer contract was awarded to U.S. Bank. The term of the contract will be two years with the ability to renew and extend at the end of the two year term under three annual options.

Rb

BOARD REPORT ITEM

TEXAS HOMEOWNERSHIP DIVISION

SEPTEMBER 12, 2013

Report on Request for Proposal for Program Administrator for the Single Family Mortgage Loan and Mortgage Credit Certificate (“MCC”) Programs

Background

A Request for Proposal (RFP) was posted for Program Administrator for the Single Family Mortgage Loan and Mortgage Credit Certificate (“MCC”) Programs on July 10, 2013, with a due date of August 5, 2013.

Two proposals were received by the due date. The respondents included Housing and Development Services, Inc. (HDS)/eHousingPlus and FirstSouthwest Company. HDS/eHousingPlus has been providing Program Administration and Compliance Services to the affordable housing market since 1999 and to TDHCA since 2011. FirstSouthwest Company has been providing Mortgage Credit Certificate (MCC) Program Administration for numerous programs since 2006 and is a fully diversified investment banking firm.

Based on a team review comprised of Department staff, the Program Administrator contract was awarded to HDS/eHousingPlus. The term of the contract will be one-year with the ability to renew and extend at the end of the one-year term under three annual options.

Rc

**BOARD REPORT ITEM
HOME DIVISION
SEPTEMBER 12, 2013**

Status Report on the HOME Program Contracts and Reservation System Participants through August 2013, Calendar Year YTD

Activity Type	<u>Funded/Awarded for August</u>		<u>Funded/Awarded for Year</u>		<u>Setups for August</u>		<u>Setups for Year</u>		<u>Draws for August</u>		<u>Draws for Year</u>	
	RSP	Contracts	RSP	Contracts	Amount	Number	Amount	Number	Amount	Number	Amount	Number
CFD	\$247,531	\$0	\$631,623	\$1,036,656	\$247,531	2	\$631,623	5	\$125,498	6	\$282,266	16
CHDO Operating	\$0	\$0	\$0	\$50,000	\$0	0	\$0	0	\$0	0	\$62,494	4
Dev SF	\$0	\$0	\$210,000	\$0	\$105,000	1	\$770,975	8	\$40,437	3	\$435,504	27
HBA/Rehab	\$126,000	\$0	\$1,867,192	\$0	\$157,500	8	\$1,969,692	109	\$245,743	20	\$2,084,857	176
HRA	\$1,659,793	\$0	\$13,968,407	\$0	\$2,102,357	25	\$21,175,376	248	\$3,176,080	154	\$19,715,482	968
MFD	\$0	\$0	\$0	\$9,450,000	\$220,000	1	\$19,554,019	19	\$1,618,099	6	\$20,154,292	80
TBRA	\$729,170	\$0	\$3,559,989	\$0	\$778,999	68	\$3,769,910	359	\$312,554	403	\$2,816,344	3,895
Sub Totals:	\$2,762,494	\$0	\$20,237,211	\$10,536,656	\$3,611,387	105	\$47,871,595	748	\$5,518,410	592	\$45,551,240	5,166
Totals:	\$2,762,494		\$30,773,867									

CFD - Contract For Deed

CHDO - Community Housing Development Organization

HRA - Homeowner Rehabilitation

HBA/Rehab - Homebuyer Assistance with Rehab

MFD - Rental Housing Development

RSP - Reservation System Participant

TBRA - Tenant Based Rental Assistance

Rd

BOARD REPORT ITEM
ASSET MANAGEMENT DIVISION
SEPTEMBER 12, 2013

Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers

REPORT ITEM

This report contains information on 4th Quarter of Fiscal Year 2013 (6/1/13 to 8/30/13).

- 13 LURA Amendments (12 Administratively Approved; 1 Board Approved)
- 4 Application/Direct Loan Amendments (2 Administratively Approved; 2 Board Approved)
- 6 Extensions (2 Cost Certification; 4 10% Test; All Approved Administratively)
- 10 Ownership Transfers (All Approved Administratively)

1st Quarter of Fiscal Year 2014 information will be reported at the December meeting.

**Land Use Restriction Agreement (LURA) Amendments
2013 4th Quarter**

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Subject of Amendment Approved
10035	6/3/2013	Homewood at Zion	Houston	Kenneth Fambro	Remove business center (-2 pts) and replace with fitness center (+2 pts). Remove laundry equipment in units (-3 pts) and storage room/closet (-1 pt).
09912	6/5/2013	Wentworth Apartments	Humble	Teresa Luquette 936.371.0081	Change to Income Limits, Amenities & add Accessible Units Numbers
93072	6/10/2013	Primavera Apartments	Dallas	Charles Friedman	Owner previously approved in 2/2013 to revise # of units rented to LI tenants (137 to 136) keeping one apartment as a leasing office.
10022	6/11/2013	Presidio Dolores Apts	San Elizario	Elaine Wynne/Rosalio Banuelos	Add lienholder pages, revise Appendix E to correctly identify community building, and add unit amenities required by Volume 3, Tab 1, Part A1(B) from the application.
93026	6/11/2013	Coopers Crossing	Irving	Rene Larkin on behalf of owner	Deleted Extended Use Period since this was not elected at application in 1993 and added good cause language.
10171	6/18/2013	HomeTowne at Garland	Garland	staff- RM	Correct legal description and include Tract II (Easement Estate).
11008	7/22/2013	Champion Homes at Canyon Creek	Brownsville	TDHCA	BIN's on original LURA don't match Carryover
09000	7/29/2013	Courtwood Apartments	Eagle Lake	Lee Ann Chance	Second amendment is needed to correct BIN's
11257	7/31/2013	Brazos Senior Villas	Rosenberg	Matt Fuqua	Remove amenity 14 SEER HVAC and Add Laundry Equipment in each Unit. Remove Geen Bldg Initiative Renewable materials and Add Healthy Finish Materials.
01148	8/7/2013	Cedar Point Apartments	Mansfield	Steve Deborba, Picerne Mgmt.	Remove HUB requirement as previously approved in 2007; draft agreement to comply fo rnew owner for transfer in 2008.
09993	8/16/2013	The Palms on Lamar	Austin	Michael O'Donnell	Correct accessible units, reflect amenities based on 1/20/11 application amendment, delete 911 or public telephone, correct number of buildings and applicable fractions, and add requirement for 5 units targeting 80% tenants.
97146	8/29/2013	La Vista Retirement Community	San Marcos	Christina Sanchez/Daisy Palmer	Change elderly restriction from 62 or older to households of at least one person who is 55 or older.
12					
BOARD APPROVED					
12332	7/11/2013	Sabine Apartments	Orange	Brad Jones	Owner requested to change income/rent restrictions on 50% of units to market rate. Board approved temporary release of income restrictions in certain buildings so owner can devise plan to achieve compliance with LURA as is.

**Housing Tax Credit Application Amendments
2013 4th Quarter**

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Subject of Amendment Approved
11257	6/20/2013	Brazos Senior Villas	Rosenberg	Matt Fuqua	Increase of site acreage from 5.17 to 5.42.
11200	7/9/2013	The Ranch at Silvercreek	Houston	Michael Robinson	Add Washers/Dryers to each of the 14 units. Tenants will pay for water and sewer.

2

BOARD APPROVED

12332	7/17/2013	Apple Grove Villas	Mesquite	Owner	Changes to site plan, unit and building plans, number of units and buildings
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1

**Direct Loan Amendments
2013 4th Quarter**

BOARD APPROVED

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Subject of Amendment Approved
12336	7/25/2013	Residences at Solms Village	New Braunfels	Michael Roderer	Revise terms of previously approved HOME loan.

1

**Housing Tax Credit Extensions
2013 4th Quarter**

ADMINISTRATIVELY APPROVED

Dev. No.	Dat of Approval	Development Name	City	Owner Name/Contact	Type of Extension	Original Deadline	Approved Extension
12332	6/18/2013	Apple Grove Villas	Mesquite	Deepak Sulakhe	10% Test	7/1/2013	10/1/2013
12218	7/1/2013	The Reserve at Rosharon	Rosharon	Chris Applequist	10% Test	7/1/2013	9/30/2013
12121	7/8/2013	Memorial Apartments	McAllen	David Marquez	10% Test	7/1/2013	10/31/2013
11179	7/11/2013	Meadowlake Village Apartments	Mabank	Warren Maupin	Cost Certification	6/13/2013	7/1/2013
11197	8/22/2013	Park Village Apartments	Big Spring	Daniel O'Dea	Cost Certification	7/31/2013	9/30/2013
12336	8/29/2013	The Residences of Solms Village	New Braunfels	Michael Roderer	10% Test	7/1/2013	7/11/2013

**Housing Tax Credit Program Ownership Transfers
2013 4th Quarter**

ADMINISTRATIVELY APPROVED

Dev. No.	Dat of Approval	Development Name	City	Person/Entity Departing	New Person/Entity	Type of Ownership Change
060421	6/11/2013	Woodside Manor Senior Community	Conroe	Outreach Housing Corporation	OHC/Woodside, Ltd.	Change in General Partner
03423	6/20/2013	Sweetwater Point Apartments	Houston	Picerne Sweetwater Point, LLC	Sweetwater Pointe	Change in General Partner
93026	7/3/2013	Coopers Crossing	Irving	Jeremy Associates Limited Partnership	Avanth Cooper's Crossing, LLC	Sale of Property
09905	07/10/13	Tammye's Pointe	Eagle Pass	Tammye's Pointe, GP, LLC & MHC Limited	Roundstone Development	Change in General Partner (Affiliate)
94131	7/12/2013	Springhollow Apartments	Austin	Apartment Acquisition I, Ltd.	Apartment Acquisition III, LLC	Change in General Partner (Affiliate)
11011	8/20/2013	Sedona Ranch	Fort Worth	N/A	172 Sedona Village GP LLC	Admission of Class B Limited Partner
10119	8/20/2013	Race Street Lofts	Fort Worth	N/A	NRP Race Street LLC/NRP Holdings LLC	Admission of Special Limited Partner,co-developer, and guarantor
95047	8/20/2013	Eban Village I	Dallas	Eban Village I, Ltd.	HHF Eban Village I & II, LLC	Sale of Property
99022	8/20/2013	Eban Village II	Dallas	Eban Village II, Ltd.	HHF Eban Village I & II, LLC	Sale of Property
98121	8/21/2013	Green Tree Village Apartments	Amarillo	AHF/Greentree Village, Inc.	AHC Amarillo Greentree Associates, LLC	Transfer of General Partner and addition of Class B Limited Partner

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TDHCA Outreach Activities, July-August 2013

A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public

Event	Location	Date	Division	Purpose
2014-2015 CSBG State Plan and Application Public Hearing	Austin	July 9	Community Affairs	Public Hearing
2014-2015 CSBG State Plan and Application Public Hearing	Houston	July 10	Community Affairs	Public Hearing
2014-2015 CSBG State Plan and Application Public Hearing	San Antonio	July 10	Community Affairs	Public Hearing
HOME TBRA/ Texas Neighborhood Services	Weatherford	July 10	HOME	Training
2014-2015 CSBG State Plan and Application Public Hearing	Fort Worth	July 11	Community Affairs	Public Hearing
Relocation Services Scan Conference Call	Austin	July 16	Program Planning, Policy & Metrics	Participant
Texas Interagency Council for the Homeless Quarterly Meeting	Austin	July 16	Community Affairs, Housing Resource Center, Planning/Policy/Metrics	Participant
Housing and Health Services Coordination Council Meeting	Austin	July 17	Housing Resource Center	Participant
Rural Rental Housing Assoc. of Texas/Annual Convention	San Antonio	July 17	External Affairs	Presentation
Promoting Independence Advisory Committee Meeting	Austin	July 18	Housing Resource Center	Participant
Community Reinvestment Work Group Meeting	Austin	July 18	Housing Resource Center	Participant
Texas Apartment Association Board/ Affordable Housing Subcommittee	San Antonio	July 18	Compliance	Presentation
TAAHP Conference	Austin	July 23	Compliance	Panelist
Draft of Phase 2 of the State of Texas Plan for Fair Housing Choice: AI/Public Hearing	Austin	July 23	Housing Resource Center	Public Hearing
Dept of State Health Services/Behavioral Health Institute	Austin	July 23	Housing Resource Center	Panelist
Danby School Demolition Ceremony/Kilgore	Kilgore	July 23	Neighborhood Stabilization	Remarks, Participant
HOME HRA Key Presentation Ceremony/Taft	Taft	July 23	Policy and Public Affairs	Participant
Council for Advising & Planning for the Prevention & Treatment of Mental & Substance Use Disorders	Austin	July 25	Housing Resource Center	Participant
DOE Weatherization Workshop	Denver, CO	July 29-31	Compliance	Participant
Multifamily Relocation and Environmental Clearance Training	Austin	July 31	Program Services	Training
HOME TBRA/Webinar	Austin	July 31	HOME	Training
Draft of Phase 2 of the State of Texas Plan for Fair Housing Choice: AI/Public Hearing	Nacogdoches	August 1	Housing Resource Center	Public Hearing
First Thursday Income Eligibility Training	Austin	August 1	Compliance	Training
Draft of Phase 2 of the State of Texas Plan for Fair Housing Choice: AI/Public Hearing	Fort Worth	August 6	Housing Resource Center	Public Hearing

Event	Location	Date	Division	Purpose
DADS Region 7 Community Transition Team	Austin	August 6	Program Planning, Policy & Metrics	Presentation
Draft of Phase 2 of the State of Texas Plan for Fair Housing Choice: AI/Public Hearing	Harlingen	August 8	Housing Resource Center	Public Hearing
Proposed Compliance Monitoring/ Previous Participation Rules Conference Call	Austin	August 12	Compliance	Presentation
Bipartisan Policy Council Meeting	Dallas	August 13	Executive	Panelist
Promoting Independence Advisory Committee /Housing Subcommittee	Austin	August 13	Housing Resource Center	Participant
Draft of Phase 2 of the State of Texas Plan for Fair Housing Choice: AI/Public Hearing	Midland	August 13	Housing Resource Center	Public Hearing
TACAA Board/Compliance Update	Austin	August 15	Community Affairs, Compliance	Presentation
Houston Housing Authority, Affordable Housing Management Association	Houston	August 15	Compliance	Training
HOME HRA/ Village of Vinton	El Paso	August 19	HOME	Training
Regional Allocation Formula Methodology Public Hearing	Austin	August 20	Housing Resource Center	Public Hearing
HOME TBRA, TBRA PWD/ Economic Opportunity Advancement Corp.	Austin	August 20	HOME	Training
DEM Texas Disaster Recovery Course	Austin	August 21	HOME	Presentation
Housing Tax Credit Training	Beaumont	August 22	Compliance	Training
South Texas Community Summit	Austin	August 22	Policy & Public Affairs	Presentation
HOME HRA/ Habitat for Humanity of Smith County	Austin	August 22	HOME	Training
Uniform Multifamily Rules and QAP/Compliance Roundtable	Austin	August 26	Compliance, Multifamily Finance	Roundtable Hearing
Disability Advisory Workgroup	Austin	August 28	Housing Resource Center	Participant
First Thursday Income Eligibility Training	McAllen	August 28	Compliance	Training
Disability Advisory Workgroup Meeting	Austin	August 28	Housing Resource Center	Participant
Texas Housing Association Annual Conference	Corpus Christi	August 29	Policy and Public Affairs	Presentation
Housing Tax Credit Program Training	McAllen	August 29	Compliance	Training

Internet Postings of Note, July-August 2013

A list of new or noteworthy documents posted to the Department's Web site

HTC Applicable Percentages and Calculation of Underwriting Rates — *used to determine the allocation amount of tax credits, as defined in Section 42(b) of the Internal Revenue Code:*

www.tdhca.state.tx.us/rea/index.htm#tools

Draft Analysis of Impediments to Fair Housing Choice: Phase 2 — *addressing identified impediments to and the state's role in affirmatively furthering fair housing choice:*

www.tdhca.state.tx.us/housing-center/fair-housing/analysis-impediments-2010-2.htm

My First Texas Home/Texas MCC Program: Lender Program Documents — including TMP 79/MCC Notice to Buyers, Refinancing of MCC Loan Application, and MCC Supplemental Instructions for Completing IRS Form W-4:

www.tdhca.state.tx.us/homeownership/fthb/lender_documentation.htm#mcc

Public Hearings: Phase 2 Analysis of Impediments — providing times and locations for five public hearings to accept comment on State of Texas Plan for Fair Housing Choice: Analysis of Impediments:

www.tdhca.state.tx.us/housing-center/fair-housing/analysis-impediments.htm

2014-2015 Housing Trust Fund Biennial Plan — detailing the Department's plan to administer and expend funds from the Housing Trust Fund:

www.tdhca.state.tx.us/htf/background.htm

Relocation and Environmental Clearance Training for Multifamily Housing Projects — detailing training session for developers to improve understanding of federal requirements, avoid actions that could jeopardize funding:

www.tdhca.state.tx.us/program-services/training.htm

Request for Proposals: Program Administrator for the Single Family Residential Mortgage Loan and Mortgage Credit Certificate Programs — seeking qualified administrator to register new home loans, perform compliance reviews, and maintain program information (links to Comptroller's Web site):

http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=106904

FY2014 Operating Budget — detailing Department funding and fund use by a variety of metrics:

www.tdhca.state.tx.us/finan.htm

Housing and Services for Persons with Disabilities Clearinghouse — providing an interactive resource for people with disabilities, local providers to find community-based affordable housing and services:

www.tdhca.state.tx.us/housing-center/real-choice-clearinghouse.htm

Request for Proposals: Master Servicer for Single Family Mortgage Revenue Bond Program — seeking qualified entity to purchase and pool mortgage loans in association with the Department's Single Family Mortgage Revenue Bond Program (links to Comptroller's Web site):

http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=106973

2013 Competitive Housing Tax Credit Program Application Submission Logs: July 15 — providing updated details on applicants competing in the 2013 9% Housing Tax Credit cycle:

www.tdhca.state.tx.us/multifamily/htc/index.htm

2013 Housing Tax Credit Applicant Request/Award Limits and Estimated Regional Allocation: July 15 — reflecting the estimated Competitive Housing Tax Credit ceiling for allocation during the 2013 cycle:

www.tdhca.state.tx.us/multifamily/applications.htm

2013 CSBG Discretionary NOFA and Application — notifying eligible Community Services Block Grant entities regarding availability of funds, application requirements, eligible activities, award amounts, and review process:

www.tdhca.state.tx.us/community-affairs/csbgnofas.htm

2013 CSBG NOFA Application Questions — to be completed by eligible entities seeking discretionary funds under the Department's Community Services Block Grant Program:

www.tdhca.state.tx.us/community-affairs/csbgnofas.htm

Amy Young Barrier Removal Program Reservation Summary — detailing total funds, funds reserved, and currently available funds under the Housing Trust Fund AYBR Program:

www.tdhca.state.tx.us/htf/single-family/amy-young.htm

2014-2015 Amy Young Barrier Removal Program NOFA — *notifying eligible AYBR entities regarding availability of funds, application requirements, eligible activities, and award amounts:*
www.tdhca.state.tx.us/htf/nofa.htm

Combined Maximum Income and Purchase Price Limits Table — *detailing eligible incomes by household size and MSA or county, home purchase price limits for My First Texas Home, Mortgage Credit Certificate programs:*
www.tdhca.state.tx.us/homeownership/fthb/down-payment-assistance.htm

PY 2013 CSBG Allocation — *detailing specific funding allocations and subrecipients administering funds through the Department's Community Services Block Grant Program for Program Year 2013:*
www.tdhca.state.tx.us/community-affairs/csbg/index.htm

2014 Draft Regional Allocation Formula for Public Comment — *providing access to draft formulas for HOME, Housing Trust Fund and Tax Credit program, as well as details on public hearing regarding RAF methodology:*
www.tdhca.state.tx.us/housing-center/pubs-drafts.htm

2014-2015 Amy Young Barrier Removal Program: Release of Funds — *announcing that \$1.6 million in project funding for the 2014-2015 AYBR Program will be released at 10 am on October 1, 2013:*
www.tdhca.state.tx.us/htf/single-family/amy-young.htm

2013 State of Texas One-Year Action Plan — *reporting on the intended use of funds received from HUD for the CDBG, HOME, ESG, and Housing Opportunities for Persons with AIDS programs:*
www.tdhca.state.tx.us/housing-center/pubs-plans.htm#consolidated

Annual Internal Audit Report for FY 2012 — *reporting on activities of the Department's Internal Audit Division, in addition to outlining the Division's work plan for Fiscal Year 2013:*
www.tdhca.state.tx.us/internal-audit.htm

Accelerating Relocation with Tenant-Based Rental Assistance — *announcing enhanced technical assistance to entities working with the Department to coordinate housing programs serving persons with disabilities:*
www.tdhca.state.tx.us/section-8/project-access/index.htm

Community Services Block Grant Program 2014 Community Action Plan — *including instructions and supporting documents required for submission by CSBG subrecipients detailing use of funds for PY 2014:*
www.tdhca.state.tx.us/community-affairs/csbg/guidance.htm

Housing Contract System Access Request Form — *providing access to the Department's contract system for individuals authorized to execute contracts, certify environmental clearance, enter data, and other functions:*
www.tdhca.state.tx.us/home-division/forms/home_forms_rhd.htm; www.tdhca.state.tx.us/home-division/forms/home_forms_tbra.htm; www.tdhca.state.tx.us/home-division/forms/home_forms_sfd.htm; www.tdhca.state.tx.us/home-division/forms/home_forms_hba.htm; www.tdhca.state.tx.us/home-division/forms/home_forms_hra.htm

2013 4% Housing Tax Credit with TDHCA as Issuer Status Log: August 1, 2013 — *listing applicants seeking non-competitive Housing Tax Credits in conjunction with bond financing with the Department as issuer:*
www.tdhca.state.tx.us/multifamily/bond/index.htm

2013 4% Housing Tax Credit with Local Issuer Status Log: August 1, 2013 — *listing applicants seeking non-competitive Housing Tax Credits in conjunction with bond financing through local housing finance agencies:*
www.tdhca.state.tx.us/multifamily/htc/index.htm

Staff Draft of Compliance Rules — *outlining procedures for compliance monitoring with respect to the Housing Tax Credit, HOME, Tax Exempt Bond, Housing Trust Fund, Neighborhood Stabilization, Tax Credit Assistance, and Tax Credit Exchange programs:*
www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm

2013 Redevelopment Notice of Funding Availability — *extending the application deadline for available financing with respect to a proposed 34-unit rental property in Dickinson:*
www.tdhca.state.tx.us/asset-management/nofa.htm

Notice for Public Hearing: Northcrest Apartments — *providing information to the general public regarding the time, location, and purpose of a hearing regarding a proposed rental property in Big Spring:*
www.tdhca.state.tx.us/multifamily/bond/index.htm

Environmental Review Documents Required for Multifamily Projects — *detailing mandatory formatting and document order requirements for environmental reviews related to multifamily housing developments:*
www.tdhca.state.tx.us/program-services/environmental/index.htm

2013 Draft Weatherization Assistance Program State Plan and Public Hearing — *outlining planned use, funding allocation, and public hearing to accept comment on 2013 WAP activities:*
www.tdhca.state.tx.us/community-affairs/wap/index.htm

HTC Applicable Percentages and Calculation of Underwriting Rates — *used to determine the allocation amount of the credits, as defined in Section 42(b) of the Internal Revenue Code:*
www.tdhca.state.tx.us/rea/index.htm#tools

Notice for Public Hearing: Pine Haven Apartments — *providing information to the general public regarding the time, location, and purpose of a hearing regarding a proposed rental property in Marshall:*
www.tdhca.state.tx.us/multifamily/bond/index.htm

2014 Uniform Multifamily Rules and Qualified Allocation Plan Roundtable — *detailing time and location for stakeholder roundtable discussion regarding Housing Tax Credit Program 2014 QAP, Uniform Multifamily Rules, and Compliance rules:*
www.tdhca.state.tx.us/multifamily/index.htm

2013 Community Services Block Grant Program Eligible Entities — *updating list containing names, contact information, service area, and other details for entities currently administering CSBG funding:*
www.tdhca.state.tx.us/community-affairs/csbfg/index.htm

Draft 2014 Housing Tax Credit Rules, Policies, and Guidance — *providing links to documents detailing application submission requirements, site and development requirements, and general information guiding the 2014 Housing Tax Credit allocation cycle:*
www.tdhca.state.tx.us/multifamily/htc/index.htm

2014 Housing Tax Credit Online Forum — *providing stakeholders the opportunity to submit comment on draft 2014 Housing Tax Credit Program QAP:*
www.tdhca.state.tx.us/multifamily/htc/index.htm

Proposed Community Affairs Compliance Monitoring Rules — *detailing the procedures for compliance monitoring regarding programs administered by the Department's Community Affairs Division:*
www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm

ACTION ITEMS

2

BOARD REPORT ITEM
INTERNAL AUDIT
SEPTEMBER 12, 2013

Report from the Audit Committee Meeting.

REPORT ITEM

Verbal report.

3

ORAL PRESENTATION

4

BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on Issues Relating to Administration of the Section 8 Housing Choice Voucher Program

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (“the Department”) is a Public Housing Authority (“PHA”) as designated 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, the Department administers approximately 870 vouchers and receives approximately \$5.6 million annually in Housing Assistance Payments (“HAP”) and associated administrative funds;

WHEREAS, ongoing budget reductions and sequestration at the federal level have caused increased challenges to PHAs in administering the Section 8 Program and the possibility exists that as PHAs deal with these challenges the Department may identify select opportunities to maximize receipt of HAP, expand the Department’s Section 8 Program and improve the efficiency of program operations;

WHEREAS, the Department is in a position to make decisions relating to reissuance of vouchers, handling of vouchers made vacant through attrition, balancing of HAP obligations, and possible absorption of vouchers from local PHAs, including opportunities at the request of HUD;

WHEREAS, the Section 8 Program is the funding source for the Project Access Program, which enables low-income persons with disabilities to transition out of institutions; and

WHEREAS, the Board desires to take steps to support the ongoing delivery of Section 8 vouchers to eligible clients consistent with Board policy;

Now, therefore, it is hereby

RESOLVED, that the Board will grant staff the authority, for the next 12 months, to utilize funds through Section 8 Program operational savings or other eligible Department administrative funds to serve as a reserve that will maximize the Department’s utilization of HAP and make efforts to achieve a HAP renewal from HUD of 100% of the current level of Department HAP commitment;

FURTHER RESOLVED, that the Department will pursue with HUD the permanent acceptance of HAP to support up to approximately 50 vouchers from the Navasota Housing Authority; and

FURTHER RESOLVED, that staff is authorized to initiate discussions with HUD that may result in future recommendations to the Board for possible absorption of vouchers from smaller local Texas PHAs as identified by HUD.

SUMMARY OF BACKGROUND

As directed by the Board at the June 13, 2013, Board meeting, staff discussed this issue with the Strategic Planning and Budgeting Board Liaison, J. Paul Ozer. This strategic item has been reviewed with him.

The Department is considered, among other things, a PHA, and the Department operates a Section 8 Housing Choice Voucher Program (the "Program"). Recently, several issues have arisen that require the Department to make decisions on the direction of the Program. The overarching decision is whether the Department will support Program growth or, in light of the factors described herein, develop a plan for the Program's contraction and gradual closure. This summary provides: 1) a contextual description of the Program including Project Access (a subset of the Section 8 vouchers), 2) possible decisions that staff believes are appropriately taken up at this time, including background information, and 3) some important considerations and context for possible decisions.

Section 8 Program Description and Project Access

The Section 8 Housing Choice Voucher Program was created by the Housing and Community Development Act of 1974, with the Housing Voucher program authorized in 1987 and the Housing Choice Voucher revisions authorized by the Quality Housing and Work Responsibility Act of 1998. Funds for Section 8 are provided to the Department by the U. S. Department of Housing and Urban Development ("HUD") and provide rental assistance payments on behalf of extremely low and very low income individuals and families, including the elderly and persons with disabilities. The Program provides financial assistance for decent, safe, and sanitary housing to eligible households whose annual gross income does not exceed 50% of HUD's area median income guidelines. HUD requires that 75% of all new households admitted to the program be at or below 30% of the area median income. Eligibility is based on several factors, including the household's income, size and composition, among other things. The household's payment is based on its income, assets, and medical and childcare expenses. Qualified households may select the best available housing through direct negotiations with landlords to obtain accommodations that best meet their specific needs. The Department pays approved rent amounts directly to property owners.

The Program is administered by the Department within its Community Affairs Division, overseen by Michael DeYoung, and the Program is currently managed by Andre Adams. The Program has primarily focused on rural and small metropolitan areas and the Project Access Program. In the past the Program contracted with Local Operators ("LOs") (these are local qualified entities whose role is much like the role of subrecipients in other programs who are units of local governments, community action agencies, and public housing authorities) who

assisted with the local administration of vouchers. In the last several years, in a concerted effort to restructure the Program's budget to be sustainable, all but four of the LO contracts were not renewed. The vouchers formerly administered by those LOs are now administered directly by the Department, which allows the Department to retain all of the administrative funds instead of splitting those fees with the LOs. In total, the Department provides approximately 870 vouchers in 21 counties; in the four remaining LO areas, there are approximately 552 vouchers (Waxahachie has 109, Ennis has 101, Galveston has 185, and Waller has 157). The fee the LOs receive per voucher has recently been reduced and further contraction of the use of LOs and/or their fees is anticipated with contracting funding sources at the federal level. The 2013 projected renewal funding is approximately \$5.6 million for Housing Assistance Payments ("HAP") and \$0.5 million for administrative funds.

Several measures have been taken to make the Department's administration of the Program increasingly efficient: reducing the number of LOs and thereby performing direct client service; making adjustments and improvements to mail and scanning processes; and transitioning fully to a direct deposit method of payment for landlords. Additionally, two FTE positions directly attributable to the Program have been eliminated (through transfers and attrition), with no associated reduction in work and HAP service. At the same time, voucher usage has been at an all-time high, with a current utilization rate of 97.3%, as compared with approximately 60% in 2008. As reported in the recent summary of External Audits, the program area has had positive audit results, including being designated by a HUD Section 8 Management Assessment Program (SEMAP) audit at a score of 100%. The SEMAP assesses whether the Program operates to meet the federal goals and also establishes a system for HUD to measure PHA performance in key Section 8 program areas and to assign performance ratings.

At this time, after the adjustments relating to LO fees and staffing changes, and including a subsidy from the Texas Department of Aging and Disability Services ("DADS") and some use of Community Services Block Grant administrative funds available for this use, the Program is budgeted to operate within its means for FY 2014 and is expected to continue to do so, barring unforeseen changes.

The Program's federal calendar year operates from January 1 to December 31 of each calendar year. Therefore, decision making on this issue is timely in anticipation of the approaching new program year.

Project Access

Project Access ("PA") was originally a pilot program developed by HUD and the U.S. Department of Health and Human Services ("HHS") operated within the Section 8 Housing Choice Voucher Program. The goal of this pilot program was to assist low-income non-elderly persons with disabilities to transition out of institutions into the community by providing access to affordable housing and necessary supportive services. The Department applied for the pilot program and received 35 Section 8 housing vouchers from HUD in 2001. After the expiration of the HUD pilot program in 2003, the Department elected to continue the program in recognition of housing need and expressed public interest and has continued to operate the program since that time with periodic increases in the number of Project Access vouchers. The original 35 vouchers continued to be tracked by HUD as "NED" vouchers (Non-Elderly Disabled). Based on

increased demand, the number of Project Access vouchers administered by the Department has increased over time from the original 35 vouchers to an authorized 140 vouchers in 2013. A federal Money Follows the Person (“MFP”) grant administered by DADS enables the leveraging of funds by assisting with administration of the Project Access vouchers. Project Access helps the persons it serves to avoid unnecessary segregation and receive disabilities related services in the most integrated setting appropriate to their needs.

Of the 140 vouchers authorized by the Department’s PHA Plan submitted to HUD, roughly 70 of those are actually being utilized due to lack of HAP availability. A waiting list currently exists for the PA vouchers.

Unlike the other Section 8 vouchers, the PA voucher recipients (in searching for supportive services) often relocate to an area where another Housing Authority exists. In some cases the housing authority agrees to “absorb” or accept the voucher holder into their program as a traditional voucher holder and that releases our PA voucher to be used by another recipient meeting PA requirements. In other instances, the local housing authority may choose to not absorb the voucher holder into their program but nonetheless continues to help locally administer that voucher for the Department; the Department shares some of its administrative funds with the local PHA and separately pays the housing assistance on behalf of the voucher holder.

Decisions and Background of the Issues

Funding from HUD for the Program has become more limited in recent years. These funding cuts apply to both the Housing Assistance Payments (“HAP”) portion of the funds, which are those funds that are used to cover the rents and utility allowances for voucher holders, and to the administrative funds available. With recent federal sequestration the reduction in funds has been exacerbated; because HUD has tried to reduce the impact of budget cuts to actual households using the vouchers, it has disproportionately passed the required reductions along in the form of a reduction in the administrative portion of funds. In spite of these reductions to administrative funds, agency staff has been able, after significant effort and operational changes, to adjust the Program’s operating budget to support itself while remaining within the funding limitations. One example of this is the significant reduction in the number of Local Operators (“LOs”) being used to administer the program. LOs receive a fee for each voucher they administer for performing a portion of the work associated with the voucher. Therefore LO administered vouchers are more costly to operate because administrative fees passed on to the LO are lost to the Department, while some of the work is still handled by the Department. There are now four remaining LOs that assist in implementing the program by conducting Housing Quality Standards (“HQS”) Inspections and processing relocation contracts. Approximately 36% of the vouchers are now directly administered by program staff.

Due to sequestration and declining budgets, the Department needs to develop a clear strategy for the future administration of the Program. In the past, the annual HAP budget was developed according to a HUD Annual Contributions Contract (“ACC”). PHAs received 1/12th of that contract amount in monthly installments. PHAs were allowed to disburse HAP payments at 95% to 105% of their approved budget amount. The reason for this range is that with tenant turnover in units, landlord rent adjustments, and family size changes, it is nearly impossible to predict the amount of HAP that will be used. The range allows some flexibility to ensure budgeted HAP can be maximized. Because of this variability it is not uncommon for a PHA to exceed their

budgeted HAP within the permitted tolerances. A HUD created reserve account was utilized to accommodate these excess. The HAP award amount is adjusted every three months.

Over the past several years, HUD's appropriation was not fully funded by Congress. Consequently, PHAs have not been fully funded according to ACC. HUD used a formula to reduce the HAP budget across the board. A PHA must have between 100% and 105% of HAP utilized to be renewed at the original stated award amount. When a PHA did not fully utilize its budget, the renewed HAP in the future is reduced. The 2013 Act also requires that HUD establish a new baseline for HAP funding eligibility based on actual HAP expenditures in the prior year. This process is commonly referred to as re-benchmarking. Funding for CY 2013 is pro-rated at 93.976 percent of eligibility. If we wanted full renewal of HAP we would not have the flexibility to fall below 100%; this effectively means that we would need to be prepared to exceed 100% (by a minimal amount) to minimize our HAP reduction. In essence, if we do not hit 100% utilization, our program will shrink at an accelerated rate through ongoing annual reductions in HAP, gradually eliminating the Program funding through attrition and having to freeze voucher re-issuances due to the lowering HAP levels. We anticipate that this would take approximately ten to twelve years if no additional action were taken. As these vouchers were lost to attrition, the HAP associated with those vouchers would be reabsorbed by HUD and redistributed elsewhere in the country, with no assurance of their use in Texas.

Further exacerbating this challenge is the fact that the Program's reserve amount has now been quite significantly depleted at HUD's directive. Therefore, it is likely that a small amount of an additional funding source would be required to support the effort to maintain constant voucher funding. As would be expected, as our HAP would be reduced over time, the administrative funds we receive would go down and the internal staffing of the program would also contract.

HUD has also provided suggestions to all PHAs on ways to attempt to reduce administrative costs. The Department has implemented as many of these as possible. The Department has gotten feedback from HUD that the Department's circumstances did not support additional reduction. There are several options remaining to reduce or mitigate administrative costs as well, which we could pursue depending on the future direction of the Program.

Related to the HAP payments, HUD has recommended that the Department reduce the number of issued vouchers to make sure we do not exceed our current HAP, particularly in light of a very small Department reserve account (this is a HUD determined reserve account solely for Section 8). Currently, the Program has approximately 870 vouchers in use (with an estimated monthly HAP budget of \$466,000). HUD discussed that our approach at this time should be to: 1) reduce our number of vouchers since we no longer have a reserve account balance that will support a greater number of vouchers, and 2) determine our goal for our number of vouchers. While HUD did not make a firm recommendation, they did say the least risky option would be if we reduced down to approximately 830 vouchers, which we are concerned, would reduce our HAP monthly budget authority to approximately \$440,200 (this would also freeze our ability to assist clients and would prompt a subsequent HAP reduction). After discussion internally between Financial Administration and Program Staff, our goal at this time is to reach between 840 and 850 vouchers which would put us at roughly \$464,000 in monthly HAP budget authority. This will be achieved through attrition primarily and absorption of "ported" vouchers to other PHAs. A ported voucher is a voucher that falls under the jurisdiction of another PHA and for which we have requested, as required by HUD, their administration of the voucher. This will bring us low

enough to not exceed HAP, but not so low as to freeze the program for an extended period of time. It would still prompt a subsequent HAP reduction.

Another factor to take into consideration is that HUD's Fort Worth Office of Public and Indian Housing (that oversees our Section 8 Program) has indicated to Department staff, in several settings, that it is encouraging many of the smaller rural PHAs in Texas to close or merge and hopes that the Department will absorb the housing choice vouchers currently allotted to those PHAs. TDHCA, as the only PHA with statewide jurisdiction, is the logical choice to HUD for this consolidation. There is currently no other statewide PHA that would be able to absorb those vouchers. The Department is not statutorily directed to be a PHA or operate a voucher program; however, tenant based vouchers are an activity supported by the Department, as shown through its programming of vouchers with other sources (HOME currently and Housing Trust Fund in the past). The Department has no statutory responsibility to assist HUD in downsizing its number of PHAs, and in essence HUD would be placing vouchers that small local PHAs find inefficient to operate with the Department while in some cases those vouchers will continue to be inefficient to administer.

The vouchers from these smaller PHAs are similar to the Program's existing vouchers in that they are geographically dispersed, more than half in rural areas. Some vouchers may be efficient to take on – such as Navasota – which is geographically located near many of our other vouchers. However, others may be less efficient to administer due to their geographic distance when not near other existing vouchers. Geographic proximity is critically important because the Department must send staff to inspect units receiving HAP. One benefit of taking on additional vouchers is that through vacant vouchers at the time of transfer, or through attrition, new vouchers received can be utilized under our PHA Plan and therefore would be able to be allocated to Project Access.

While the requests of Fort Worth HUD to date have been general, at this time the Navasota Housing Authority and the Houston HUD Office of Public and Indian Housing (the HUD office with oversight of the Navasota HA) have requested that TDHCA take on all of the Navasota vouchers; of the 50 vouchers contemplated, approximately 15 are occupied and the remaining 35 are vacant. Interestingly, this is roughly the number of vouchers TDHCA would need to maintain equilibrium and not require freezing the program, but instead have the ability to reissue vouchers to Project Access when they are vacated. It should be noted that whether for Navasota, or for other PHA voucher absorption, the vouchers as vacated by current tenants, will fall under the Department's HUD approved PHA Plan, which has a preference for the PA Program; this means that until the 140 PA voucher preference is achieved, all vacated vouchers will go toward the PA Program, and not necessarily remain in the geographic area where they originated.

Decisions

There are several decisions that need to be made, that should consistently address the short and long term plan of the Department or the Program.

- 1) Should the Board authorize, for the next 12 months, staff to have the authority to utilize funds through Section 8 operational savings or other eligible Department administrative

funds to serve as a reserve that will maximize the Department's utilization of HAP and make efforts to achieve a HAP renewal from HUD of 100% of our current HAP commitment?

- 2) Should the Department agree to accept and permanently take on the approximately 50 Navasota Housing Authority vouchers?
- 3) Is staff authorized to begin discussions with HUD relating to the possible absorption of vouchers from smaller local PHAs selected by HUD? Staff would use the board action only to proceed with discussions with HUD, with known Board support of the concept, but would still return to the Board for action on any specific absorption recommendations. The discussions with HUD would let the Department identify those circumstances where absorption may be a reasonable step for us because it may have minimal administrative burden on the Department (*i.e.*, vouchers geographically located near existing Department administered vouchers) or where absorption would be very challenging to administer (far reaching geographic areas where we have minimal existing vouchers).
- 4) If #1 above is not authorized and a gradual reduction in HAP is therefore anticipated to occur, are there any other steps the Board desires to take to accelerate this reduction in Department vouchers, such as pursuing the release of LO area vouchers to the LOs, or staff being directed to freeze any new issuances so that a 10.4% attrition rate is maximized?

Long Term Decisions and Considerations

Taken as a whole, all of the questions above ultimately provide the policy direction of whether to maintain and/or grow its voucher program through striving to achieve 100% of HAP authority and through acceptance of vouchers from smaller Texas PHAs – or whether to consciously contract the Program anticipating its ultimate elimination over time. In addition to the varied considerations provided above, several others exist as well.

Serving Persons with Disabilities. Contraction of the Program would gradually eliminate the Project Access program, making the transition of persons with disabilities out of institutions more difficult.

HUD Desires Program Expansion. With increasingly limited federal funds TDHCA is in a positive position with HUD's support to maintain or grow this program.

Cost Savings. It is not anticipated that any cost savings that would be created through the elimination of the Program could be retained for other uses by the Department. The Program uses its administrative funds to support itself – as vouchers decrease, the amount of admin funds will decrease proportionally.

Rider 5, General Appropriation Act. The Department currently uses the Section 8 Program expenditures as one of its means for achieving its Rider 5 requirement. Rider 5 under the Department's bill pattern in the General Appropriations Act requires that the Department adopt

an annual goal to apply no less than \$30,000,000 of the funds available from the Housing Trust Fund, HOME Program, Section 8 Program, and Housing Tax Credit Program's total housing funds toward housing assistance for individuals and families earning less than 30% of the Area Median Family Income. The Section 8 program contributes approximately \$5 million per year to achieving that goal.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on Awards of Competitive 9% Low Income Housing Tax Credits from the Waiting List for the 2013 Housing Tax Credit Application Round

RECOMMENDED ACTION

WHEREAS, the Board approved 64 final commitments for allocations of Competitive (9%) Housing Tax Credits in accordance with the qualified allocation plan on July 25, 2013; and

WHEREAS, the Board further approved the establishment of a Waiting List of eligible applications ranked by score in descending order of priority based on set-aside categories and regional allocation requirements of the Qualified Allocation Plan concurrent with the initial issuance of commitments for Competitive Housing Tax Credits;

WHEREAS, applications are funded from the Waiting List as the amount of available credit becomes sufficient to award the next application on the Waiting List;

WHEREAS, the total balance of credits available to award has reached \$1,353,977 and Homestead Apartments (#13109) located in Urban Region 7 is the next application on the Waiting List with a request of \$1,252,000;

NOW, therefore, it is hereby

RESOLVED, the Application for Homestead Apartments (#13109) is recommended for an award and Final Commitment of \$1,252,000 in Housing Tax Credits from the 2013 State Housing Credit Ceiling conditioned upon completion of the conditions of the underwriting report, any necessary program and underwriting reviews, and any other special conditions that the Board may consider appropriate; and

FURTHER RESOLVED, that should sufficient credits become available to award any other applications from the Waiting List, the Board hereby directs an award or awards to additional application(s) from the Waiting List in accordance with the ranking, methodology, and other requirements set forth in Department

rules, and hereby directs and authorizes the Executive Director to implement and carry out the award of such credits in full compliance with the requirements of the Department's rules and requirements to fully utilize all available tax credits prior to January 1, 2014 and report such awards to the Board at the next available meeting subsequent to such awards.

BACKGROUND

The initial issuance of commitments of Competitive Housing Tax Credit was approved at the July 25, 2013 meeting, and at that meeting the board also approved the Waiting List, which is composed of all Applications that were not approved by the Board for a commitment of 2013 Housing Tax Credits and that have not been terminated by the Department or withdrawn by the Applicant. The Board further approved that the list of Applications accepted as the Waiting List be "ranked by score in descending order of priority" and subject to the same allocation process as set out in §11.6 of the Qualified Allocation Plan (QAP).

Applications were approved to be awarded from the waiting list using the following methodology, which is also set out in §11.6 of the QAP:

- If tax credits are returned from the Nonprofit Set-Aside, and the return of tax credits causes the Department to achieve less than the required 10% Set-Aside, the next highest scoring Qualified Nonprofit Development will be recommended for a commitment to the Board, regardless of the region in which it is located. If tax credits are returned from the Nonprofit Set-Aside, and the return of tax credits does not cause the Department to go below the required 10% Set-Aside, then the next highest scoring Application in the sub-region of the returned tax credits will be recommended for a commitment to the Board, regardless of Set-Aside. If no other Application exists in the sub-region or if the amount of the credit return is not sufficient to fund the next highest scoring Application in the sub-region of the returned credits, then the credits will go to the statewide collapse and fund the next eligible Application from the Waiting List.
- If tax credits are returned from the USDA Set-Aside, the next highest scoring USDA Application from the Waiting List will be recommended to the Board for a commitment. If there are no eligible USDA Applications available, then the next highest scoring At-Risk Application will be recommended for a commitment to the Board. If there are no eligible At-Risk Applications available, then the remaining ceiling will be added to the statewide collapse pool. Staff's recommendations provide for all eligible and active USDA and At-Risk Applications receiving awards, therefore any amounts returned from the USDA Set-Aside will go to the statewide collapse and fund the next eligible Application from the Waiting List.
- If tax credits are returned from the At-Risk Set-Aside and the return of tax credits causes the Department to achieve less than the required 15 percent At-Risk Set-Aside, the next highest scoring At-Risk Application from the Waiting List will be recommended for a commitment to the Board. If there are no eligible applications available in the At-Risk Set-Aside, then the remaining ceiling will be added to the statewide collapse pool. Staff's recommendations provide for all eligible and active At-Risk Applications receiving

awards, therefore any amounts returned from the At-Risk Set-Aside will go to the statewide collapse and fund the next eligible Application from the Waiting List.

- For all other Applications, if tax credits are returned from an Application not associated with any set-aside, the next highest scoring Application from that sub-region's waiting list will be recommended for a commitment to the Board. If no other Application exists in the sub-region or if the amount of the credit return is not sufficient to fund the next highest scoring Application in the sub-region of the returned credits, then the credits will go to the statewide collapse and fund the next eligible Application from the Waiting List.

At the July meeting, the Board approved awards for 64 applications and a total of \$57,863,635 in tax credits. This left approximately \$1,241,163 in remaining credits available from the total \$59,104,798 2013 ceiling. The Real Estate Analysis division has since completed underwriting reviews for all but two of these applications, resulting in \$112,814 in additional available tax credits from previously awarded applications and a total of \$1,353,977 now available. Staff determined that this balance is sufficient to award the first application on the Waiting List, Homestead Apartments (#13109). Homestead Apartments is a New Construction Development to be located in Austin, Texas, Urban Region 7, and the Applicant requested \$1,252,000 in Annual Housing Tax Credits. An underwriting report for Homestead has been completed and the Real Estate Analysis Division is also recommending \$1,252,000 in tax credits. Staff recommends approval of this award and the issuance of a Final Commitment.

As of this Board meeting, and with approval of the additional award to Homestead Apartments, there is an estimated \$101,977 in credit remaining. The state may receive additional credits to allocate prior to the end of the calendar year from the National Pool or from credit returned from previously awarded applicants. However, any additional allocations of credits must be made before January 1, 2014 and staff anticipates the possibility that the timing of upcoming Board meetings may present obstacles in the awarding of any additional applications from the Waiting List. Therefore, staff requests that the Board direct and authorize the Executive Director to implement the award of such credits, in full compliance with the requirements of the Department's rules and this Board action, to fully utilize all available tax credits prior to December 31, 2013. Staff also recommends that a report of such awards be made to the Board with an explanation of the selection of any particular application from the Waiting List.

An updated list of previously awarded applications and the amounts of those awards as well as the recommended award from the Waiting List is included here along with a list of Applications remaining on the Waiting List. All applications on the Waiting List not yet reviewed by the Multifamily Finance or Real Estate Analysis divisions must still be found to meet the applicable rules and requirements. Credit amounts and conditions are subject to change based on underwriting and underwriting appeals. Awards from the Waiting List remain subject to a previous participation review by the Compliance Division to ensure no issues of Material Noncompliance or delinquencies exist. In the event that the credit amount returned is insufficient

to fund the next appropriate application, staff may wait to determine if other return credits would make the application whole or offer the applicant an opportunity to adjust the size of their development. If the applicant declines the offer, staff will contact the next appropriate applicant on the Waiting List, continuing in this manner until the Waiting List is exhausted. Staff will also review to ensure that no awards from the Waiting List would cause a violation of any sections of the 2013 QAP (for example, the \$3 million credit limitation, the concentration rules, etc.).



Texas Department of Housing and Community Affairs
2013 Competitive (9%) Housing Tax Credit (HTC) Program
Award Recommendations

The Application log is organized by region and subregion. Applicants selecting the At-Risk/USDA Set-Asides are listed first and are organized by score rather than by region. Detailed instructions regarding how to interpret the information presented here is included in previously posted logs on the Department's website.

Version date: September 5, 2013

Application Number	Development Name	Development Address	City	Zip Code	County	Region	Urban/Rural	At-Risk Set-Aside	USDA Set-Aside	Nonprofit Set-Aside	Construction Type	Low Income Units	Market Rate Units	Total Units	Target Population	HTC Request or Recommend.*	REA review complete*	Applicant Contact	Second Contact	Review Status: C = complete; UR = under review; N = not reviewed										Basic Demographic Information for Census Tract		
																				(1) Points Requested / Awarded	(2) Adjustments (CRP / deductions)	(3) Development Cost/Ft	(4) Senator/Rep letters	(5) QCP	(6) Other than QCP	Total Possible Score	Review Status	Status of Commitment	Census Tract	Quartile of Median HH Income	Poverty Rate	
At-Risk Set-Aside																																
13004	Stone Creek Apartments	400 Pine Burr	Kilgore	75662	Gregg	4	Rural	X	X		Acq/Rhb	56	0	56	General	\$290,711	X	James W. Fieser	Melissa Baughman	107	10	12	10	4	143	C	Commitment Issued	48183010600	1st Q	10.0%		
13207	Pecan Creek Village	205 Riverview Dr	Lampasas	76550	Lampasas	8	Rural	X	X		Acq/Rhb	40	0	40	Elderly	\$327,223	X	Dennis Hoover	Kim Youngquist	101	10	12	10	4	137	C	Commitment Issued	48281950400	4th Q	23.4%		
13212	Prairie Village	1915 N Wharton St	El Campo	77437	Wharton	6	Rural	X			Acq/Rhb	37	1	38	Elderly	\$332,500	X	Matt Rule	Suzann Cunningham	101	8	12	14	0	135	C	Commitment Issued	48481740800	2nd Q	19.0%		
13252	Oak Creek Village	2324 Wilson St	Austin	78704	Travis	7	Urban	X			NC	173	0	173	General	\$2,000,000	X	Rene Campos	Mark Rogers	98	10	12	14	0	134	C	Commitment Issued	48453001305	3rd Q	26.7%		
13119	Emma Finke Villas	1101 E Kennedy St	Beeville	78102	Bee	10	Rural	X	X	X	Rehab	76	0	76	General	\$391,709	X	Adrian Iglesias	Viola Salazar	100	8	12	10	4	134	C	Commitment Issued	48025950300	3rd Q	15.6%		
13003	Crossing at Oak Grove	200 Daniels Dr	Kerens	75144	Navarro	3	Rural	X	X		Acq/Rhb	32	0	32	General	\$226,432	X	James W. Fieser	Melissa Baughman	99	8	12	10	4	133	C	Commitment Issued	48349970600	4th Q	17.4%		
13048	Shepherd Seniors Apartments	1791 S Byrd Ave	Shepherd	77371	San Jacinto	5	Rural	X	X		Acq/Rhb	32	0	32	Elderly	\$186,676	X	Shepherd Seniors Housing, Ltd.	James E. Washburn	99	-1	8	12	10	4	132	C	Commitment Issued	48407200101	3rd Q	22.5%	
13234	Wynnewood Family Housing	Appr 2048 S Zang Boulevard	Dallas	75224	Dallas	3	Urban	X	X		NC	160	0	160	General	\$2,000,000	X	Brian L. Roop	Tamea A. Dula	96	8	12	10	4	130	C	Commitment Issued	48113006200	3rd Q	24.1%		
13047	GardenWalk of La Grange, Schulenburg, and Weimar	1018 N Madison, 104 Simpson, 303 N Smith Weimar	La Grange, Schulenburg, Weimar	78945, 78956, 78962	Fayette, Fayette, Colorado		Rural	X	X		Acq/Rhb	40	0	40	General	\$297,029	X	Shawn Smith	Corey Farmer	92	10	12	10	4	128	C	Commitment Issued					
13006	Country Place Apartments	1300 Courtland Road	Atlanta	75551	Cass	4	Rural	X	X		Acq/Rhb	72	0	72	General	\$456,288	X	Marlon Sullivan	Winston Sullivan	94	-3	10	12	10	4	127	C	Commitment Issued	48067950400	4th Q	26.6%	
13089	Pinewood Park	120 Kirksey Dr	Lufkin	75904	Angelina	5	Rural	X	X		Acq/Rhb	94	0	94	General	\$860,855	X	Tracy Ambridge	Tamea Dula	89	8	12	14	0	123	C	Commitment Issued	48005000500	4th Q	36.7%		
13007	Spring Creek Apartments	305 Hwy 8 N	Linden	75563	Cass	4	Rural	X	X		Acq/Rhb	24	0	24	General	\$190,179	X	Marlon Sullivan	Winston Sullivan	93	-8	10	12	10	4	121	C	Commitment Issued	48067950600	3rd Q	18.4%	
13001	Sunset Place Apartments	100 Sunset	Malakoff	75148	Henderson	4	Rural	X	X		Acq/Rhb	36	0	36	General	\$240,606	X	James W. Fieser	Melissa Baughman	87	-1	8	12	10	4	120	C	Commitment Issued	48213951000	4th Q	18.2%	
13232	Pine Lake Estates	2012 Durst St	Nacogdoches	75964	Nacogdoches	5	Rural	X			Acq/Rhb	100	0	100	Elderly	\$714,418	X	Rick J. Devoe	Juli Gonzalez	85	8	12	10	4	119	C	Commitment Issued	48347950700	4th Q	50.7%		
13069	Grand Manor Apartments	2700 N Grand Ave	Tyler	75702	Smith	4	Urban	X			Acq/Rhb	120	0	120	General	\$1,194,270	X	Melissa Adami	Dewey Stevens	88	8	0	14	0	110	C	Commitment Issued	48423000201	4th Q	33.9%		
Estimated Amount Available to Allocate		\$8,800,591												Total HTCs Awarded		\$9,708,896																
Amount Available in USDA Set-Aside		\$2,937,270																														
Region 1 / Rural																																
13245	The Reserves at Sawgrass	SEQ of Navajo Rd & Laguna Dr	Pampa	79065	Gray	1	Rural				NC	38	10	48	General	\$525,830	X	Brett Johnson	Matt Gillam	110	-1	10	0	10	4	133	C	Commitment Issued	48179950300	1st Q	5.2%	
13139	Stonebridge of Plainview	NEC of Mesa Dr & 16th St	Plainview	79072	Hale	1	Rural				NC	53	27	80	General	\$647,000	X	Victoria W. Spicer	Dru Childre	108	10	0	10	4	132	C	Commitment Issued	48189950300	1st Q	5.3%		
Estimated Amount Available to Allocate		\$656,943												Total HTCs Awarded		\$1,172,830																
Region 1 / Urban																																
13247	The Reserves at South Plains	SE Corner of Ave U & 98th St Lubbock	Lubbock	79423	Lubbock	1	Urban				NC	83	25	108	General	\$1,101,991	X	Brett Johnson	Matt Gillam	105	10	12	10	4	141	C	Commitment Issued	48303010511	1st Q	6.7%		
Estimated Amount Available to Allocate		\$1,149,932												Total HTCs Awarded		\$1,101,991																
Region 2 / Rural																																
13128	Winchester Arms Apartments	SWC of W Summit Ave & State Hwy 16	Comanche	79118	Comanche	2	Rural				NC	38	10	48	General	\$434,000	X	Justin Zimmerman	Ben Mitchell	112	10	12	10	4	148	C	Commitment Issued	48093950200	2nd Q	16.8%		
Estimated Amount Available to Allocate		\$511,612												Total HTCs Awarded		\$434,000																
Region 2 / Urban																																
13246	The Reserves at Maplewood	S side of N Regent Dr, E of McNiel Ave	Wichita Falls	76308	Wichita	2	Urban				NC	36	0	36	General	\$571,912	X	Brett Johnson	Matt Gillam	96	10	12	10	4	132	C	Commitment Issued	48485012600	2nd Q	8.7%		
Estimated Amount Available to Allocate		\$601,283												Total HTCs Awarded		\$571,912																
Region 3 / Rural																																
13115	Abbingdon Meadows	SWC of Hall Cemetery Rd & S Collins Freeway	Howe	75459	Grayson	3	Rural				NC	39	25	64	General	\$500,000	X	William J. Rea, Jr.	Sean Brady	118	10	12	10	4	154	C	Commitment Issued	48181001801	1st Q	11.3%		
Estimated Amount Available to Allocate		\$544,496												Total HTCs Awarded		\$500,000																

Application Number	Development Name	Development Address	City	Zip Code	County	Region	Urban/Rural	At-Risk Set-Aside	USDA Set-Aside	Nonprofit Set-Aside	Construction Type	Low Income Units	Market Rate Units	Total Units	Target Population	HTC Request or Recommend.*	REA review complete*	Applicant Contact	Second Contact	(1) Points Requested / Awarded	(2) Adjustments (CRP / Deductions)	(3) Development Cost/Ft	(4) Senator/Rep letters	(5) QCP	(6) Other than QCP	Total Possible Score	Review Status	Status of Commitment	Census Tract	Quartile of Median HH Income	Poverty Rate	
Region 3 / Urban																																
13152	KIRON at Aubrey	5700 Hwy 377 S	Aubrey	76227	Denton	3	Urban				NC	100	50	150	General	\$1,238,416	X	Thomas Huth	Dru Childre	113	10	12	10	4	149	C	Commitment Issued	48121020103	2nd Q	7.4%		
13240	Summit Place	SW Corner of Merit Dr & Hwy 635	Dallas	75251	Dallas	3	Urban				NC	75	23	98	General	\$1,487,000	X	Lisa Stephens	Mitchell Friedman	109	10	12	10	4	145	C	Commitment Issued	48113013200	1st Q	8.3%		
13214	Flora Street Lofts	2121 Flora	Dallas	75201	Dallas	3	Urban				NC	39	8	47	General	\$500,000		Graham Green	Ben Reavis	108	10	12	14	0	144	C	Commitment Issued	48113002100	1st Q	4.6%		
13259	The Millennium - McKinney	NEQ of McKinney Ranch Prky & Stacy Rd	McKinney	75070	Collin	3	Urban				NC	130	34	164	General	\$1,500,000	X	Brandon Bolin	Alan McDonald	108	10	12	10	4	144	C	Commitment Issued	48085030513	1st Q	12.3%		
13102	Reserve at McAlister	N of McAlister Rd & E of Hemphill St	Fort Worth	76028	Tarrant	3	Urban				NC	112	12	124	Elderly	\$1,238,974	X	Chris Applequist	Brian M. McGeedy	107	10	12	10	4	143	C	Commitment Issued	48439111016	1st Q	1.9%		
13058	Evergreen at Hebron Senior Community	2200 Block of Parker Road	Hebron	75010	Denton	3	Urban		X		NC	136	0	136	Elderly	\$1,500,000	X	Brad Forslund	Becky Villanueva	106	10	12	10	4	142	C	Commitment Issued	48121021625	1st Q	0.4%		
13145	Mariposa at Elk Drive	Appr 100 block Elk Dr, NWQ Elk Dr & SE John Jones Dr	Burleson	78676	Johnson	3	Urban				NC	117	63	180	Elderly	\$1,395,438	X	Stuart Shaw	Casey Bump	106	10	12	10	4	142	C	Commitment Issued	48251130215	1st Q	1.1%		
13044	Villas of Vanston Park	4540 Gus Thomasson Road	Mesquite	75150	Dallas	3	Urban				NC	113	47	160	General	\$1,500,000	X	Joseph Agumadu	Vanessa Hardy	106	10	12	14	0	142	C	Commitment Issued	48113018001	3rd Q	12.3%		
Estimated Amount Available to Allocate		\$10,479,003												Total HTCs Awarded	\$10,359,828																	
Region 4 / Rural																																
13173	Canton Village Homes	SW intersection of IH-20 & Edgewood Rd (aka FM 859)	Canton	75103	Van Zandt	4	Rural				NC	65	15	80	General	\$619,000	X	Doak Brown	Leslie Holleman	116	10	12	10	4	152	C	Commitment Issued	48467950600	1st Q	14.0%		
13032	StoneLeaf at Eustace	320 FM 316	Eustace	75124	Henderson	4	Rural				NC	45	4	49	General	\$626,888	X	Victoria Sugrue	Ben Dempsey	114	10	12	10	4	150	C	Commitment Issued	48213950500	1st Q	12.1%		
Estimated Amount Available to Allocate		\$1,274,924												Total HTCs Awarded	\$1,245,888																	
Region 4 / Urban																																
13242	Saige Meadows	SEQ of Hwy 69 & Experimental Station Rd/James Fair Pkwy	Tyler	75706	Gregg	4	Urban				NC	82	10	92	General	\$1,163,876	X	Lisa Stephens	Michael Wohl	100	8	12	10	4	134	C	Commitment Issued	48423001601	4th Q	29.8%		
Estimated Amount Available to Allocate		\$1,182,302												Total HTCs Awarded	\$1,163,876																	
Region 5 / Rural																																
13005	Tower Village	Tower Rd & Park St	Nacogdoches	75961	Nacogdoches	5	Rural				NC	36	0	36	General	\$805,000	X	Mark Musemeche	Ofelia Elizondo	100	-1	8	12	10	4	133	C	Commitment Issued	48347951000	4th Q	34.9%	
Estimated Amount Available to Allocate		\$867,188												Total HTCs Awarded	\$805,000																	
Region 5 / Urban																																
13203	Providence on Major	SWQ of N Major Dr & Westfield, Appr 3900 N Major Dr	Beaumont	77713	Jefferson	5	Urban				NC	108	20	128	Elderly	\$1,245,259	X	Miranda Ashline	Tamea Dula	100	10	12	10	4	136	C	Commitment Issued	48245000307	1st Q	12.0%		
Estimated Amount Available to Allocate		\$842,972												Total HTCs Awarded	\$1,245,259																	
Region 6 / Rural																																
13183	Newport Village	SWQ of S Diamondhead Blvd & N Main St (FM 2100)	Crosby	77532	Harris	6	Rural				NC	80	0	80	General	\$750,000	X	Justin Hartz	Chris Dischinger	113	10	12	10	4	149	C	Commitment Issued	48201251902	1st Q	4.9%		
Estimated Amount Available to Allocate		\$500,000												Total HTCs Awarded	\$750,000																	
Region 6 / Urban																																
13026	The Huntington at Sienna Plantation	4200 block Trammel Fresno Road	Missouri City	77459	Fort Bend	6	Urban				NC	105	27	132	Elderly	\$1,300,000	X	Mark Musemeche	Ofelia Elizondo	104	10	12	10	4	140	C	Commitment Issued	48157674501	1st Q	4.2%		
13062	The Retreat at Westlock	W side of 24000 block of SH 249, just S of Westlock	Houston ETJ	77377	Harris	6	Urban				NC	99	41	140	Elderly	\$1,260,904	X	Marcialete Voller	Ann Duggin	103	10	12	10	4	139	C	Commitment Issued	48201555502	1st Q	4.7%		
13042	The Cottages at South Acres	E side of the Appr 11300 block of Scott St	Houston	77047	Harris	6	Urban				NC	102	42	144	General	\$1,425,351	X	Marcy H. Voller	Ann Duggin	102	10	12	14	0	138	C	Commitment Issued	48201331500	4th Q	23.3%		
13110	El Dorado Green Apartments	Appr 240 W El Dorado Blvd	Houston	77546	Harris	6	Urban				NC	88	20	108	Elderly	\$1,364,364	X	Gary Brinkley	Donna Rickenbacker	105	10	12	10	0	137	C	Commitment Issued	48201350601	1st Q	1.6%		
13144	Mariposa at Pecan Park	Approx the 3600 block of Canada 0.2 miles N of W Fairmont Pkwy	La Porte	77571	Harris	6	Urban				NC	120	60	180	Elderly	\$1,405,352	X	Stuart Shaw	Casey Bump	101	8	12	10	4	135	C	Commitment Issued	48201343000	2nd Q	11.5%		
13151	Lafayette Plaza	Appr NEC of Clarewood Dr & Bonhomme Rd	Houston	77036	Harris	6	Urban				NC	98	24	122	Elderly	\$1,428,022	X	William D. Henson	Cheryl L. Henson	102	8	12	10	2	134	C	Commitment Issued	48201432802	4th Q	29.6%		
13117	Red Bluff Apartment Homes	NEC of Strawberry Rd & Genoa Red Bluff Rd	Houston	77034	Harris	6	Urban				NC	50	22	72	General	\$613,361	X	Adrian Iglesias	Rick J. Deyoe	107	10	0	10	4	131	C	Commitment Issued	48201324000	1st Q	6.8%		
Estimated Amount Available to Allocate		\$9,414,495												Total HTCs Awarded	\$8,797,354																	
Region 7 / Rural																																
13201	The Trails at Carmel Creek	West of FM 685, S of Carl Stern Dr extension	Hutto	78634	Williamson	7	Rural				NC	50	11	61	Elderly	\$500,000	X	Janine Sisak	Teresa Bowyer	112	10	12	10	4	148	C	Commitment Issued	48491020804	1st Q	6.3%		
Estimated Amount Available to Allocate		\$500,000												Total HTCs Awarded	\$500,000																	
Region 7 / Urban																																
13112	Liberty Trails Townhomes	Appr 95 acres; NEC of Hwy 29 & Hwy 1869	Liberty Hill	78642	Williamson	7	Urban				NC	75	25	100	General	\$1,090,000	X	Jorge A. Aguirre	Donna Rickenbacker	109	10	12	10	4	145	C	Commitment Issued	48491020202	1st Q	7.6%		
13071	Windy Ridge Apartments	10910 Ranch Rd 620	Austin	78726	Travis	7	Urban				NC	120	0	120	General	\$1,080,918	X	Adrian Iglesias	Rick Deyoe	108	10	12	10	4	144	C	Commitment Issued	48453001765	1st Q	6.2%		
13109	Homestead Apartments	3226 W Slaughter Lane	Austin	78748	Travis	7	Urban		X		NC	126	14	140	General	\$1,252,000	X	Walter Moreau	Jennifer Hicks	105	10	12	10	4	141	C	Recommended	48453001746	2nd Q	5.2%		
Estimated Amount Available to Allocate		\$3,362,682												Total HTCs Awarded	\$3,422,918																	
Region 8 / Rural																																
13033	StoneLeaf at Fairfield	113 W Reunion St	Fairfield	75840	Freestone	8	Rural				NC	45	4	49	General	\$500,000	X	Victoria Sugrue	Ben Dempsey	116	10	12	10	4	152	C	Commitment Issued	48161000200	1st Q	8.1%		
Estimated Amount Available to Allocate		\$543,746												Total HTCs Awarded	\$500,000																	

Application Number	Development Name	Development Address	City	Zip Code	County	Region	Urban/Rural	At-Risk Set-Aside	USDA Set-Aside	Nonprofit Set-Aside	Construction Type	Low Income Units	Market Rate Units	Total Units	Target Population	HTC Request or Recommend.*	REA review complete*	Applicant Contact	Second Contact	(1) Points Requested / Awarded	(2) Adjustments (CRP / Deductions)	(3) Development Cost/Ft	(4) Senator/Rep letters	(5) QCP	(6) Other than QCP	Total Possible Score	Review Status	Status of Commitment	Census Tract	Quartile of Median HH Income	Poverty Rate															
Region 8 / Urban																																														
13118	Oak Ridge Apartments	W of 10th St & Nolan Ridge Dr	Nolanville	76559	Bell	8	Urban				NC	48	0	48	General	\$500,000	X	Chris Applequist	Brian M. McGeady	109	10	12	10	4	145	C	Commitment Issued	48027021800	1st Q	12.8%																
13187	Barron's Branch	N 9th St & Colcord Ave (Appr 1323 N 9th st)	Waco	76707	McLennan	8	Urban				NC	77	15	92	General	\$963,900	X	Lisa Stephens	David Deutch	105	8	12	14	0	139	C	Commitment Issued	48309001200	4th Q	58.1%																
Estimated Amount Available to Allocate		\$1,541,697														Total HTCs Awarded	\$1,463,900																													
Region 9 / Rural																																														
13167	Freedoms Path at Kerrville	3600 Block of Memorial Blvd	Kerrville	78028	Kerr	9	Rural		X		NC	49	0	49	Supp. Hsg.	\$717,000	X	Donald Paxton	Craig Taylor	114	10	12	10	4	150	C	Commitment Issued	48265960100	2nd Q	6.9%																
Estimated Amount Available to Allocate		\$500,000														Total HTCs Awarded	\$717,000																													
Region 9 / Urban																																														
13262	Paso Fino Apartment Homes	10729 Shaenfield Rd	San Antonio	78254	Bexar	9	Urban				NC	149	11	160	General	\$1,500,000	X	Manish Verma	Walter Martinez	108	10	12	10	4	144	C	Commitment Issued	48029181726	1st Q	5.3%																
13273	Richland Meadows Apartments	+/- 9.31 Acres on Richland Hills Dr	San Antonio	78251	Bexar	9	Urban				NC	140	0	140	General	\$1,324,827	X	Ezequiel P. Elizondo	Enrique Flores	108	10	12	10	4	144	C	Commitment Issued	48029171924	1st Q	2.1%																
13193	Balcones Lofts	SC of Gentleman Rd & Hillcrest Dr	Balcones Heights	78201	Bexar	9	Urban		X		NC	50	34	84	General	\$711,849	X	Balcones Lofts Ltd.	Debra Guerrero	107	10	12	10	4	143	C	Commitment Issued	48029180800	4th Q	31.1%																
Estimated Amount Available to Allocate		\$3,992,496														Total HTCs Awarded	\$3,536,676																													
Region 10 / Rural																																														
13213	Bailey Square	SEQ of N Valley St & E Bailey St	Cuero	77954	DeWitt	10	Rural				NC	48	8	56	General	\$500,000	X	Audrey Martin	Teresa Bowyer	113	10	12	10	4	149	C	Commitment Issued	48123970300	2nd Q	12.6%																
Estimated Amount Available to Allocate		\$500,000														Total HTCs Awarded	\$500,000																													
Region 10 / Urban																																														
13082	Woodland Creek Apartments	11641 Leopard St	Corpus Christi	78410	Nueces	10	Urban		X	Recon	94	0	94	General	\$1,356,998	X	Gilbert M. Piette	Roger H. Canales	103	10	12	14	0	139	C	Commitment Issued	48355003601	1st Q	10.0%																	
Estimated Amount Available to Allocate		\$1,231,390														Total HTCs Awarded	\$1,356,998																													
Region 11 / Rural																																														
13087	Villas del Rio	N Hwy 83 & 300' W of Hernandez Rd & Corrales Rd	Rio Grande City	78582	Starr	11	Rural				NC	50	30	80	General	\$860,000	X	Kyndel Bennett	Matthew Long	117	10	12	10	4	153	C	Commitment Issued	48427950104	1st Q	17.0%																
Estimated Amount Available to Allocate		\$1,042,926														Total HTCs Awarded	\$860,000																													
Region 11 / Urban																																														
13100	Villages of Penitas	10 acres out of Diamond Commercial Park Subdivision	Penitas	78576	Hidalgo	11	Urban				NC	116	12	128	General	\$1,383,000	X	Steve Lollis	Donna Rickenbacker	112	10	12	10	4	148	C	Commitment Issued	48215024203	2nd Q	17.0%																
13081	River Bank Village	202 Aquero Boulevard	Laredo	78045	Webb	11	Urban				NC	114	38	152	General	\$1,225,000	X	Apolonio ("Nono") Flores	Doak Brown	109	10	12	10	4	145	C	Commitment Issued	48479001711	1st Q	11.7%																
13068	Mayorca Villas	8.75 acres W Marcelo Blvd at Jose Marti Blvd	Brownsville	78575	Cameron	11	Urban				NC	48	72	120	General	\$500,000	X	Melissa Adami	Dewey Stevens	109	10	12	10	4	145	C	Commitment Issued	48061012613	1st Q	22.2%																
13281	Sunquest Apartments	23850 Stuart Place Road	Primera	78552	Cameron	11	Urban		X		NC	100	28	128	General	\$1,400,000	X	Mr. Sunny K. Philip	Michelle Grandt	108	10	12	10	4	144	C	Commitment Issued	48061010302	1st Q	30.5%																
Estimated Amount Available to Allocate		\$4,913,492														Total HTCs Awarded	\$4,508,000																													
Region 12 / Rural																																														
13180	Mission Village of Pecos	SEC of Texas St & W Washington St	Pecos	79772	Reeves	12	Rural				NC	49	11	60	General	\$500,000	X	Michael Ash	Marissa Downs	115	10	12	10	4	151	C	Commitment Issued	48389950400	1st Q	23.3%																
Estimated Amount Available to Allocate		\$500,000														Total HTCs Awarded	\$500,000																													
Region 12 / Urban																																														
13016	Westridge	5100 Blk of Graceland	Midland	79703	Midland	12	Urban		X		NC	84	12	96	Elderly	\$739,061	X	Granger MacDonald	Carrie Adams	94	10	12	10	4	130	C	Commitment Issued	48329001300	2nd Q	9.0%																
Estimated Amount Available to Allocate		\$750,323														Total HTCs Awarded	\$739,061																													
Region 13 / Rural																																														
13131	Montana Vista Palms	Off of Montana Ave at Peggy Hopkins & Oshea Dr	El Paso	79938	El Paso	13	Rural				NC	48	0	48	General	\$474,000	X	R.L. "Bobby" Bowling, IV	Demetrio Jimenez	95	10	12	10	4	131	C	Commitment Issued	48141010340	1st Q	14.1%																
Estimated Amount Available to Allocate		\$500,000														Total HTCs Awarded	\$474,000																													
Region 13 / Urban																																														
13133	Verde Palms	Btwn Joe Battle & Pine Springs Dr on Loma Verde Dr	El Paso	79936	El Paso	13	Urban				NC	100	52	152	General	\$1,254,000	X	R.L. "Bobby" Bowling, IV	Demetrio Jimenez	103	10	12	10	4	139	C	Commitment Issued	48141010338	1st Q	6.5%																
13099	Villas at West Mountain	NWQ Helen of Troy & New Harvest (fka Export)	El Paso	79912	El Paso	13	Urban				NC	76	0	76	General	\$813,434	X	Ike J. Monty	Maria Espinoza	100	10	12	10	4	136	C	Commitment Issued	48141010215	1st Q	9.8%																
Estimated Amount Available to Allocate		\$2,400,306														Total HTCs Awarded	\$2,067,434																													
TOTALS																																														
Total Estimated 2013 HTC Ceiling		\$59,104,798	Total Active Applications													65	Total HTCs Awarded													\$59,002,821																

* For those Applications with a complete REA review, the HTC Request reflected on the log is the recommended credit amount from the Real Estate Analysis division. These recommendations may be subject to appeal.

Application Number	Development Name	Development Address	City	Zip Code	County	Region	Urban/Rural	At-Risk Set-Aside	USDA Set-Aside	Nonprofit Set-Aside	Construction Type	Low Income Units	Market Rate Units	Total Units	Target Population	HTC Request or Recommend.*	REA review complete*	Applicant Contact	Second Contact	(1) Points Requested / Awarded	(2) Adjustments (CRP / Deductions)	(3) Development Cost/Ft	(4) Senator/Rep letters	(5) QCP	(6) Other than QCP	Total Possible Score	Review Status	Status of Award	Census Tract	Quartile of Median HH Income	Poverty Rate
Region 3 / Rural																															
13115	Abbingdon Meadows	SWC of Hall Cemetery Rd & S Collins Freeway	Howe	75459	Grayson	3	Rural				NC	39	25	64	General	\$500,000	X	William J. Rea, Jr.	Sean Brady	118	10	12	10	4	154	C	Commitment Issued	48181001801	1st Q	11.3%	
13184	The Village at Forney Crossing	E side of FM 460, N of US Hwy 80	Forney	75126	Kaufman	3	Rural				NC	57	9	66	General	\$710,000		Stacy Kaplowitz	Mike Rodriguez	115	10	0	10	4	139	N		48257050201	1st Q	3.6%	
Estimated Amount Available to Allocate		\$544,496														Total HTCs Requested/Awarded	\$1,210,000														
Region 3 / Urban																															
13152	KIRON at Aubrey	5700 Hwy 377 S	Aubrey	76227	Denton	3	Urban				NC	100	50	150	General	\$1,238,416	X	Thomas Huth	Dru Childre	113	10	12	10	4	149	C	Commitment Issued	48121020103	2nd Q	7.4%	
13240	Summit Place	SW Corner of Merit Dr & Hwy 635	Dallas	75251	Dallas	3	Urban				NC	75	23	98	General	\$1,487,000	X	Lisa Stephens	Mitchell Friedman	109	10	12	10	4	145	C	Commitment Issued	48113013200	1st Q	8.3%	
13214	Flora Street Lofts	2121 Flora	Dallas	75201	Dallas	3	Urban				NC	39	8	47	General	\$500,000		Graham Green	Ben Reavis	108	10	12	14	0	144	C	Commitment Issued	48113002100	1st Q	4.6%	
13259	The Millennium - McKinney	NEQ of McKinney Ranch Prky & Stacy Rd	McKinney	75070	Collin	3	Urban				NC	130	34	164	General	\$1,500,000	X	Brandon Bolin	Alan McDonald	108	10	12	10	4	144	C	Commitment Issued	48085030513	1st Q	12.3%	
13102	Reserve at McAlister	N of McAlister Rd & E of Hemphill St	Fort Worth	76028	Tarrant	3	Urban				NC	112	12	124	Elderly	\$1,238,974	X	Chris Applequist	Brian M. McGeady	107	10	12	10	4	143	C	Commitment Issued	48439111016	1st Q	1.9%	
13058	Evergreen at Hebron Senior Community	2200 Block of Parker Road	Hebron	75010	Denton	3	Urban	X			NC	136	0	136	Elderly	\$1,500,000	X	Brad Forslund	Becky Villanueva	106	10	12	10	4	142	C	Commitment Issued	48121021625	1st Q	0.4%	
13145	Mariposa at Elk Drive	Appr 100 block Elk Dr, NWQ Elk Dr & SE John Jones Dr	Burleson	78676	Johnson	3	Urban				NC	117	63	180	Elderly	\$1,395,438	X	Stuart Shaw	Casey Bump	106	10	12	10	4	142	C	Commitment Issued	48251130215	1st Q	1.1%	
13044	Villas of Vanston Park	4540 Gus Thomasson Road	Mesquite	75150	Dallas	3	Urban				NC	113	47	160	General	\$1,500,000	X	Joseph Agumadu	Vanessa Hardy	106	10	12	14	0	142	C	Commitment Issued	48113018001	3rd Q	12.3%	
13023	Patriot's Crossing (fka Veteran's Place)	4623 S Lancaster Road	Dallas	75216	Dallas	3	Urban	X			NC	150	0	150	General	\$1,499,292		Yigal Lelah	Claire Palmer	106	10	12	10	4	142	C		48113005700	4th Q	41.1%	
13140	Villas at Justin	18 acres off of FM 156 adjacent & S of Bishop Park	Justin	76247	Denton	3	Urban				NC	130	28	158	General	\$1,500,000		Kecia Boulware	Donna Rickenbacker	111	-6	10	12	10	4	141	N		48121020308	2nd Q	5.4%
13186	Desoto Senior Living	SW Corner of S Westmoreland Rd & W Belt Line Rd	Desoto	75115	Dallas	3	Urban				NC	120	12	132	Elderly	\$1,500,000		Deepak P. Sulakhe	Jason Lain	104	10	12	10	4	140	N		48113016612	1st Q	1.7%	
13138	Mariposa at Woodbridge	Appr S of intersection of McCreary Rd & W Kirby (aka FM 544) on McCreary Rd (East Side)	Wylie	75098	Collin	3	Urban				NC	120	60	180	General	\$1,500,000		Stuart Shaw	Casey Bump	106	10	12	10	0	138	N		48085031317	1st Q	3.3%	
13091	Heritage Park Vista - Phase Two	8729 Ray White Rd	Fort Worth	76244	Tarrant	3	Urban				NC	80	5	85	Elderly	\$1,095,676		Therese Allgeier	Robert G. Hoskins	99		8	12	14	0	133	N		48439113921	1st Q	7.8%
13064	HomeTowne on Magnolia	NWC of US 380 & FM 1385	Savannah	76227	Denton	3	Urban				NC	117	45	162	General	\$1,500,000		Kenneth W. Fambro, II	Christina Schwartz	107	10	0	10	4	131	N		48121020105	2nd Q	7.6%	
13045	Evergreen at Murphy Senior Community	401 W FM 544	Murphy	75094	Collin	3	Urban	X			NC	132	0	132	Elderly	\$1,500,000		Brad Forslund	Becky Villanueva	106	10	0	10	4	130	N		48085031313	1st Q	3.0%	
13249	Old Town Plaza Apartments	Leonard St & E Walters St	Lewisville	75057	Denton	3	Urban				NC	112	28	140	General	\$1,500,000		Deepak P. Sulakhe	Jason Lain	102	10	0	10	4	126	N		48121021618	3rd Q	13.7%	
13090	Residences at Caruth Lake	1049 Williams St	Rockwall	75087	Rockwall	3	Urban	X			NC	57	3	60	General	\$998,472		Dan Allgeier	Monique Allen	104	10	-12	10	4	116	N		48397040200	1st Q	0.6%	
Estimated Amount Available to Allocate		\$10,479,003														Total HTCs Requested/Awarded	\$22,953,267														
Region 4 / Rural																															
13173	Canton Village Homes	SW intersection of IH-20 & Edgewood Rd (aka FM 859)	Canton	75103	Van Zandt	4	Rural				NC	65	15	80	General	\$619,000	X	Doak Brown	Leslie Holleman	116	10	12	10	4	152	C	Commitment Issued	48467950600	1st Q	14.0%	
13032	StoneLeaf at Eustace	320 FM 316	Eustace	75124	Henderson	4	Rural				NC	45	4	49	General	\$626,888	X	Victoria Sugrue	Ben Dempsey	114	10	12	10	4	150	C	Commitment Issued	48213950500	1st Q	12.1%	
13011	Villas at Henderson	W Fordall St	Henderson	75652	Rusk	4	Rural				NC	80	0	80	General	\$1,254,960		Jay Collins	Brenda Given	104	10	12	10	4	145	C		48401950800	2nd Q	12.7%	
13235	Pinecrest Park	Lots 6 & 7 off Whipporwill, Pinecrest Addition #1	Kilgore	75662	Gregg	4	Rural	X			NC	52	4	56	Elderly	\$747,187		Emanuel H. Glockzin, Jr.	Pixie Stracener	108	10	12	14	0	144	N		48183010600	1st Q	10.0%	
13073	Lakeland Villas	1390 CR 4628	Athens	75751	Henderson	4	Rural				NC	49	0	49	General	\$482,650		Jay Milam	Jack Jenks	114	10	0	14	0	138	N		48213950300	1st Q	11.9%	
Estimated Amount Available to Allocate		\$1,274,924														Total HTCs Requested/Awarded	\$3,730,685														
Region 4 / Urban																															
13242	Saige Meadows	SEQ of Hwy 69 & Experimental Station Rd/James Fair Pkwy	Tyler	75706	Gregg	4	Urban				NC	82	10	92	General	\$1,163,876	X	Lisa Stephens	Michael Wohl	100	8	12	10	4	134	C	Commitment Issued	48423001601	4th Q	29.8%	
13037	The Preserve at the Crossing	SWQ of Three Lakes Pkwy & Crosswater Dr, TBD Crosswater Dr	Tyler	75703	Smith	4	Urban				NC	124	20	144	Elderly	\$1,409,847		Tracy Ambridge	Tamea Dula	88	10	0	10	4	112	N		48423001905	1st Q	6.1%	
Estimated Amount Available to Allocate		\$1,182,302														Total HTCs Requested/Awarded	\$2,573,723														
Region 5 / Rural																															
13005	Tower Village	Tower Rd & Park St	Nacogdoches	75961	Nacogdoches	5	Rural				NC	36	0	36	General	\$805,000	X	Mark Musemeche	Ofelia Elizondo	100	-1	8	12	10	4	133	C	Commitment Issued	48347951000	4th Q	34.9%
13018	Hudson Providence	NWQ of Hwy 94 W of Hudson Heights	Hudson	75904	Angelina	5	Rural				NC	80	0	80	Elderly	\$871,803		Miranda Ashline	Tamea Dula	96	-1	10	12	10	4	131	C		48005000301	1st Q	13.8%
Estimated Amount Available to Allocate		\$867,188														Total HTCs Requested/Awarded	\$1,676,803														
Region 5 / Urban																															
13203	Providence on Major	SWQ of N Major Dr & Westfield, Appr 3900 N Major Dr	Beaumont	77713	Jefferson	5	Urban				NC	108	20	128	Elderly	\$1,245,259	X	Miranda Ashline	Tamea Dula	100	10	12	10	4	136	C	Commitment Issued	48245000307	1st Q	12.0%	
Estimated Amount Available to Allocate		\$842,972														Total HTCs Requested/Awarded	\$1,245,259														
Region 6 / Rural																															
13183	Newport Village	SWQ of S Diamondhead Blvd & N Main St (FM 2100)	Crosby	77532	Harris	6	Rural				NC	80	0	80	General	\$750,000	X	Justin Hartz	Chris Dischinger	113	10	12	10	4	149	C	Commitment Issued	48201251902	1st Q	4.9%	
13059	Timberbrook Village	11899 Old Montgomery Rd	Willis	77318	Montgomery	6	Rural				NC	62	18	80	General	\$750,000		David Mark Koogler	Keith Richards	113	10	12	10	4	149	N		48339694202	1st Q	2.8%	
13254	Rice Senior Housing	862 acres Southwest from the corner of Loop 2765 & Hwy 71	El Campo	77437	Wharton	6	Rural	X			NC	52	4	56	Elderly	\$749,360		Emanuel H. Glockzin, Jr.	Pixie Stracener	102	10	12	14	0	138	N		48481740900	1st Q	13.3%	
Estimated Amount Available to Allocate		\$500,000														Total HTCs Requested/Awarded	\$2,249,360														

Application Number	Development Name	Development Address	City	Zip Code	County	Region	Urban/Rural	At-Risk Set-Aside	USDA Set-Aside	Nonprofit Set-Aside	Construction Type	Low Income Units	Market Rate Units	Total Units	Target Population	HTC Request or Recommend.*	REA review complete*	Applicant Contact	Second Contact	(1) Points Requested / Awarded	(2) Adjustments (CRP / Deductions)	(3) Development Cost/Ft	(4) Senator/Rep letters	(5) QCP	(6) Other than QCP	Total Possible Score	Review Status	Status of Award	Census Tract	Quartile of Median HH Income	Poverty Rate			
Region 6 / Urban																																		
13026	The Huntington at Sienna Plantation	4200 block Trammel Fresno Road	Missouri City	77459	Fort Bend	6	Urban				NC	105	27	132	Elderly	\$1,300,000	X	Mark Musemeche	Ofelia Elizondo	104	10	12	10	4	140	C	Commitment Issued	48157674501	1st Q	4.2%				
13062	The Retreat at Westlock	W side of 24000 block of SH 249, just S of Westlock	Houston ETJ	77377	Harris	6	Urban				NC	99	41	140	Elderly	\$1,260,904	X	Marcialele Voller	Ann Duggin	103	10	12	10	4	139	C	Commitment Issued	48201555502	1st Q	4.7%				
13042	The Cottages at South Acres	E side of the Appr 11300 block of Scott St	Houston	77047	Harris	6	Urban				NC	102	42	144	General	\$1,425,351	X	Marcy H. Voller	Ann Duggin	102	10	12	14	0	138	C	Commitment Issued	48201331500	4th Q	23.3%				
13110	El Dorado Green Apartments	Appr 240 W El Dorado Blvd	Houston	77546	Harris	6	Urban				NC	88	20	108	Elderly	\$1,364,364	X	Gary Brinkley	Donna Rickenbacker	105	10	12	10	0	137	C	Commitment Issued	48201350601	1st Q	1.6%				
13144	Mariposa at Pecan Park	Approx the 3600 block of Canada 0.2 miles N of W Fairmont Pkwy	La Porte	77571	Harris	6	Urban				NC	120	60	180	Elderly	\$1,405,352	X	Stuart Shaw	Casey Bump	101	8	12	10	4	135	C	Commitment Issued	48201343000	2nd Q	11.5%				
13151	Lafayette Plaza	Appr NEC of Clarewood Dr & Bonhomme Rd	Houston	77036	Harris	6	Urban				NC	98	24	122	Elderly	\$1,428,022	X	William D. Henson	Cheryl L. Henson	102	8	12	10	2	134	C	Commitment Issued	48201432802	4th Q	29.6%				
13117	Red Bluff Apartment Homes	NEC of Strawberry Rd & Genoa Red Bluff Rd	Houston	77034	Harris	6	Urban				NC	50	22	72	General	\$613,361	X	Adrian Iglesias	Rick J. Deyoe	107	10	0	10	4	131	C	Commitment Issued	48201324000	1st Q	6.8%				
13223	Campanile at Jones Creek	1717 Fm 359	Richmond	77406	Fort Bend	6	Urban		X		NC	72	6	78	Elderly	\$890,000		Les Kilday	Phyllis Sefeldt	107	10	0	10	4	131	N		48157673400	1st Q	4.8%				
13143	The Hamilton	1800 St Joseph Parkway	Houston	77003	Harris	6	Urban				NC	134	14	148	General	\$1,500,000		J. Steve Ford	Carrie Ford	98	-1	8	12	14	0	131	C		48201100000	2nd Q	32.7%			
13256	4320 Lofts	4320 Old Spanish Trail	Houston	77021	Harris	6	Urban				NC	81	15	96	General	\$1,000,000		Audrey Martin	Teresa Bowyer	102	10	0	10	4	126	N		48201313200	3rd Q	20.5%				
13077	KIRON at Spring	NW quadrant of Kuykendahl Rd & Louetta Rd	Spring	77379	Harris	6	Urban				NC	108	52	160	General	\$1,328,377		Thomas Huth	Dru Childre	108	10	-12	10	4	120	N		48201553801	1st Q	3.1%				
13052	Southfork Plantation	Southfork Parkway & County Rd 59	Manvel	77578	Brazoria	6	Urban		X		NC	94	23	117	Elderly	\$1,040,709		Chris Richardson	Jessica Bailey	108	10	-12	10	0	116	N		48039660602	1st Q	7.2%				
Estimated Amount Available to Allocate		\$9,414,495														Total HTCs Requested/Awarded	\$14,556,440																	
Region 7 / Rural																																		
13201	The Trails at Carmel Creek	West of FM 685, S of Carl Stern Dr extension	Hutto	78634	Williamson	7	Rural				NC	50	11	61	Elderly	\$500,000	X	Janine Sisak	Teresa Bowyer	112	10	12	10	4	148	C	Commitment Issued	48491020804	1st Q	6.3%				
13251	River Terrace	Home Depot Way & Hwy 304	Bastrop	78602	Bastrop	7	Rural				NC	35	13	48	General	\$500,000		Will Markel	Jim Markel	112	10	12	10	0	144	N		48021950300	2nd Q	9.1%				
13022	Liberty Manor	US Hwy 29 W @ Bailey Lane	Liberty Hill	78642	Williamson	7	Rural				NC	70	4	74	Elderly	\$750,000		Ken Blankenship	Breck Kean	94	10	12	10	4	130	C		48491020202	1st Q	7.6%				
13137	Mariposa at Ranch Road 12	Appr the 1440 Blk of RR 12 on E Side of Ranch Rd 12	Wimberley	78676	Hays	7	Rural				NC	40	40	80	Elderly	\$500,000		Stuart Shaw	Casey Bump	111	8	-12	10	4	121	N		48209010804	2nd Q	4.1%				
Estimated Amount Available to Allocate		\$500,000														Total HTCs Requested/Awarded	\$2,250,000																	
Region 7 / Urban																																		
13112	Liberty Trails Townhomes	Appr 95 acres; NEC of Hwy 29 & Hwy 1869	Liberty Hill	78642	Williamson	7	Urban				NC	75	25	100	General	\$1,090,000	X	Jorge A. Aguirre	Donna Rickenbacker	109	10	12	10	4	145	C	Commitment Issued	48491020202	1st Q	7.6%				
13071	Windy Ridge Apartments	10910 Ranch Rd 620	Austin	78726	Travis	7	Urban				NC	120	0	120	General	\$1,080,918	X	Adrian Iglesias	Rick Deyoe	108	10	12	10	4	144	C	Commitment Issued	48453001765	1st Q	6.2%				
13108	Skyway Studios	2800 S Lamar Blvd	Austin	78704	Travis	7	Urban		X		NC	109	0	109	Supp. Hsg.	\$1,002,000		Walter Moreau	Jennifer Hicks	107	10	12	14	0	143	C		48453001901	2nd Q	4.7%				
13109	Homestead Apartments	3226 W Slaughter Lane	Austin	78748	Travis	7	Urban		X		NC	126	14	140	General	\$1,252,000	X	Walter Moreau	Jennifer Hicks	105	10	12	10	4	141	C	Recommended	48453001746	2nd Q	5.2%				
13125	Songhai at West Gate	8700 Westgate Boulevard	Austin	78745	Travis	7	Urban				NC	140	6	146	General	\$1,220,000		Miguel Medellin	Cherno M. Njie	104	10	12	14	0	140	N		48453001729	2nd Q	6.3%				
13159	4800 Berkman	SWC of Berkman Dr & Barbara Jordan Blvd	Austin	78723	Travis	7	Urban				NC	140	30	170	General	\$1,500,000		Janine Sisak	Wayne Gerami	105	8	12	14	0	139	N		48453000306	4th Q	19.1%				
13142	The Hills of Pflugerville	SWS of "to-be built" Colorado Sand Dr, N side of Pflugerville Pkwy	Pflugerville	78660	Travis	7	Urban				NC	117	0	117	Elderly	\$1,500,000		J. Steve Ford	Carrie Ford	105	10	12	10	0	137	N		48453001858	1st Q	2.1%				
Estimated Amount Available to Allocate		\$3,362,682														Total HTCs Requested/Awarded	\$8,644,918																	
Region 8 / Rural																																		
13033	StoneLeaf at Fairfield	113 W Reunion St	Fairfield	75840	Freestone	8	Rural				NC	45	4	49	General	\$500,000	X	Victoria Sugrue	Ben Dempsey	116	10	12	10	4	152	C	Commitment Issued	48161000200	1st Q	8.1%				
13147	Eagles Crossing Apartments	1800 Block of Old Brandon Road	Hillsboro	76645	Hill	8	Rural				NC	38	10	48	General	\$470,493		Justin Zimmerman	Ben Mitchell	115	10	12	10	4	151	C		48217961100	1st Q	12.1%				
13250	Hidden Glen	NE of intersection of Mary Ln & Vaness St	Salado	76571	Bell	8	Rural				NC	35	10	45	Elderly	\$500,000		Will Markel	Jim Markel	112	10	12	10	4	148	N		48027023403	1st Q	3.5%				
Estimated Amount Available to Allocate		\$543,746														Total HTCs Requested/Awarded	\$1,470,493																	
Region 8 / Urban																																		
13118	Oak Ridge Apartments	W of 10th St & Nolan Ridge Dr	Nolanville	76559	Bell	8	Urban				NC	48	0	48	General	\$500,000	X	Chris Applequist	Brian M. McGeady	109	10	12	10	4	145	C	Commitment Issued	48027021800	1st Q	12.8%				
13187	Barron's Branch	N 9th St & Colcord Ave (Appr 1323 N 9th st)	Waco	76707	McLennan	8	Urban				NC	77	15	92	General	\$963,900	X	Lisa Stephens	David Deutch	105	8	12	14	0	139	C	Commitment Issued	48309001200	4th Q	58.1%				
13021	The Manor at Commerce Park	SWQ of Commerce St & Sparta Road	Belton	76513	Bell	8	Urban				NC	80	8	88	Elderly	\$956,000		Ken Blankenship	Breck Kean	101	10	12	10	4	137	C		48027021700	1st Q	8.2%				
Estimated Amount Available to Allocate		\$1,541,697														Total HTCs Requested/Awarded	\$2,419,900																	
Region 9 / Rural																																		
13167	Freedoms Path at Kerrville	3600 Block of Memorial Blvd	Kerrville	78028	Kerr	9	Rural		X		NC	49	0	49	Supp. Hsg.	\$717,000	X	Donald Paxton	Craig Taylor	114	10	12	10	4	150	C	Commitment Issued	48265960100	2nd Q	6.9%				
13020	The Manor at Currey Creek	10 FM 474	Boerne	78006	Kendall	9	Rural				NC	70	4	74	Elderly	\$715,000		Ken Blankenship	Breck Kean	111	10	12	10	4	147	N		48259970402	1st Q	1.2%				
13013	Ana's Cove	S Uvalde St to US 281 to E side of Sierra Blvd	Pleasanton	78064	Atascosa	9	Rural				NC	36	0	36	General	\$625,288		Rene Sierra	Sylvia Romans	98	-4	10	12	10	2	128	C		48013960100	3rd Q	13.2%			
Estimated Amount Available to Allocate		\$500,000														Total HTCs Requested/Awarded	\$2,057,288																	

Application Number	Development Name	Development Address	City	Zip Code	County	Region	Urban/Rural	At-Risk Set-Aside	USDA Set-Aside	Nonprofit Set-Aside	Construction Type	Low Income Units	Market Rate Units	Total Units	Target Population	HTC Request or Recommend.*	REA review complete*	Applicant Contact	Second Contact	(1) Points Requested / Awarded	(2) Adjustments (CRP / Deductions)	(3) Development Cost/Ft	(4) Senator/Rep letters	(5) QCP	(6) Other than QCP	Total Possible Score	Review Status	Status of Award	Census Tract	Quartile of Median HH Income	Poverty Rate		
Region 9 / Urban																																	
13262	Paso Fino Apartment Homes	10729 Shaenfield Rd	San Antonio	78254	Bexar	9	Urban				NC	149	11	160	General	\$1,500,000	X	Manish Verma	Walter Martinez	108	10	12	10	4	144	C	Commitment Issued	48029181726	1st Q	5.3%			
13192	Shaenfield Apartments	10585 Shaenfield Rd	San Antonio	78254	Bexar	9	Urban		X		NC	105	39	144	General	\$1,405,470		Shaenfield Apartments Ltd.	Ben Amor	108	10	12	10	4	144	C		48029181726	1st Q	5.3%			
13273	Richland Meadows Apartments	+/- 9.31 Acres on Richland Hills Dr	San Antonio	78251	Bexar	9	Urban				NC	140	0	140	General	\$1,324,827	X	Ezequiel P. Elizondo	Enrique Flores	108	10	12	10	4	144	C	Commitment Issued	48029171924	1st Q	2.1%			
13193	Balcones Lofts	SC of Gentleman Rd & Hillcrest Dr	Balcones Heights	78201	Bexar	9	Urban		X		NC	50	34	84	General	\$711,849	X	Balcones Lofts Ltd.	Debra Guerrero	107	10	12	10	4	143	C	Commitment Issued	48029180800	4th Q	31.1%			
13196	Emerald Village	NEC of NW Loop 1604 & Corporate Woods Dr	San Antonio	78259	Bexar	9	Urban		X		NC	134	30	144	General	\$1,500,000		Emerald Village Ltd.	Lori Hall	108	10	0	10	4	132	C		48029121906	1st Q	2.7%			
Estimated Amount Available to Allocate		\$3,992,496														Total HTCs Requested/Awarded	\$6,442,146																
Region 10 / Rural																																	
13213	Bailey Square	SEQ of N Valley St & E Bailey St	Cuero	77954	DeWitt	10	Rural				NC	48	8	56	General	\$500,000	X	Audrey Martin	Teresa Bowyer	113	10	12	10	4	149	C	Commitment Issued	48123970300	2nd Q	12.6%			
Estimated Amount Available to Allocate		\$500,000														Total HTCs Requested/Awarded	\$500,000																
Region 10 / Urban																																	
13082	Woodland Creek Apartments	11641 Leopard St	Corpus Christi	78410	Nueces	10	Urban		X		Recon	94	0	94	General	\$1,356,998	X	Gilbert M. Plette	Roger H. Canales	103	10	12	14	0	139	C	Commitment Issued	48355003601	1st Q	10.0%			
Estimated Amount Available to Allocate		\$1,231,390														Total HTCs Requested/Awarded	\$1,356,998																
Region 11 / Rural																																	
13087	Villas del Rio	N Hwy 83 & 300' W of Hernandez Rd & Corrales Rd	Rio Grande City	78582	Starr	11	Rural				NC	50	30	80	General	\$860,000	X	Kyndel Bennett	Matthew Long	117	10	12	10	4	153	C	Commitment Issued	48427950104	1st Q	17.0%			
13051	Royal Gardens	Eisenhower St (SW of Eisenhower St & Charco Blanco Rd)	Rio Grande City	78582	Starr	11	Rural		X		NC	80	0	80	General	\$586,271		Noorallah Jooma	Robert Wilson	117	10	12	10	4	153	C		48427950104	1st Q	17.0%			
13046	La Esperanza Del Rio	W of FM 3167 & S of Eisenhower Rd	Rio Grande City ETJ	78582	Starr	11	Rural				NC	50	10	60	General	\$500,000		Sara Reidy	Linda S. Brown	116	10	12	10	4	152	C		48427950104	1st Q	17.0%			
13154	Trosper Apartments	Near 5 mile Rd & Trosper	Alton	78573	Hidalgo	11	Rural				NC	80	0	80	General	\$1,138,000		Mike Lopez	Tim Smith	102	8	0	10	4	124	N		48215024113	3rd Q	41.3%			
Estimated Amount Available to Allocate		\$1,042,926														Total HTCs Requested/Awarded	\$3,084,271																
Region 11 / Urban																																	
13100	Villages of Penitas	10 acres out of Diamond Commercial Park Subdivision	Penitas	78576	Hidalgo	11	Urban				NC	116	12	128	General	\$1,383,000	X	Steve Lollis	Donna Rickenbacker	112	10	12	10	4	148	C	Commitment Issued	48215024203	2nd Q	17.0%			
13081	River Bank Village	202 Aquero Boulevard	Laredo	78045	Webb	11	Urban				NC	114	38	152	General	\$1,225,000	X	Apolonio ("Nono") Flores	Doak Brown	109	10	12	10	4	145	C	Commitment Issued	48479001711	1st Q	11.7%			
13068	Mayorca Villas	8.75 acres W Marcelo Blvd at Jose Marti Blvd	Brownsville	78575	Cameron	11	Urban				NC	48	72	120	General	\$500,000	X	Melissa Adami	Dewey Stevens	109	10	12	10	4	145	C	Commitment Issued	48061012613	1st Q	22.2%			
13281	Sunquest Apartments	23850 Stuart Place Road	Primera	78552	Cameron	11	Urban		X		NC	100	28	128	General	\$1,400,000	X	Mr. Sunny K. Philip	Michelle Grandt	108	10	12	10	4	144	C	Commitment Issued	48061010302	1st Q	30.5%			
13270	Bella Terra Apartments	+/- 10.5 acres at SEQ of Morrison Rd & Pablo Kisel Blvd	Brownsville	78526	Cameron	11	Urban				NC	120	0	120	General	\$1,420,889		Enrique Flores	Enrique Flores, IV	108	10	12	10	4	144	C		48061012612	1st Q	12.9%			
13263	Sunland Apartments	19000 FM 508	Combes	78550	Cameron	11	Urban				NC	100	40	140	General	\$1,500,000		Mr. Sunny K. Philip	Michelle Grandt	107	10	12	14	0	143	C		48061010203	1st Q	25.0%			
13275	Bella Vista Apartments	+/- 8.5 acres at SWQ of McColl Rd & Sprague St	Edinburg	78539	Hidalgo	11	Urban				NC	120	0	120	General	\$1,210,263		Enrique Flores	Enrique Flores, IV	107	10	12	10	4	143	N		48215023904	1st Q	12.3%			
Estimated Amount Available to Allocate		\$4,913,492														Total HTCs Requested/Awarded	\$8,639,152																
Region 12 / Rural																																	
13180	Mission Village of Pecos	SEC of Texas St & W Washington St	Pecos	79772	Reeves	12	Rural				NC	49	11	60	General	\$500,000	X	Michael Ash	Marissa Downs	115	10	12	10	4	151	C	Commitment Issued	48389950400	1st Q	23.3%			
13211	Mustang Springs Apartments	NWC of Quail Ridge Dr & NE Mustang Dr	Andrews	79714	Andrews	12	Rural				NC	49	11	60	General	\$500,000		Michelle Den Bleyker	Joseph Ortega	115	10	12	10	4	151	N		48003950100	1st Q	16.9%			
13160	Sands Terrace Apartments	IH-20 Business Appr 3,000' E of S James Ave	Monahans	79756	Ward	12	Rural				NC	38	10	48	General	\$453,000		Justin Zimmerman	Ben Mitchell	112	10	12	10	4	148	N		48475950200	2nd Q	9.1%			
Estimated Amount Available to Allocate		\$500,000														Total HTCs Requested/Awarded	\$1,453,000																
Region 12 / Urban																																	
13016	Westridge	5100 Blk of Graceland	Midland	79703	Midland	12	Urban		X		NC	84	12	96	Elderly	\$739,061	X	Granger MacDonald	Carrie Adams	94	10	12	10	4	130	C	Commitment Issued	48329001300	2nd Q	9.0%			
13043	Progress Senior Living	NEC of W Loop 338 & W 8th St	Odessa	79763	Ector	12	Urban		X		NC	80	0	80	Elderly	\$817,898		Bernadine Spears	Sharon Laurence	93	8	12	10	4	127	N		48135001100	3rd Q	22.4%			
13136	Concho Villas	2001 S Concho Dr	San Angelo	76904	Tom Green	12	Urban				NC	49	0	49	General	\$638,000		Jay Milam	Jack Jenks	89	10	0	10	4	113	N		48451001708	1st Q	2.2%			
Estimated Amount Available to Allocate		\$750,323														Total HTCs Requested/Awarded	\$2,194,959																
Region 13 / Rural																																	
13131	Montana Vista Palms	Off of Montana Ave at Peggy Hopkins & Oshea Dr	El Paso	79938	El Paso	13	Rural				NC	48	0	48	General	\$474,000	X	R.L. "Bobby" Bowling, IV	Demetrio Jimenez	95	10	12	10	4	131	C	Commitment Issued	48141010340	1st Q	14.1%			
13132	San Elizario Palms II	A parcel directly behind 13850 Socorro Rd	San Elizario	79849	El Paso	13	Rural				NC	48	0	48	General	\$415,000		R.L. "Bobby" Bowling, IV	Demetrio Jimenez	87	10	12	10	4	123	N		48141010501	4th Q	57.5%			
13096	Laureles del Este	SWQ Fabens St & Citizen Transfer Station Rd	Fabens	79838	El Paso	13	Rural				NC	42	0	42	General	\$460,396		Ike J. Monty	Maria Espinoza	85	10	12	10	4	121	N		48141010505	4th Q	42.4%			
Estimated Amount Available to Allocate		\$500,000														Total HTCs Requested/Awarded	\$1,349,396																

Application Number	Development Name	Development Address	City	Zip Code	County	Region	Urban/Rural	At-Risk Set-Aside	USDA Set-Aside	Nonprofit Set-Aside	Construction Type	Low Income Units	Market Rate Units	Total Units	Target Population	HTC Request or Recommend.*	REA review complete*	Applicant Contact	Second Contact	(1) Points Requested / Awarded	(2) Adjustments (CRP / Deductions)	(3) Development Cost/Ft	(4) Senator/Rep letters	(5) QCP	(6) Other than QCP	Total Possible Score	Review Status	Status of Award	Census Tract	Quartile of Median HH Income	Poverty Rate	
Region 13 / Urban																																
13133	Verde Palms	Btwn Joe Battle & Pine Springs Dr on Loma Verde Dr	El Paso	79936	El Paso	13	Urban				NC	100	52	152	General	\$1,254,000	X	R.L. "Bobby" Bowling, IV	Demetrio Jimenez	103	10	12	10	4	139	C	Commitment Issued	48141010338	1st Q	6.5%		
13099	Villas at West Mountain	NWQ Helen of Troy & New Harvest (fka Export)	El Paso	79912	El Paso	13	Urban				NC	76	0	76	General	\$813,434		Ike J. Monty	Maria Espinoza	100	10	12	10	4	136	C	Commitment Issued	48141010215	1st Q	9.8%		
13130	North Desert Palms	11001 Dyer St	El Paso	79934	El Paso	13	Urban				NC	100	52	152	General	\$1,254,000	X	R.L. "Bobby" Bowling, IV	Demetrio Jimenez	100	10	12	10	4	136	C		48141010207	2nd Q	10.2%		
13098	Meadow Heights	11620 Pellicano	El Paso	79936	El Paso	13	Urban				NC	50	0	50	General	\$500,000		Ike J. Monty	Maria Espinoza	100	10	12	10	2	134	C		48141004309	1st Q	12.5%		
13097	Eastpointe Estates	NEQ Zaragosa & Pebble Hills	El Paso	79938	El Paso	13	Urban				NC	104	0	104	General	\$1,135,364		Ike J. Monty	Maria Espinoza	96	-1	10	12	10	4	131	C		48141010341	2nd Q	18.9%	
13166	Artspace El Paso Lofts	601 N Oregon St	El Paso	79901	El Paso	13	Urban				NC	51	0	51	General	\$1,077,426		Sarah White	Cathryn Vandenbrink	102	0	12	14	0	128	C		48141001600	4th Q	46.3%		
Estimated Amount Available to Allocate													\$2,400,306											Total HTCs Requested/Awarded	\$6,034,224							

TOTALS

Total Estimated 2013 HTC Ceiling	\$59,104,798	Total Active Applications				121	Total HTCs Requested/Awarded										\$113,730,951
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* For those Applications with a complete REA review, the HTC Request reflected on the log is the recommended credit amount from the Real Estate Analysis division. These recommendations may be subject to appeal.



2013 STATE OF TEXAS, COMPETITIVE HOUSING TAX CREDIT CEILING ACCOUNTING SUMMARY

2013 COMPETITIVE (9%) HOUSING TAX CREDIT FUNDING ALLOCATION

APPLICATION LIMITS

AWARDS SUMMARY BY SUB-REGION

Region	Geography	Initial Sub-region amount	Returned during 2013 Calendar Year	Sub-region amount after returned credit	Amount needed to reach \$500,000	Amount over \$500,000 that can be reallocated	Proportion of amount available to be reallocated	Amount to be reallocated	Final Funding Amount	Allocation %
Urban	1 Lubbock	\$ 1,173,030		\$ 1,173,030	\$ -	\$ 673,030	2%	\$ (23,097.89)	\$ 1,149,932	2.29%
	2 Abilene	\$ 583,212	\$ 21,671	\$ 604,883	\$ -	\$ 104,883	0%	\$ (3,599.49)	\$ 601,283	1.20%
	3 Dallas/Fort Worth	\$ 10,583,457	\$ 250,189	\$ 10,833,646	\$ -	\$ 10,333,646	27%	\$ (354,643.14)	\$ 10,479,003	20.83%
	4 Tyler	\$ 1,206,550		\$ 1,206,550	\$ -	\$ 706,550	2%	\$ (24,248.28)	\$ 1,182,302	2.35%
	5 Beaumont	\$ 855,161		\$ 855,161	\$ -	\$ 355,161	1%	\$ (12,188.86)	\$ 842,972	1.68%
	6 Houston	\$ 9,703,075	\$ 28,232	\$ 9,731,307	\$ -	\$ 9,231,307	24%	\$ (316,811.68)	\$ 9,414,495	18.72%
	7 Austin/Round Rock	\$ 3,464,419		\$ 3,464,419	\$ -	\$ 2,964,419	8%	\$ (101,736.69)	\$ 3,362,682	6.68%
	8 Waco	\$ 1,578,717		\$ 1,578,717	\$ -	\$ 1,078,717	3%	\$ (37,020.79)	\$ 1,541,697	3.06%
	9 San Antonio	\$ 4,116,616		\$ 4,116,616	\$ -	\$ 3,616,616	9%	\$ (124,119.60)	\$ 3,992,496	7.94%
	10 Corpus Christi	\$ 1,221,566	\$ 35,817	\$ 1,257,383	\$ -	\$ 757,383	2%	\$ (25,992.82)	\$ 1,231,390	2.45%
	11 Brownsville/Harlingen	\$ 5,070,343		\$ 5,070,343	\$ -	\$ 4,570,343	12%	\$ (156,850.81)	\$ 4,913,492	9.77%
	12 San Angelo	\$ 759,220		\$ 759,220	\$ -	\$ 259,220	1%	\$ (8,896.23)	\$ 750,323	1.49%
	13 El Paso	\$ 2,467,841		\$ 2,467,841	\$ -	\$ 1,967,841	5%	\$ (67,534.85)	\$ 2,400,306	4.77%

Max Funding Request/Award Limits (150%)
\$ 1,500,000
\$ 857,868
\$ 1,500,000
\$ 1,500,000
\$ 1,245,260
\$ 1,500,000
\$ 1,500,000
\$ 1,500,000
\$ 1,500,000
\$ 1,500,000
\$ 1,500,000
\$ 1,108,591
\$ 1,500,000

Initial Funding	(over)/under	Rank	Rural Collapse	(over)/under	SW Collapse	(over)/under	Notes (Related to sub-regions with no awards prior to the rural or statewide collapses)
1 \$ 1,101,991.00	4.17%	10		4.17%	16	\$ -	4.17%
2 \$ 571,912.00	4.88%	9		4.88%	15	\$ -	4.88%
3 \$ 10,359,828.00	1.14%	13		1.14%	20	\$ -	1.14%
4 \$ 1,163,876.00	1.56%	11		1.56%	18	\$ -	1.56%
5 \$ -	100.00%	1		100.00%	1	\$ 1,245,259.00	-47.72%
6 \$ 8,797,354.00	6.56%	7		6.56%	12	\$ -	6.56%
7 \$ 2,170,918.00	35.44%	3		35.44%	3	\$ 1,252,000.00	-1.79%
8 \$ 1,463,900.00	5.05%	8		5.05%	14	\$ -	5.05%
9 \$ 3,536,676.00	11.42%	5		11.42%	7	\$ -	11.42%
10 \$ -	100.00%	1		100.00%	1	\$ 1,356,998.00	-10.20%
11 \$ 4,508,000.00	8.25%	6		8.25%	8	\$ -	8.25%
12 \$ 739,061.00	1.50%	12		1.50%	19	\$ -	1.50%
13 \$ 2,067,434.00	13.87%	4		13.87%	6	\$ -	13.87%

Rural	1 Lubbock	\$ 662,521		\$ 662,521	\$ -	\$ 162,521	0%	\$ (5,577.59)	\$ 656,943	1.31%	
	2 Abilene	\$ 505,404	\$ 6,620	\$ 512,024	\$ -	\$ 12,024	0%	\$ (412.67)	\$ 511,612	1.02%	
	3 Dallas/Fort Worth	\$ 546,077		\$ 546,077	\$ -	\$ 46,077	0%	\$ (1,581.34)	\$ 544,496	1.08%	
	4 Tyler	\$ 1,302,464		\$ 1,302,464	\$ -	\$ 802,464	2%	\$ (27,539.98)	\$ 1,274,924	2.53%	
	5 Beaumont	\$ 880,237		\$ 880,237	\$ -	\$ 380,237	1%	\$ (13,049.46)	\$ 867,188	1.72%	
	6 Houston	\$ 336,392		\$ 336,392	\$ 163,608	\$ -	\$ -	0%	\$ 163,607.80	\$ 500,000	0.99%
	7 Austin/Round Rock	\$ 188,828		\$ 188,828	\$ 311,172	\$ -	\$ -	0%	\$ 311,172.33	\$ 500,000	0.99%
	8 Waco	\$ 545,300		\$ 545,300	\$ -	\$ 45,300	0%	\$ (1,554.67)	\$ 543,746	1.08%	
	9 San Antonio	\$ 216,391		\$ 216,391	\$ 283,609	\$ -	\$ -	0%	\$ 283,609.26	\$ 500,000	0.99%
	10 Corpus Christi	\$ 449,742		\$ 449,742	\$ 50,258	\$ -	\$ -	0%	\$ 50,257.58	\$ 500,000	0.99%
	11 Brownsville/Harlingen	\$ 938,769	\$ 123,452	\$ 1,062,221	\$ -	\$ 562,221	1%	\$ (19,295.01)	\$ 1,042,926	2.07%	
	12 San Angelo	\$ 412,202		\$ 412,202	\$ 87,798	\$ -	\$ -	0%	\$ 87,797.85	\$ 500,000	0.99%
	13 El Paso	\$ 70,693		\$ 70,693	\$ 429,307	\$ -	\$ -	0%	\$ 429,307.05	\$ 500,000	0.99%

\$ 970,844
\$ 750,000
\$ 804,970
\$ 1,500,000
\$ 1,280,981
\$ 750,000
\$ 750,000
\$ 803,863
\$ 750,000
\$ 750,000
\$ 1,364,360
\$ 750,000
\$ 750,000

1 \$ 525,830.00	19.96%	4	\$ 647,000.00	-78.53%	26	\$ -	-78.53%
2 \$ 434,000.00	15.17%	6	\$ -	15.17%	5	\$ -	15.17%
3 \$ 500,000.00	8.17%	7	\$ -	8.17%	9	\$ -	8.17%
4 \$ 619,000.00	51.45%	3	\$ 626,888.00	2.28%	17	\$ -	2.28%
5 \$ 805,000.00	7.17%	9	\$ -	7.17%	11	\$ -	7.17%
6 \$ -	100.00%	1	\$ 750,000.00	-50.00%	25	\$ -	-50.00%
7 \$ 500,000.00	0.00%	11	\$ -	0.00%	21	\$ -	0.00%
8 \$ 500,000.00	8.05%	8	\$ -	8.05%	10	\$ -	8.05%
9 \$ -	100.00%	1	\$ 717,000.00	-43.40%	24	\$ -	-43.40%
10 \$ 500,000.00	0.00%	11	\$ -	0.00%	21	\$ -	0.00%
11 \$ 860,000.00	17.54%	5	\$ -	17.54%	4	\$ -	17.54%
12 \$ 500,000.00	0.00%	11	\$ -	0.00%	21	\$ -	0.00%
13 \$ 474,000.00	5.20%	10	\$ -	5.20%	13	\$ -	5.20%

Urban Totals	\$ 42,783,204	\$ 335,909	\$ 43,119,113		\$ 41,862,372	83.2%
Rural Totals	\$ 7,055,021	\$ 130,072	\$ 7,185,093		\$ 8,441,834	16.8%

Regional Total	\$ 49,838,226	\$ 465,981	\$ 50,130,852		\$ 50,304,207	85.11%
At-Risk Total	\$ 8,794,981	\$ 5,610	\$ 8,800,591		\$ 8,800,591	14.89%
USDA (from At-Risk)	\$ 2,931,660	\$ 5,610	\$ 2,937,270		\$ 2,937,270	4.97%
Grand Total	\$ 58,633,207	\$ 471,591	\$ 59,104,798		\$ 59,104,798	100.00%

Regional Awards	\$ 49,293,925	83.40%
USDA Awards	\$ 2,606,853	4.41%
At Risk (non-USDA) Awards	\$ 7,102,043	12.02%
Total New Awards	\$ 59,002,821	99.83%

Total Awards	\$ 59,002,821	99.83%
Nonprofit total	\$ 10,929,472	18.49%
Remaining Funds	\$ 101,977	0.17%
**National Pool		
Total Remaining	\$ 101,977	
Total Funds	\$ 59,104,798	100.00%

**National Pool is received subsequent to July awards and goes directly to Statewide Collapse.

5b

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, discussion, and possible action regarding Galveston Housing Initiative II, LP, a proposed multifamily development seeking 4% low income housing tax credits. Possible action may include consideration of the granting of waivers and approval of the awarding of 4% low income housing tax credits subject to such conditions and restrictions as the Board may require.

POSSIBLE ACTION

Staff is not recommending any specific action at this time but anticipates that persons may provide public comment, some seeking for GHA to move ahead with its proposed development and others opposing it. Staff is posting this matter so that the Board is not constrained if it determines that some action on this matter warranted.

BACKGROUND

Galveston Housing Initiative II, LP, aka “Cedar Terrace,” is a proposed 122 unit new construction public housing development which will include market rate units as well as affordable units. It proposes a financing structure which includes a repayable loan of Community Development Block Grant Disaster Recovery (CDBG-DR) funds administered by the Texas General Land Office (the “GLO”) to fund recovery from Hurricane Ike and private activity bonds to be issued by the Galveston Public Facility Corporation. The Department’s underwriting of Cedar Terrace is not complete. The need for two waivers has been identified: (1) The proposed development is in a floodplain and the parking would be approximately 12 feet below the designated flood line and (2) proposed units may be within the fall zone of power lines in a utility easement across the property.

In September 2008 Hurricane Ike struck the upper Texas coast, causing widespread damage. The City of Galveston was especially hard hit, and Ike devastated Galveston’s public housing. Congress appropriated CDBG-DR funds to recover from several major disasters including Hurricane Ike, and the U. S. Department of Housing and Urban Development (“HUD”) made these funds available in two rounds. Notice of Round I funds was published in the *Federal Register* on February 13, 2009, and notice of Round II was published on August 14, 2009. On February 7, 2010, a fair housing complaint was filed against the State of Texas and conciliation discussions ensued. On May 26, 2010, a Conciliation Agreement was approved by HUD, and a copy is attached (Attachment A). The Conciliation Agreement addresses, among other things, the use of the CDBG-DR funds in connection with the replacement of public housing in Galveston. Below is an excerpt from this HUD-approved document:

One-For-One Replacement. From TDHCA's affordable housing set aside out of the Hurricane Recovery Funds, no less than \$50 million shall be available for use in the City of Galveston for the one-for-one replacement of all family and elderly public housing units damaged or destroyed in Hurricane Ike. Of the remaining funds, no less than \$25 million shall be provided for the construction, reconstruction, replacement, or rehabilitation of family and elderly public housing units damaged or destroyed by The Hurricanes, with priority being given to activities which include one-for-one replacement of family and elderly public housing units within a Public Housing Authority jurisdiction, or federally funded farm labor housing.

CDBG-DR funds are now administered by the GLO. The manner in which the replacement of public housing units will occur has created a great deal of concern in Galveston, and on Friday, August 30, 2013, the attached letter (Attachment B) was sent to the Department's General Counsel.

Staff has discussed these issues preliminarily with GLO and it appears to be their assessment that this transaction needs to move forward as an important component in satisfaction of the Conciliation Agreement. They have represented that HUD's Office of Fair Housing and Equal Opportunity agrees.

Attachments follow.

Attachment A



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Fort Worth Regional Office of FHEO, Region VI
801 Cherry Street, Unit #45
Suite 2500
Fort Worth, TX 76102
Phone 1-888-560-8913 Fax (817) 978-5876
www.hud.gov

MAY 26 2010

VIA ELECTRONIC MAIL AND REGULAR MAIL

Barbara Deane
Assistant Attorney General
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711

RECEIVED
JUN - 1 2010
EXECUTIVE DIRECTOR

Dear Ms. Deane:

SUBJECT: HUD Case Nos. 06-10-0410-8 and 06-10-0410-9
Texas Low Income Housing Information Service and Texas Appleseed v The State
of Texas, by and through The Texas Department of Rural Affairs and The Texas
Department of Housing and Community Affairs

HUD has approved the attached Conciliation Agreement between the Texas Low Income Housing Information Service and Texas Appleseed ("Complainants"), and the State of Texas, by and through the Texas Department of Rural Affairs and the Texas Department of Housing and Community Affairs ("Respondent"). Complainants originally filed administrative complaints (the "Complaints") with HUD containing allegations that the State's use of federal funds violated Sections 804 and 808 of the Civil Rights Act of 1968, as amended. HUD rejected the claim under Section 808 for lack of jurisdiction and Complainants re-filed under Section 804, as well as Section 109 of the Housing and Community Development Act of 1974, as amended. The Agreement has been corrected to replace citation to Section 808 with citation to Section 109.

The Conciliation Agreement notes that HUD in approving the Agreement was "making a finding that the terms and conditions of this Agreement adequately address all issues urged in the Complaints, including, without limitation, the substantive and legal issues." The allegations in the Complaints have not been investigated by HUD, and in this approval, HUD is acknowledging that Complainants and Respondent have resolved their dispute, that Complainants and Respondent believe that the Conciliation Agreement resolves the issues raised in the Complaints, and that the provisions of the Agreement will adequately vindicate the public interest.

Retaliation is a violation of the Fair Housing Act. Section 818 of the Act makes it unlawful to retaliate against any person because he or she has filed a housing discrimination complaint; is associated with a complainant; has counseled or otherwise assisted any person to file such a complaint; or has provided information to HUD during a complaint investigation. Section 818 also protects complainants against retaliatory acts that occur after a complainant has withdrawn, settled, or conciliated a housing discrimination complaint. Any person who believes that he or she has been a victim of retaliation for any of the reasons listed above may file a housing discrimination complaint with HUD within one (1) year of the date on which the most

recent alleged retaliatory act(s) occurred or ended.

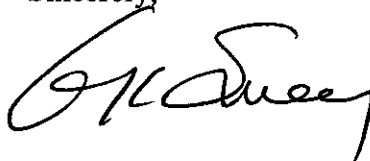
Enforcement by the Attorney General. Section 810(c) of the Act provides that whenever HUD has reasonable cause to believe that a respondent has breached a Conciliation Agreement, HUD shall refer the matter to the Attorney General with a recommendation that a civil action be filed on behalf of the complainant. Section 814(b)(2) of the Act authorizes the Attorney General to file a civil action in an appropriate United States District Court for appropriate relief with respect to the breach of a HUD Conciliation Agreement.

If an aggrieved person believes that a respondent has breached a HUD Conciliation Agreement, he or she should promptly report the alleged breach to the HUD Office that investigated the complaint.

Public Disclosure. Section 103.330(b) of HUD's regulations implementing the Act provides that Conciliation Agreements shall be made public, unless the aggrieved person and the respondent request nondisclosure and HUD determines that disclosure is not required to further the purposes of the Act. Notwithstanding a determination that disclosure of an Agreement is not required, HUD may publish tabulated descriptions of the results of all conciliation efforts.

Thank you for your cooperation during the complaint investigation, and during the conciliation process. If you have any questions regarding the Agreement or the information provided in this letter, please contact Thurman G. Miles, Director, Fort Worth FHEO Center, at (817) 978-5900 or 1-888-560-8913, for assistance.

Sincerely,



Garry L. Sweeney
Director
Fort Worth Regional Office of
Fair Housing and Equal Opportunity
Region VI

Enclosure

cc: Texas Department of Rural Affairs
Charlie Stone, Executive Director
1700 North Congress Avenue, Suite 220
Austin, Texas 78711

Texas Department of Housing and Community Affairs
Michael Gerber, Executive Director
P. O. Box 13941
Austin, Texas 78711-3941



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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May 21, 2010

Mr. Garry Sweeney
Fair Housing Director, Region VI
FORT WORTH REGIONAL OFFICE
U.S. Department of Housing and Urban Development
Southwest Office
801 Cherry St., Unit 45, Suite 2500
Fort Worth, TX 76102

Dear Mr. Sweeney:

Enclosed for your review and approval on behalf of the U. S. Department of Housing and Urban Affairs are three (3) fully executed copies of the Conciliation Agreement regarding Case No. 06-10-0410-8 (Title VIII) and Case. No. 06-10-0410-9 (Section 109). Please execute all three (3) copies, retain one for your files, and return the other two (2) to us so that we may retain one and provide one to the Complainants' counsel.

We believe that this agreement fully addresses the concerns that have been raised, resolves fully the matters raised in the complaints, and forms a constructive path for the expeditious delivery of these important disaster recovery funds. Please do not hesitate to contact me if you require anything further in this regard.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael Gerber", written over a horizontal line.

Michael Gerber
Executive Director

cc (w/att.): Deputy Assistant Secretary Yolanda Chavez
Charles S. "Charlie" Stone
John Henneberger
Madison Sloan

United States Department of Housing and Urban Development

Case No. 06-10-0410-8 (Title VIII)

Case No. 06-10-0410-9 (Section 109)

Texas Low Income Housing Information Service,
Complainant

Texas Appleseed,
Complainant

v.

The State of Texas, by and through
The Texas Department of Rural Affairs and
The Texas Department of Housing and Community Affairs,
Respondent

CONCILIATION AGREEMENT

Approved by the Assistant Secretary for Fair Housing and Equal Opportunity on
behalf of the United States Department of Housing and Urban Development

Effective Date: May 25, 2010

I. PARTIES, DEFINITIONS, AND STATEMENT OF FACTS

A. Parties and Issues in Controversy

Complainants:

Texas Low Income Housing Information Service
508 Powell Street
Austin, Texas 78703-5122
john@texashousing.org

Texas Appleseed
1609 Shoal Creek, Suite 201
Austin, Texas 78701
msloan@texasappleseed.net

Representing Complainants:

Michael Allen, Esq.
RELMAN, DANE, & COLFAX, PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036-2456
Phone: (202) 728-1888
Fax: (202) 728-0848
E-mail: mallen@relmanlaw.com

Respondent:

State of Texas, by and through:

Texas Department of Rural Affairs
Charlie Stone
Executive Director
Texas Department of Rural Affairs
1700 North Congress Avenue, Suite 220
Austin, Texas 78711
E-mail: charlie.stone@tdra.state.tx.us

Texas Department of Housing and Community Affairs
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
P.O. BOX 13941
Austin, TX 78711-3941

Conciliation Agreement

CASE NAME: Texas Low Income Housing Information Service and Texas Appleeed v. State of Texas
CASE NUMBERS: 06-10-0410-8 (TITLE VIII); 06-10-0410-9 (SECTION 109)

(512) 475-3800

E-mail: michael.gerber@tdhca.state.texas.us

Representing Respondent:

Barbara Deane

Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL

P. O. Box 12548

Austin, Texas 78711

E-mail: barbara.deane@oag.state.tx.us

Issues in Controversy:

Complainants allege the State has violated 42 U.S.C. §§3604(a), 3604(b), and 42 U.S.C. §§5309 in connection with its administration of funds under P.L. 110-329 (see Complaints). HUD understands and agrees that the execution of this agreement does not confer upon HUD any additional rights or obligations beyond those specified in Public Law 110-329 and the August 14, 2009 issue of the Federal Register. The regular (non-disaster, annual) allocation of CDBG funds to the State of Texas is in no way delayed or otherwise affected by the execution of this agreement. Nothing herein constitutes a finding or admission of any fact or noncompliance by the State of Texas, TDHCA or TDRA.

B. Definitions

For purposes of this Conciliation Agreement, the following terms shall have the meanings indicated below:

1. "Agreement" means this Conciliation Agreement.
2. "AFFH" means, as the context may indicate, either affirmatively furthering fair housing or to affirmatively further fair housing.
3. "Amendment" means the amendment to the State's Action Plan submitted by the State to HUD on September 30, 2009 describing the proposed use of an additional \$1.7 billion made available under P.L. 110-329.
4. "CDBG" means Community Development Block Grant.
5. "Complaints" means HUD Case No. 06-10-0410-8 and 06-10-0410-9, submitted to HUD by Texas Low Income Housing Information Service on December 1, 2009, deemed filed by HUD on January 21, 2010, and joined by Texas Appleeed as a Complainant on February 7, 2010, the amendment thereto filed with HUD by Texas Low Income Housing Information Service and Texas Appleeed on April 27, 2010, and the Administrative

Complaint filed with HUD by Texas Low Income Housing Information Service and Texas Appleeed on October 28, 2009. The term "Complaint," as used in this Agreement and when considered in context, refers to the applicable filing that is described in the preceding sentence.

6. "Council of Governments" or "COG" means a regional planning commission or similar regional planning agency as described in Chapter 391, Texas Local Government Code.
7. "FEMA" means the Federal Emergency Management Agency.
8. "HUD" means the U.S. Department of Housing and Urban Development.
9. "Hurricane Block Grant Funds" means \$3.1 billion in supplemental Community Development Block Grant disaster recovery funds allocated by HUD to the State to respond to the needs of Texans affected by The Hurricanes pursuant to Public Law 110-329.
10. "Hurricane Recovery Funds" means any Round I funds that are reallocated during the Term of this Agreement and Round II funds.
11. "LMI" means persons of low or moderate income as defined by HUD for purposes of the Hurricane Recovery Funds.
12. "LURA" means a land use restriction agreement, being a recorded agreement setting forth, among other things, income and rent restrictions applicable to units of affordable rental housing and constituting, with respect to the specific affordable rental housing identified therein, a covenant running with the land.
13. "MODs" means methods of distribution, as provided for in HUD's rules governing the CDBG disaster recovery program.
14. "Program" or "Programs" means any program, programs, or project funded by Hurricane Recovery Funds.
15. "Revised Amendment" means the revised amendment to the State's Action Plan describing the use of Hurricane Recovery Funds to be prepared by the State pursuant to Section II.B. of this Agreement. The Revised Amendment may be submitted to HUD as a series of partial amendments, and this term may refer to the revised amendment as a whole or in part as context may indicate.
16. "Round I" refers to Hurricane Block Grant Funds made available to the State under its Action Plan for CDBG Disaster Recovery Funds pursuant to notice in the *Federal Register* published by HUD on February 13, 2009.

17. "Round II" refers to Hurricane Block Grant Funds allocated to the State pursuant to notice in the *Federal Register* published by HUD on August 14, 2009.
18. "Recipient" means any entity that receives or administers any Hurricane Recovery Funds. The term does not include TDHCA or TDRA, unless the context clearly indicates otherwise.
19. "State" means the State of Texas.
20. "Term of this Agreement" means the period commencing on the Effective Date and ending on the Expiration Date.
21. "TDHCA" means the Texas Department of Housing and Community Affairs.
22. "TDRA" means the Texas Department of Rural Affairs.
23. "The Hurricanes" means Hurricanes Dolly and Ike.

Terms used in HUD regulations and not specifically defined herein have the meanings ascribed to them in such HUD regulations.

C. **Statement of Facts**

Pursuant to Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, Public Law 110-329 (2008), Congress appropriated \$6.5 billion in supplemental CDBG funds, of which HUD allocated \$3.1 billion in funding to respond to the needs of Texans affected by The Hurricanes. Thereafter, HUD published two notices of allocations, waivers, and alternative grant requirements in the *Federal Register*. The State designated TDRA its lead agency for administration of programs funded under P.L. 110-329. On May 14, 2009, HUD issued a general conditional approval of the State's Action Plan for use of Hurricane Block Grant Funds of approximately \$1.3 billion, and supplemental approvals thereof on July 2, 2009, and July 24, 2009.

On September 30, 2009, the State submitted the Amendment describing the proposed use of an additional \$1.7 billion made available under P.L. 110-329. By letter of October 28, 2009, to HUD Secretary Shaun Donovan, Texas Low Income Housing Information Service ("TxLIHIS") and Texas Appleseed lodged objections to the Amendment. On November 10, 2009, HUD informed the State that it had determined the Amendment to be "substantially incomplete," and directed the State to revise and resubmit the Amendment within forty-five (45) days.

On December 1, 2009, Complainant TxLIHIS submitted a Complaint to HUD alleging the State had violated 42 U.S.C. §§3604(a), 3604(b) and 3608 in its administration of certain Hurricane Block Grant Funds. HUD deemed that Complaint officially filed on January 21,

2010. Texas Appleseed requested to be added as a Complainant on February 7, 2010. The Complaint was amended on April 27, 2010. HUD accepted the amended Complaint. This amended Complaint alleged violations of 42 U.S.C. §§ 3604(a), 3604(b) and 5309. The allegation under 42 U.S.C. § 3608 was dropped in the amended Complaint.

The Complaints provide the basis for this Conciliation Agreement. The acceptance by HUD of the Complaints does in no way confer upon HUD any additional rights or obligations beyond those specified in Public Law 110-329 and the August 14, 2009 issue of the Federal Register. The regular (non-disaster, annual) allocation of CDBG funds to the State of Texas is in no way delayed or otherwise affected by the execution of this Conciliation Agreement.

- D. With the approval of this Conciliation Agreement, the Parties commit themselves to affirmatively furthering fair housing for survivors of The Hurricanes in an expeditious manner.

The Parties commit themselves to honor the terms of this Agreement and to work together to obtain HUD approval of this Agreement; a Revised Amendment that will provide for allocation of funds consistent with this Agreement; an updated AI consistent with the state's needs, the law, and guidance of HUD; and MODs for each COG informed by the applicable AI and respectful to public input and the dignity of people and communities these funds are intended to assist.

II. TERMS OF AGREEMENT

In approving this Agreement as an acceptable conciliation of the Complaints, HUD is making a finding that the terms and conditions of this Agreement adequately address all issues urged in the Complaints, including, without limitation, the substantive and legal issues. To facilitate the efficient delivery of Hurricane Recovery Funds to eligible Texans affected by The Hurricanes, and without admission of liability by the State, TDHCA, or TDRA with respect to the allegations of the Complaints, TDHCA, TDRA and Complainants commit to the following terms:

A. Analysis of Impediments to Fair Housing ("AI")

1. **Updated AI.** The State, acting through TDHCA, will update its AI. TDHCA acknowledges that this updated AI must conform to HUD's requirements in effect at the time that it is prepared. The State will develop its updated AI in two phases. Both phases of the development of the updated AI will be done by a qualified consultant or organization with experience in development of Analyses of Impediments. Under phase 1, within one-hundred-twenty (120) days of HUD's approval of this Agreement, plus such reasonable time as may be necessary for a lawful procurement, TDHCA shall produce for public comment a materially complete draft of that portion of its AI covering the areas eligible to receive Hurricane Recovery Funds (including the entitlement

jurisdictions within that area). Under phase 2, which will begin once phase 1 of the updated AI is accepted by HUD, TDHCA will, as promptly as reasonably possible, while still ensuring a thorough and competent product, produce for public comment a materially complete draft of that portion of its AI covering the balance of the State.

- a. With respect to all Round I and Round II activities for which reimbursable activity has already occurred, the applicable Program shall be subject to the AI in effect at the time the reimbursable activity commenced.
- b. Phase 1 of the updated AI shall include and provide separately for the identification and analysis of impediments to fair housing in each of the following areas and shall recommend appropriate actions utilizing applicable Hurricane Recovery Funds to overcome the effects of the impediments identified in each area:
 - 1) The geographic area represented by the Houston-Galveston Area Council (hereafter, "H-GAC"). Phase 1 of the updated AI shall assess, among other factors, any fair housing impediments related to:
 - (i) the impact of the hurricane evacuee population within the City of Houston and Harris County; and
 - (ii) rebuilding public, assisted, and affordable housing on Galveston Island that was destroyed by The Hurricanes.
 - 2) The geographic area represented by the South East Texas Regional Planning Commission (hereafter, "SETRPC").
 - 3) The geographic area represented by the Deep East Texas Council of Governments (hereafter, "DETCOG").
 - 4) The geographic area represented by the Lower Rio Grande Valley Development Council (hereafter, "LRGVDC"), specifically including impediments to fair housing faced by farmworkers and residents of colonias.
 - 5) The geographic area represented by the remaining areas eligible as Recipients.
- c. After TDHCA produces the draft of phase 1 of the updated AI for public comment, pursuant to Section II.A.1. of this Agreement, the public shall have ten (10) days, pursuant to applicable law, to provide comments on the draft phase 1 of the updated AI. After the close of the public comment period, TDHCA shall submit phase 1 of the updated AI to HUD for review, together with TDHCA's written responses to any public comments as part of the submission, and seek confirmation from HUD that phase 1 of the updated AI complies with federal requirements. TDHCA will timely respond to any questions raised by HUD. TDHCA will copy the Complainants on

written responses it provides to HUD in response to HUD's questions under this subparagraph.

- d. TDHCA shall appoint an advisory committee to review and provide comment to TDHCA prior to the release of phase 1 of the updated AI and to assist TDHCA with the evaluation of phase 1 of the updated AI and associated work products. This advisory committee may, as deemed necessary by TDHCA, be consulted with respect to the procurement of the consultant to develop the updated AI, which procurement shall be done as expeditiously as possible with the objective that it be completed and accepted by HUD no later than January 1, 2011, but earlier if possible.
 - e. Notwithstanding any other provision in this Conciliation Agreement, the State, through TDHCA and TDRA, may submit amendments for allocation to Recipients of Hurricane Recovery Funds to the Action Plan during the pendency of HUD's acceptance of phase 1 of the updated AI, and irrespective of any determination by HUD with respect to phase 1 of the updated AI. If HUD has not accepted phase 1 of the updated AI by January 1, 2011, neither TDHCA nor TDRA shall, except as provided by Section II.A.3.5, expend any further Hurricane Recovery Funds until such time as phase 1 of the updated AI has been accepted by HUD.
 - f. **Phase 2.** Under phase 2, which will begin once phase 1 of the updated AI is accepted by HUD, TDHCA will, as promptly as reasonably possible produce for public comment a materially complete draft of that portion of its AI covering the balance of the State. Phase 2 must be developed by a qualified consultant or organization with experience in the development of AIs. After TDHCA produces phase 2 of the updated AI for public comment; the public shall have thirty (30) days, pursuant to applicable law, to provide comments. After the close of the public comment period, TDHCA shall submit phase 2 of the updated AI to HUD for review, including written responses to any public comments as part of the submission.
2. **Application of Phase 1 of the Updated AI.** For Hurricane Block Grant Funds for which MODs have been reviewed and approved as of the Effective Date of this Agreement, TDHCA, TDRA, and Recipients may proceed to expend such funds. The Action Plan and MODs that have previously been submitted to and approved by HUD are not subject to the updated AI. Upon HUD's acceptance of phase 1 of the updated AI, TDHCA and TDRA will review the substance and effect of all Programs funded with applicable Hurricane Recovery Funds for consistency with phase 1 of the updated AI. Such Programs shall be funded and undertaken in a manner that affirmatively furthers fair housing consistent with this Agreement and federal law and regulations. TDHCA and TDRA shall require Recipients to review expenditures of Hurricane Recovery Funds to ensure they will be consistent with phase 1 of the updated AI. In the event of noncompliance by a Recipient with its AFFH obligations (as defined by phase 1 of the updated AI), TDHCA or TDRA shall impose progressive sanctions, which TDHCA and

TDRA shall promulgate by rule, up to and including termination of funding to a non-compliant Recipient.

3. **Use of Funds and Planning Activities Prior to the Completion of Production of Phase 1 of the Updated AI.** . Subject to Section 3.5 of this Agreement, TDHCA or TDRA may not expend Hurricane Recovery Funds (except for planning and administrative funds) until the earlier of January 1, 2011 or HUD's acceptance of phase 1 of the updated AI.

- 3.5 **Expenditures of Round II Funds Prior to the Acceptance of Phase 1 of the Updated AI.** Except as explicitly provided for elsewhere in this Agreement, neither TDHCA nor TDRA shall commit or expend any Hurricane Recovery Funds prior to HUD's acceptance of phase 1 of the updated AI, or January 1, 2011, whichever is earlier, except in cases of locally identified priority Programs that cannot be carried out without Hurricane Recovery Funds. With respect to a non-housing Program that is subject to this Section II.A.3.5, TDRA will, using an independent consultant acceptable to the Complainants, notify Complainants of the Program in question, describe the Program in detail and state explicitly how the Program is consistent with HUD's current Fair Housing Guidance. This notification shall contain the consultant's assessment of how the Program in question will be consistent with the State's and each Recipient's obligation to AFFH. For each housing Program that is subject to this Section II.A.3.5, TDHCA will notify Complainants of the Program in question, describe the Program in detail and state explicitly how the Program is consistent with HUD's current Fair Housing Guidance or this Conciliation Agreement. From the date of notification, Complainants will have ten business days within which to lodge an objection stating how the Program does not comply with HUD's current Fair Housing Guidance or this Conciliation Agreement. Upon mutual consent of the applicable agency and the Complainants, the period may be extended. The applicable agency and the Complainants commit to work together in good faith to resolve and address differences or concerns about such Programs. The Complainants may, while deciding whether to object or not, ask questions to and request clarifications directly from the consultant. In the event of an objection, TDHCA or TDRA will not expend Hurricane Recovery Funds until Complainants withdraw their objection, phase 1 of the updated AI is accepted by HUD or January 1, 2011, whichever is earlier. Complainants are bound by a covenant of good faith and fair dealing with respect to any objection. If Complainants do not timely object, they will be deemed to have waived any objection to the Program. With respect to each allocated area, the amount of money that may be spent under this Section II.A.3.5 is capped at the lesser of 33% the area's total allocation under the Revised Action Plan Amendment or \$258 million.

4. **AFFH Training.** TDHCA and TDRA shall provide mandatory training to Recipients on AFFH and civil rights compliance.
 - a. TDHCA or TDRA, as appropriate, shall promptly provide mandatory training to each Recipient's designee(s) concerning the Recipient's obligations to AFFH and to comply with civil rights certifications and the reporting requirements required by this Agreement.
 - b. Upon HUD's acceptance of phase 1 of the updated AI, TDHCA and TDRA shall conduct additional mandatory training with respect to Hurricane Recovery Funds to review with Recipients the impediments identified in phase 1 of the updated AI, to provide guidance and assistance on how to use phase 1 of the updated AI to inform their recovery activities regarding The Hurricanes, to help prepare them to carry out their responsibilities to AFFH, and to prepare them to meet their compliance requirements in administering their Programs in a manner consistent with this Agreement.
 - c. TDHCA and TDRA shall separately approve training curricula for the AFFH training described in this Section II.A.4. of this Agreement after a public notice and comment period of at least fifteen (15) days.
5. **Reporting On AFFH.** TDHCA and TDRA, by rule, shall establish procedures to collect data relevant to actions to AFFH for any Programs and shall require each Recipient to collect and report to TDHCA or TDRA, as applicable, on a quarterly basis, data relevant to actions to AFFH and ensure compliance with civil rights certifications. Upon written request by Complainants, TDHCA or TDRA, as applicable, will make available free of charge and within ten business days, data including but not limited to the following (unless such data can not be produced within such ten business days, in which case the applicable agency shall certify that fact in writing to the Complainants, and set a date within a reasonable time when the data will be available):
 - a. For each Program activity requiring a direct application by an individual or a non-institutional entity: the applicant household's income, the household's income as a percentage of area median family income as defined by HUD, the race and ethnicity of the head of the household, the household's familial status, and the presence or non-presence of a household member with a disability.
 - b. For each non-housing Program activity directly linked to an individual beneficiary: the beneficiary household's income and that household's income as a percentage of area median family income as defined by HUD, the race and ethnicity of the beneficiaries using census or survey data.

- c. For each activity providing housing or housing assistance that is not directly linked to a specific beneficiary: the cost of the housing unit to the applicant and to the occupant, the maximum qualifying household income as a percentage of area median family income as defined by HUD, restrictions regarding the age or familial status of occupants, the presence or non-presence of design or services that make the housing unit accessible to an individual with a disability, and the number of fully accessible units.
- d. For each non-housing activity that is identified as principally benefitting low- and moderate-income persons, a description detailing the methodology used for the determination of the LMI benefit that permits an independent evaluation of that determination, including a detailed geographic description of the households benefited with the census geographies used to make the determination or, if other methodology was utilized to make the determination, a clear and complete description of the methodology and data. This description shall include surveys, survey tabulations, correspondence, sampling methodology, and other material documentation on which TDHCA or TDRA, as applicable, has relied in making its LMI certification.
- e. TDHCA and TDRA, as applicable, shall collect and maintain, until at least the Expiration Date of this Agreement, all final documents listed in this Section II.A.5. of this Agreement.
- f. Final Program applications shall be posted on TDHCA's or TDRA's website, or linked to a single website, as appropriate, from the time of award through a period of six months following the applicable Program's closeout.
- g. For purposes of monitoring compliance with this Agreement and applicable law, TDHCA and TDRA agree to provide information to Complainants as follows:
 1. TDCHA and TDRA are each state agencies subject to the Texas Public Information Act, Texas Government Code, Chapter 552 ("Act"). Except as provided herein, nothing in this Agreement shall obligate TDHCA or TDRA to provide any information which it may not lawfully provide or is not required by law to provide. If any information is requested by Complainants that TDHCA or TDRA believes may be excepted from disclosure under the Act, the information may not be withheld unless the procedures and requirements of the Act are followed.
 2. The Complainants acknowledge that the Act does not require TDRA or TDHCA to create new documents, information or reports to respond to information requests under the Act. Should Complainants request documents, information or reports that do not exist or that TDHCA and TDRA do not possess, TDHCA and

TDRA agree to so notify Complainants within the timeframes established under the Act.

3. TDHCA and TDRA shall provide public information requested by Complainants within ten (10) business days of request, unless the applicable agency seeks an opinion from the Attorney General in good faith under the Act, or unless the information can not be produced within such ten business days, in which case the applicable agency shall certify that fact in writing to the Complainants, and set a date within a reasonable time when the information will be available.
4. To the extent Complainants request information that is available in electronic form, TDHCA and TDRA shall provide such information without charge or other fee. TDHCA and TDRA agree to provide such information in the electronic format used by TDHCA or TDRA. TDHCA and TDRA shall, without charge to Complainants, collectively provide Complainants up to 10,000 pages of information that is available only in paper form. When information is kept electronically and in paper form, Complainants have the option to elect the form in which the information that is to be provided.
5. Within thirty (30) days after the Effective Date, and upon written request by the Complainants (which requests shall in no event be more frequent than quarterly during the term of the Agreement), TDHCA and TDRA shall provide Complainants reports containing all data reported in the HUD Disaster Recovery Grant Reporting System with respect to Hurricanes Ike, Dolly and Rita.

B. Allocation of Funds to Affirmatively Further Fair Housing

1. **Action Plan Amendment.** TDRA and TDHCA shall prepare a Revised Amendment and submit it to HUD. TDRA and TDHCA acknowledge that prior to such submission they are responsible for satisfying applicable federal statutes and regulations governing public participation, as well as the provisions for public participation as announced in the February 13, 2009, and August 14, 2009 *Federal Registers*.

After the Revised Amendment is developed by TDRA and TDHCA TDRA and TDHCA shall submit the Revised Amendment to HUD for review. TDHCA and TDRA shall include written responses to any public comments as part of the submission. TDHCA and TDRA shall submit the Revised Amendment to HUD, seeking confirmation that it complies with federal requirements. TDHCA and TDRA will timely respond to any questions regarding the Revised Amendment raised by HUD. TDHCA and TDRA will copy the Complainants on written responses it provides to HUD in response to HUD's questions under this subparagraph.

The Revised Amendment may be submitted to HUD as a series of partial amendments. Subject to applicable federal requirements for public comment, the Revised Amendment (as a whole) shall include the following:

- a. **Methods of Distribution.** MODs shall be proposed that describe each Recipients' Programs, including a description of the funding levels, eligibility requirements, intended beneficiaries, and maximum and minimum benefit levels. For each Program listed in a MOD, TDRA and TDHCA, as applicable, shall describe how the Program will address identified impediments and AFFH in accordance with phase 1 of the updated AI. TDHCA and TDRA shall not release Hurricane Recovery Funds for any Program until a MOD as described above is proposed, published for public comment, submitted to the appropriate state agency for review, and thereafter submitted to and approved by HUD. Before any MOD is finalized, it shall be posted on the applicable agency's website so that it may be reviewed for a period of not less than fifteen (15) days for public comment.
- b. **LMI Allocation.**
 - i. TDHCA and TDRA shall expend at least 55 percent of Hurricane Block Grant Funds and Program income on Programs to benefit low- and moderate-income persons.
 - ii. TDHCA and TDRA may administer a Program directly if, at any point, in TDHCA's or TDRA's sole determination, there is no acceptable provider capable of serving the needs of low- and moderate-income persons residing in the locality or region in a competent and efficient manner.
 - iii. TDHCA and TDRA shall regularly report on their websites or link to a single website, and require regular reporting by Recipients, to ascertain and ensure compliance with the requirement in this Section II.B.1.b.
- c. **Housing Allocation.** TDHCA and TDRA shall expend at least 55 percent of Hurricane Block Grant Funds on housing Programs.
- d. **Recipient Performance.** TDHCA shall require Recipients to adhere to expenditure performance requirements with respect to the applicable Hurricane Recovery Funds used for housing, and to submit to performance evaluations of their expenditure rates every six months during the term of this Agreement. TDHCA's proposed performance standards shall be set at a level of incremental expenditure to reasonably assure that, within a period of no more than eighteen months from the date of the commencement of the Program, each Recipient will have identified sufficient eligible beneficiaries such that the Recipient will be able to provide reasonable assurance that the Recipient will be able to expend all applicable Hurricane Recovery Funds utilized for housing in compliance with

TDHCA-established benchmarks. TDHCA will require each Recipient to ensure that expenditure of those committed funds is in compliance with TDHCA-established benchmarks. If a Recipient is unable or unwilling to administer its allocated Hurricane Recovery Funds in compliance with TDHCA's benchmarks, the COG in which the Recipient is located will determine, in a manner acceptable to TDHCA, whether the COG or another eligible provider with demonstrated capacity will assume responsibility for the administration of those Hurricane Recovery Funds for the same purposes and for the benefit of the same beneficiaries. If the COG and TDHCA cannot find a mutually agreeable administrator, TDHCA agrees to administer a Program to carry out those responsibilities.

- e. TDHCA shall provide the proposed expenditure performance requirements for public review and comment fifteen (15) days before they are approved by TDHCA. TDHCA will provide a written response to any public comment.
- f. **Housing Program Guidelines.** TDHCA shall create a task force comprised of representatives of TDHCA and the COGs, that shall in one or more posted public meetings, develop criteria governing all housing Programs to be carried out with Hurricane Recovery Funds. Such recommendations, upon adoption by TDHCA, will direct the available scope of housing activities Recipients may carry out and will be reflected in an amendment. TDHCA must consider these recommendations and approve guidelines which shall include and address but not be limited to:
 - i. A list of housing Program activities (including appropriate relocation and buyout activities) from which Recipients may select housing Programs that they will offer;
 - ii. The cost and benefit criteria for each housing Program;
 - iii. The Program participant eligibility and qualification criteria for each housing Program;
 - iv. Housing quality standards for housing funded with Hurricane Recovery Funds;
 - v. The priority factors that Recipients must consider in administering their overall housing Program, including prioritization for persons at various income levels, persons with special needs, and relocation Programs;
 - vi. An evaluation of the income levels of disaster survivors and the establishment of reasonable guidelines to ensure that the housing needs of low-, very low- and extremely low-income households are assisted with housing in no less than the proportion to their relative percentages of the overall populations

which suffered housing damage within the community being served by the Program;

vii. Appropriate outreach and public awareness measures for housing Programs;

viii. The recommendations will provide and allow for objectively determined regional adjustments for these criteria to reflect differences in the costs of delivery for benefits and the economic profile of local target populations.

2. **Housing Initiatives.** Subject to applicable federal requirements for public comment, TDHCA shall establish and fund from Hurricane Recovery Funds the following housing initiatives as part of its Revised Amendment:

a. **Affordable Rental Housing Program.** Set asides from the Hurricane Block Grant Funds for affordable rental housing Programs administered by TDHCA, sufficient to ensure that TDHCA will meet the mandate of P.L. 110-329, and addressing multifamily rental housing, single family rental housing, and public housing needs arising from The Hurricanes. Such funds relating to affordable multifamily rental housing and owners of 20 or more single family or duplex private rental housing units constructed, repaired, or reconstructed using Hurricane Recovery Funds will be governed by appropriate use restrictions, to be evidenced by duly-recorded LURAs having terms of ten (10) years. TDHCA shall require all owners of affordable multifamily rental housing units and owners of 20 or more single family or duplex private rental housing units receiving assistance under this Program to accept Housing Choice Voucher holders under the same substantive provisions as those in place in the Texas Low Income Housing Tax Credit program established by Internal Revenue Code §42, Texas Government Code, Chapter 2306, and rules and guidelines promulgated by TDHCA relating thereto.

If, and only if, prior to the execution of the first such LURA applicable to an affordable multifamily property or owner of 20 or more single family or duplex private rental properties constructed, repaired, or reconstructed using Hurricane Recovery Funds, HUD has provided TDHCA written confirmation, in form and substance reasonably acceptable to TDHCA, that TDHCA shall have no responsibility to monitor or enforce any such LURA or the ownership and operation of the property to which it relates after ten (10) years from the date such LURA is executed and recorded, a subsequent ten (10) year period shall be included in the LURA, which shall expressly provide that such additional ten (10) year period shall be enforceable under the same substantive provisions as those in place in the Texas Low Income Housing Tax Credit program established by Internal Revenue Code §42, Texas Government Code, Chapter 2306, and rules and guidelines promulgated by TDHCA relating thereto.

- b. **One-For-One Replacement.** From TDHCA's affordable housing set aside out of the Hurricane Recovery Funds, no less than \$50 million shall be available for use in the City of Galveston for the one-for-one replacement of all family and elderly public housing units damaged or destroyed in Hurricane Ike. Of the remaining funds, no less than \$25 million shall be provided for the construction, reconstruction, replacement, or rehabilitation of family and elderly public housing units damaged or destroyed by The Hurricanes, with priority being given to activities which include one-for-one replacement of family and elderly public housing units within a Public Housing Authority jurisdiction, or federally funded farm labor housing.
- c. **Disaster Housing Demonstration Program.** TDHCA shall administer \$6 million in Hurricane Recovery Funds for the disaster housing pilot program required by HB 2450 (81st Legislature, regular session). This funding shall be administered with \$2 million available in each of the following areas Lower Rio Grande Valley Development Council, Harris County, and Galveston County. TDHCA will publish the criteria under which interested parties may compete to administer such pilot projects.
- d. **Title Clearance and Legal Assistance Program.** A title clearance and legal assistance Program funded from Hurricane Recovery Funds at \$500,000.
- e. **Rebuilding Subsidized Housing.** In furtherance of the objective of restoration of subsidized housing damaged or destroyed by The Hurricanes and to ensure funds are available to address issues identified in phase 1 of the updated AI, TDHCA shall create a Program, to be administered by the appropriate COG, funded at \$100 million, for the sole benefit of low- and moderate-income persons with unmet housing needs resulting from The Hurricanes, with priority given to addressing issues identified with public housing and affordable rental housing damaged or destroyed by The Hurricanes. Of this amount, \$90 million shall be made available in the Counties of Harris and Galveston, and \$10 million shall be made available in the County of Orange. Such Program shall require:
 - i. The one-for-one replacement or rehabilitation of all family and elderly public housing units that were damaged or destroyed as a result of The Hurricanes within the local jurisdictions in a manner that affirmatively furthers fair housing in compliance with phase 1 of the updated AI. Twenty million dollars shall be reserved specifically to support the one-for-one replacement of family and elderly public housing damaged or destroyed by The Hurricanes in the City of Galveston. Once all public housing units damaged or destroyed by The Hurricanes in Galveston have been addressed the reservation shall be released for other rental housing activities under this section.

- ii. The rehabilitation, reconstruction or construction of single-family and multi-family rental housing units damaged or destroyed by The Hurricanes within the jurisdictions or surrounding regions in a manner that affirmatively furthers fair housing in compliance with phase 1 of the updated AI in sufficient numbers and at appropriate rents to affordably house an equal number of Housing Choice Voucher holders as were living within each jurisdiction at the time of The Hurricanes.
 - 1) TDHCA will work with units of local government in the areas where applicable Hurricane Recovery Funds are to be administered requiring that zoning and permitting in connection with the use of Hurricane Recovery Funds are addressed in a manner which is consistent with AFFH and other applicable laws.
 - 2) TDHCA shall require all Recipients for multifamily and owners of 20 or more units of single family or duplex private rental housing to accept Housing Choice Voucher holders under the same substantive provisions as those in place in the Texas Low Income Housing Tax Credit program established by Internal Revenue Code §42, Texas Government Code, Chapter 2306, and rules and guidelines promulgated by TDHCA relating thereto, for a period of ten (10) years. Such provisions shall be evidenced by duly-recorded LURAs. Furthermore, such housing shall be subject to the same use restrictions as those described in Section II.B.2.a.
- f. **Impacted Area Buyout Criteria.** TDHCA shall set aside \$18 million of Hurricane Recovery Funds to fund relocation and buyout assistance for low and moderate income victims of The Hurricanes living in FEMA designated "High Risk Areas" and areas of high minority and poverty concentration as approved by TDHCA. These activities will be administered by the COGs under policies developed by TDHCA, and will use relocation counselors and licensed real-estate professionals.
- g. **Moving To Opportunity Program.** TDHCA and Complainants shall work together to prepare a request to HUD for an allocation of additional Housing Choice Vouchers, or assistance in developing alternative tenant-based rental assistance for eligible households. Contingent on securing federal appropriations to fully fund Housing Choice Vouchers or equivalent tenant-based rental assistance to assist up to 2,500 eligible households, TDHCA shall propose to establish a Moving to Opportunity Program, funded at \$1 million per year for five years and operated by Public Housing Authorities, to permit eligible renter households in areas affected by The Hurricanes to locate alternative rental housing in higher opportunity areas. Such funds shall be expended to provide relocation counseling, security and utility deposits, moving expenses, and reasonable Program administrative expenses under criteria developed by TDHCA.

3. **Tax Issues.** In addition to other requirements described in this Agreement, TDHCA shall prohibit the denial of assistance to applicants who are elderly or disabled based upon an election to defer property tax payments as permitted under Texas law, or to applicants who have property tax debt so long as the applicant has entered or agrees to enter into a plan with the appropriate local taxing authority to pay such taxes. TDHCA shall require contractors for the State, COGs, and Recipients being paid from Hurricane Recovery Funds to properly state these criteria in all public notices and media communications regarding their Programs, and to use a TDHCA-approved disclosure form to inform potential beneficiaries and applicants of their right to enter into a payment plan or defer taxes as provided in Texas law. This disclosure will be in clear language, understandable to a layperson. TDHCA shall approve the proposed disclosure and instructions after a 15 day public comment period.
4. **Ownership.** TDHCA shall provide Recipients with clear instructions concerning the standards that must be used to establish property ownership as provided under Texas Government Code §2306.188, and prohibit Recipients' use of standards that are more onerous than those in Texas Government Code §2306.188. TDHCA shall approve the proposed instructions after a fifteen (15) day public comment period.
5. **Access to Housing for Persons with Disabilities.** TDHCA shall establish clear standards under which all housing constructed or rehabilitated with Hurricane Recovery Funds shall be designed to be visitable by people with disabilities.
 - a. TDHCA shall create a task force, appointed in consultation with Complainants, to develop a practical policy for the waiver of requirements allowed under Texas Government Code §2306.514(b) related to new construction and rehabilitation of properties using Hurricane Recovery Funds. No such waiver would be granted where the property being constructed was being built specifically for an applicant with special needs. TDHCA shall provide full consideration to Hurricane Recovery Funds applications for LMI households with special needs and will give such applications funding priority.
 - b. Visitability standards set forth in Texas Government Code §2306.514(b) shall apply to all housing constructed with Hurricane Recovery Funds except if a waiver is granted under Section II.B.5.a. of this Agreement.
 - c. TDHCA and TDRA shall establish rules, procedures and funding guidelines requiring their contractors and Recipients to (i) adequately assess the needs of survivors of The Hurricanes with disabilities for funding to be carried out with Hurricane Recovery Funds and (ii) assign the highest funding priority to Programs serving low and moderate income households within this population.

6. **Eligibility.** In the administration of Hurricane Recovery Funds, TDHCA shall prohibit COGs and Recipients from refusing housing assistance to applicants solely on the basis that the applicants were denied assistance by FEMA. TDHCA shall include in each Hurricane Recovery Funds grant contract provisions to require the Recipient to accept reasonable alternative proof of damage from The Hurricanes in the event a homeowner has been denied FEMA assistance. TDHCA will promulgate clear standards to be used for establishing whether an applicant's home is eligible for housing benefits out of Hurricane Recovery Funds because of damage related to The Hurricanes and shall require all COGs and Recipients to adhere to these standards. TDHCA shall issue proposed instructions for compliance with this provision after a 15 day public comment period.

III. REPORTING

TDHCA and TDRA shall increase the accountability and transparency for Hurricane Recovery Funds by posting on their respective websites, or linking to a single website, the HUD-approved updated AI, Revised Amendment, all final MODs, all final Program applications, all project status and fund expenditure reports provided to HUD, and reporting data required in Sections II.A.5 and II.B.1.b.iii of this Agreement.

- A. TDHCA and TDRA shall require each Recipient to submit to TDHCA or TDRA, as applicable, all notices of any public hearings or requests for public comment the Recipient may have that relates to the administration of Hurricane Recovery Funds that are provided to such Recipient. TDHCA and TDRA agree to post on their respective websites, or link to a single website, all such notices that TDRA or TDHCA, as applicable, receives from any such Recipient. Such postings will not fulfill the Recipients' responsibility under Chapter 551 of the Texas Government Code.
- B. Assistance with Document Location. If TDHCA or TDRA receives a request for information under the Act that the agency does not possess, then in response to the request for information, the applicable agency will, within ten business days, provide the Complainants with a list of governmental bodies that the agency, reasonably and in good faith, believes may have the information.
- C. In the event of noncompliance by a Recipient with the applicable terms of this Agreement or with federal law or regulation governing the administration of Hurricane Recovery Funds, TDHCA and TDRA shall by rule provide for the imposition of progressive sanctions, consistent with the requirements of applicable state and federal law, up to and including a termination of funds to that non-compliant Recipient.

IV. OTHER

A. Withdrawal and Dismissal of Complaints

Upon the Effective Date of this Agreement, the Complaints will be deemed to have been withdrawn and dismissed without need of any further action by any party and with the express understanding that neither the Complaints nor any issue or allegation urged in such Complaints, that had been urged in any previous version of such Complaints, or that may have been urged in any of the Complaints in connection with the State's administration of the Hurricane Block Grant Funds, may be re-filed, in whole or in part by, on behalf of or at the request of any Complainant.

B. Miscellaneous Terms

1. **Notice.** If any legal notice is provided concerning this Agreement, notice shall be given at the following:

For TxLIHIS:

John Henneberger, Co-Director
Texas Low Income Housing Information Service
508 Powell Street
Austin, Texas 78703-5122

For Texas Appleseed:

M. Madison Sloan, Staff Attorney
Texas Appleseed
1609 Shoal Creek, Suite 201
Austin, Texas 78701
msloan@texasappleseed.net

For TDRA:

Charles Stone
Executive Director
Texas Department of Rural Affairs
P. O Box 12877
Austin, Texas 78711
charlie.stone@tdra.state.tx.us

For TDHCA:

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
P. O. Box 13941
Austin, Texas 78711
michael.gerber@tdhca.state.tx.us

Notice shall be sent either electronically or, in compliance with the "mailbox" rule, when sent first class, return receipt required.

2. **Venue.** The parties, and by approving this Agreement HUD, agree that venue for any suit brought by the Department of Justice to enforce the terms of this Agreement should be brought in the federal district court for the Southern, Eastern, or Western District of Texas in which one or more of the defendants in such suit resides or has its principle place of business. Except as otherwise provided in this paragraph, any action to enforce the terms of this Agreement shall be brought in a State District Court for Travis County, Texas.
3. **Headings.** Headings are included solely for the ease of locating subjects and shall not be considered for purposes of interpreting this Agreement, nor do they enlarge or limit any term of this Agreement.
4. **Plural and Gender.** Every singular word may be read as a plural and vice versa. Any reference to gender herein may be read as either masculine, feminine, or neuter and should not be interpreted as a limitation.

5. **Remedies for Breach.** Each party agrees that, in the event of a breach of this Agreement, the harmed party is limited to seeking injunctive relief to compel compliance with this Agreement.
6. **Use of Funds.** Notwithstanding anything contained in this Agreement: (a) the State represents that state law does not prohibit TDHCA and TDRA from entering into this Agreement and complying with its terms; (b) this Agreement applies solely to Hurricane Block Grant Funds and does not and shall not be construed to apply to any other federal funds or to any State funds; (c) State funds may not be used in a manner inconsistent with Texas law, including without limitation, the General Appropriations Act and the Texas Constitution; and, (d) this Agreement shall not control or compel appropriation of any State funds.
7. **Severability.** If any section of this Agreement is determined by a court to be in violation of the laws of the State, federal law or regulation, or against public policy, the remainder of the Agreement shall continue to operate in full force.
8. **Entire Agreement.** This Agreement contains the entire Agreement and understanding between the parties. With respect to this Agreement, no representations, promises, agreements or understandings, written or oral, not herein contained shall be valid or binding unless the same is in writing and signed by the party intended to be bound.
9. **Construction.** This Agreement is the result of conciliation negotiations undertaken in good faith and in that regard the rule of contractual construction that an ambiguous term shall be construed against the drafter shall not be employed.
10. **Review by Counsel.** Each of the Parties represents and warrants to the others that it has had this Agreement reviewed by counsel prior to execution.
11. **Notice and Cure.** An action by Complainants or either of them for breach of this Agreement may not be commenced until and unless TDHCA or TDRA or both, as appropriate, have been given written notice specifying the basis for the assertion of a material breach, a reasonable opportunity to cure, and have failed to cure or take steps to cure.
12. **Force Majeure.** "Force Majeure event" means an event beyond the control of the State, TDHCA, or TDRA which prevents or delays compliance with one or more of their obligations under this Agreement, such events including but not limited to the following:
 - a. an act of God (such as, but not limited to, hurricanes, tornadoes, and floods);
 - b. war, hostilities (whether war be declared or not), invasion, or embargo;

- c. rebellion, revolution, insurrection, or military or usurped power, or civil war;
- d. contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- e. contamination by any other hazardous materials or substance;
- f. riot, commotion, strikes, work stoppages or slowdowns, lock outs or disorder, or
- g. acts or threats of terrorism.

Upon the occurrence of a force majeure event a party to this Agreement shall not be considered in breach of this Agreement for failure to perform any obligation hereunder to the extent that such performance is prevented by that force majeure event. Upon occurrence of a force majeure event the party or parties whose performance is affected shall, as promptly as reasonably possible, provide notice of the facts and circumstances to the other parties hereto. The parties will work in good faith to resume performance as soon as is reasonably possible once such force majeure event no longer impairs or affects their ability to do so.

C. Effective Date and Expiration Date

The Effective Date of this Agreement is the last date on which it is signed by each signatory for the State and each Complainant, and approved by each signatory for the U.S. Department of Housing and Urban Development. If this Agreement, the Revised Amendment, the updated AI, or the ultimate release of funds based on approved MODS—as each may be amended by agreement of the Parties or by agreement between The State and HUD—are not approved by HUD, this Agreement shall be null and void *ab initio* without need of any further action by any party even if it has been executed by each Complainant, TDHCA and TDRA. The Expiration Date of this Agreement is six (6) months following the date of the close out of the Hurricane Block Grant Funds grant.

D. Relief for Complainants

Complainants seek no monetary award of damages. They are, however, entitled to payment of actual and reasonable attorneys' fees and costs in the amount of \$120,000.

E. Monitoring

Complainants and TDHCA and TDRA agree that HUD shall monitor compliance with the terms and conditions specified in this Agreement. As part of such monitoring, HUD may, upon reasonable notice and at reasonable times, inspect TDHCA's and TDRA's records, examine witnesses and copy pertinent records. TDHCA and TDRA agree to provide their

Conciliation Agreement

CASE NAME: Texas Low Income Housing Information Service and Texas Appleseed v. State of Texas
CASE NUMBERS: 06-10-0410-8 (TITLE VIII); 06-10-0410-9 (SECTION 109)

cooperation in any monitoring review undertaken by HUD to ensure compliance with this Agreement.

F. Reporting and Record Keeping

All required certifications and documentation of compliance with the terms of this Agreement shall be submitted to:

U.S. Department of Housing and Urban Development
Fair Housing Enforcement Center
ATTENTION: CONCILIATION REVIEW
801 Cherry Street, Unit #45, Suite 2500
Fort Worth, Texas 76102

G. Consequences of Breach

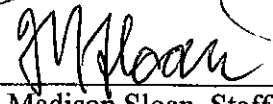
The parties acknowledge that in the event of an uncured breach of this Agreement, 42 USC §3610(c) will apply.

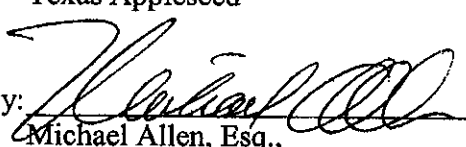
H. Signatures

This Agreement is being signed by TDRA and TDHCA by individuals acting in their official capacity. They have the requisite authority to sign this Agreement on behalf of their respective agencies. These other signatures to this Agreement attest to the approval and acceptance of this Conciliation Agreement by the signatories.

Complainants:

By:  Date: May __, 2010
John Henneberger, Co-Director, TxLIHIS

By:  Date: May 21, 2010
M. Madison Sloan, Staff Attorney,
Texas Appleseed

By:  Date: May 21, 2010
Michael Allen, Esq.,
Counsel for TxLIHIS and Texas Appleseed

Conciliation Agreement

CASE NAME: Texas Low Income Housing Information Service and Texas Appleseed v. State of Texas


CASE NUMBERS: 06-10-0410-8 (TITLE VIII); 06-10-0410-9 (SECTION 109)

The Texas Department of Housing and Community Affairs:

By:  Date: May 21, 2010

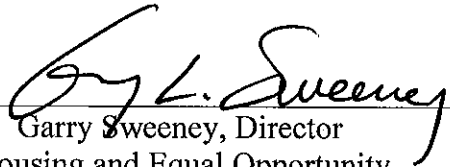
Name: Michael Gerber
Title: Executive Director

The Texas Department of Rural Affairs:

By:  Date: May 21, 2010

Name: Charles S. ("Charlie") Stone
Title: Executive Director

APPROVED:

By:  Date: May 25, 2010

Name: Garry Sweeney, Director
Fair Housing and Equal Opportunity
Region VI
U.S. Department of Housing and Urban Development

Attachment B

Goldsberry & Associates, PLLC
3027 Marina Bay Dr., #108
League City, TX 77573

August 20, 2013

Barbara Deane
General Counsel
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711
barbara.deane@tdhca.state.tx.us

Ms. Deane:

My law firm represents a group of minority public housing residents and potential public housing residents in an impending lawsuit against the United States Department of Housing and Urban Development (HUD) as well as state and local government entities. Our case concerns public housing discrimination in the City of Galveston.

The Galveston Housing Authority seeks to rebuild public housing in mixed-income developments by using tax credits issued by the Texas Department of Housing and Community Affairs (TDHCA). As you know, both public housing and housing using tax-credit financing must conform to the requirements of the Fair Housing Act (FHA).

Galveston Initiative II, LP (aka Cedar Terrace) has applied for tax credits to help finance this development. Unfortunately, this site is located in a racially segregated and impoverished area of the City of Galveston which makes it an unacceptable and inappropriate location for public housing and housing financed by tax credits.

61% of the people who reside in this neighborhood live below the poverty level. 60% are Black and 34% are Hispanic. Building in this kind of "impacted census tract" will reestablish and perpetuate segregation, so approving these plans would be to disregard the government's duty to affirmatively further fair housing (AFFH).

We have reviewed the recent decision in *ICP v. TDHCA* (civil action 3:08-CV-0546-D) in the United States District Court for the Northern District of Texas. In that case, the court determined that the way in which this department allocated tax credits is discriminatory and in violation of the Fair Housing Act ("FHA") and ordered the TDHCA to "submit a remedial plan that sets out how it will bring its allocation decisions into compliance with the FHA." *ICP, Inc. v. Tex. Dep't of Housing and Community Affairs*, No. 3:08-CV-0546-D (N.D. Tex. March 20, 2012).

It is our opinion that approval of the tax credit application for Galveston Initiative II, LP would also be in violation of the FHA, as it would be a continuation of the same discriminatory practices by the TDHCA cited in the ICP case. The original strategy of our lawsuit did NOT include the TDHCA, however, should this department move forward and approve this tax credit application, we would have no choice but to add the TDHCA as a defendant.

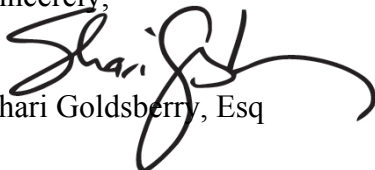
The actual scoring system used in the remedy is looking to ideally award tax credits in census tracts where the poverty rate is less than 15%, AND household income is in the top quartile for the county, and the schools are rated exemplary or recognized by the TEA. May 18, 2012 Remedial Plan, Page 6
<http://www.danielbesharalawfirm.com/Documents/TDHCA%20notice%20of%20proposed%20remedial%20plan.pdf>

As mentioned above, the poverty rate in the Galveston Initiative II, LP census tract is 61% or FOUR TIMES HIGHER than the TDHCA guidelines in the ICP remedy.

Therefore, it is our hope that the TDHCA will refrain from issuing any tax credits for Galveston Initiative II, LP simply because of the extreme poverty rate in this census tract which should make it completely unacceptable for tax credits. There are many other reasons why this location should fail TDHCA scrutiny if you would like us to send additional data.

Once my clients are assured that this department's actions will not violate the FHA, there should be no need to add the TDHCA as a defendant in their suit.

Sincerely,


Shari Goldsberry, Esq

cc:
Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711
(512) 469-9606 fax
tim.irvine@tdhca.state.tx.us

cc:
Cameron Dorsey
Director, Multi-Family Finance Division
Texas Department of Housing and Community Affairs

P.O. Box 13941
Austin, Texas 78711
Cameron.dorsey@tdhca.state.tx.us

Cc:
Teresa Morales
Texas Department of Housing and Community Affairs
Teresa.Morales@TDHCA.State.TX.US

5c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer

RECOMMENDED ACTION

WHEREAS, a Housing Tax Credit application for Park Central Apartments was submitted to the Department on April 29, 2013;

WHEREAS, the proposed issuer of the bonds is the Port Arthur Housing Opportunity Corporation;

WHEREAS, the Certificate of Reservation expires on November 2, 2013;

WHEREAS, the development is located in a municipality that has been identified as having twice the state average of units *per capita* supported by Housing Tax Credits or Private Activity Bonds;

WHEREAS, the City of Port Arthur voted on July 9, 2013, to support the construction of the development and authorize an allocation of 4% Housing Tax Credits;

WHEREAS, the applicant requested pre-clearance regarding the proposed site being in the 100-year floodplain and potentially wetlands;

WHEREAS, staff has determined that the presence of these features does not specifically require pre-clearance pursuant to §10.101(a)(4) of the Uniform Multifamily Rules; however, staff recommends the award be conditioned upon the completion of the HUD Environmental Clearance Process in accordance with 24 CFR Part 50 and/or 58 prior to bond closing as well as receipt of a Conditional Letter of Map Revision (CLOMR) from FEMA to be submitted at the time of cost certification;

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$656,590 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

the Park Central Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The development is new construction and will consist of 184 total units serving the general population. This transaction is Priority 3 and 168 of the units will be rent and income restricted at 30% and 60% of the Area Median Family Income (AMFI). The remaining 16 units will be market rate and have no rent restrictions. The development is located in Port Arthur, Jefferson County and is currently zoned for this type of development.

The applicant submitted a “Waivers, Pre-clearance, Determination, and Disclosure” (WPDD) Packet requesting pre-clearance to build the development in the 100-year floodplain and, potentially, in wetlands. Information contained in the Environmental Site Assessment (ESA) indicated that a potential wetland area crosses the northwestern boundary of the site and continues to adjacent eastern and western properties and further states that the surface drainage flows southeast of the site. As stated in the ESA there are no environmental concerns identified based on the topography maps contained therein. The WPDD Packet indicated the ESA provider is conducting additional assessments to determine the presence of wetlands; the conclusion of which will be provided to the Army Corps of Engineers for review before any determination can be made. The fact that the development is proposed to be built in the 100-year floodplain is mitigated by the certification in the application regarding specifications for elevations of ground floor buildings, parking and drive areas. While the presence of these features does not specifically require pre-clearance pursuant to §10.101(a)(4) of the Uniform Multifamily Rules, staff recommends conditioning the award upon completion of the HUD Environmental Clearance Process in accordance with 24 CFR Part 50 and/or 58 prior to bond closing as well as receipt of a Conditional Letter of Map Revision (CLOMR) from FEMA. Documentation to satisfy such conditions will be required to be submitted at the time of cost certification.

Organizational Structure and Compliance: The Borrower is Port Arthur Housing Initiative I, L.P., and the General Partner is Port Arthur Housing Initiative I GP, LLC, which includes the Housing Authority of the City of Port Arthur and is comprised of the following individuals: Seledonio Quesada, Ronnie Linden, Clonie Ambroise, Brenda Roy, Bart Bragg and Robert Reid. The Compliance Status Summary completed on May 24, 2013, revealed that the principals of the general partner have received 20 multifamily awards. There were no identified issues relating to material noncompliance.

Census Demographics: The development is to be located at 2500 Highway 365 in Port Arthur. Demographics for the census tract (0069.00) include AMFI of \$54,842; the total population is 2,902; the percent of population that is minority is 73.47%; the percent of the population that is below the poverty line is 8.30%; the number of owner occupied units is 895 and the number of renter units is 290. (Census information from FFIEC Geocoding for 2013).

Public Comment: The Department has not received any letters of support or opposition for this Development.

DEVELOPMENT IDENTIFICATION

TDHCA Application #: 13409 Program(s): 4% LIHTC

Park Central

Address/Location: 2500 Farm to Market 365

City: Port Arthur County: Jefferson Zip: 77640

Population: Family Program Set-Aside: Non-Profit Area: Urban

Activity: New Construction Building Type: Wrap (3 or 4-story) Region: 5

Townhouse

Analysis Purpose: New Application - Initial Underwriting

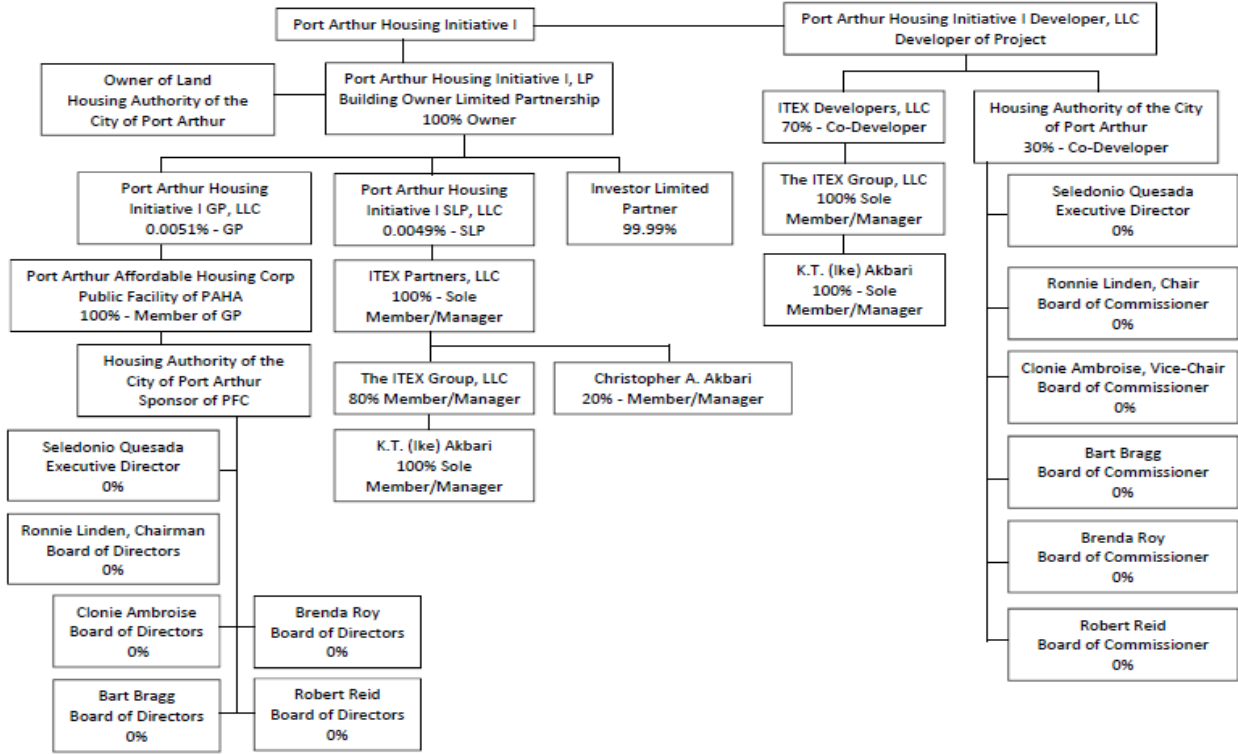
ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (Annual)	\$656,590				\$656,590				

CONDITIONS

- 1 Receipt and acceptance before Determination Notice:
 - Draft ground lease between PAHA and Applicant clearly specifying all terms and rents, including any up-front payment.
- 2 Receipt and acceptance by Bond Closing:
 - Documentation on the completion of the HUD Environmental Clearance Process in accordance with 24 CFR Part 50 and/or 58. Such documentation must be submitted with the post bond closing documentation pursuant to 10.402(e) of the Uniform Multifamily Rules.
- 3 Receipt and acceptance by Cost Certification:
 - a: Documentation of a \$12,528,012 CDBG loan from Port Arthur HA to Applicant, as a must-pay loan with no provision for forgiveness.
 - b: An attorney's opinion and analysis validating that the CDBG loan can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not be deducted from eligible basis.
 - c: Documentation from Port Arthur CAD confirming details of PILOT agreement.
 - d: Execution of HAP contract for 46 Project Based Vouchers.
 - e: Documentation clearing environmental issues contained in the ESA report, specifically:
 - i: An architectural engineer's certification that the finished ground floor elevation for each building is at least one foot above the floodplain and that all drives, parking and amenities are not more than 6 inches below the floodplain, or a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F") indicating that the development is no longer within the 100 year floodplain.
 - ii: Documentation that all noise assessment recommendations were implemented.
 - iii: Further investigation into the wetlands status and all appropriate permitting is obtained.
- 4 Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

OWNERSHIP STRUCTURE

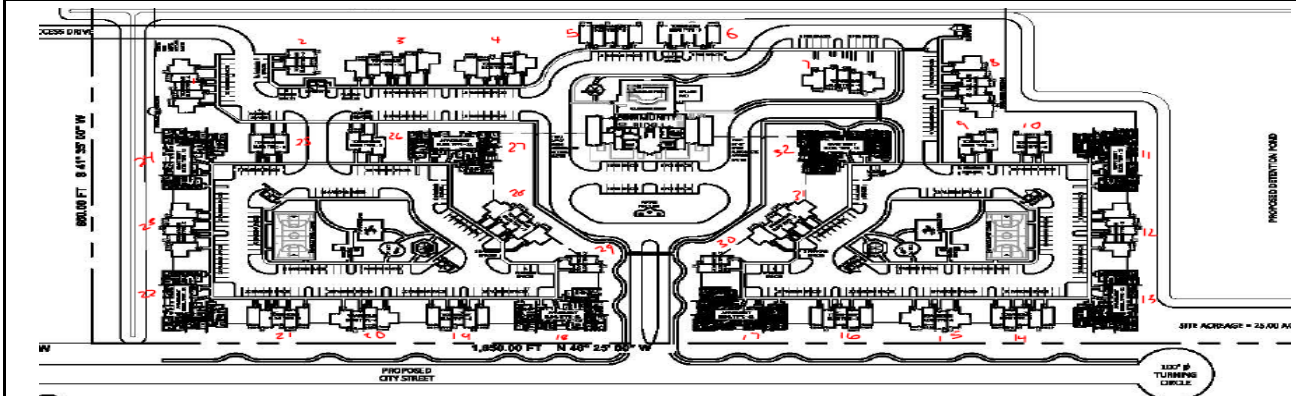


Related-Party Seller/Identity of Interest: No

- The Applicant, Developer, General Contractor, property manager, and supportive services provider are related entities.

DEVELOPMENT SUMMARY

SITE PLAN



This section intentionally left blank.

BUILDING ELEVATIONS

ROOF PITCH = 6:12 & 8:12



ROOF PITCH = 6:12 & 8:12



BUILDING CONFIGURATION

Bldg Type	11	12	1	2	3	4	5	6	7	8	9	10	Total Buildings
Stories	3	3	3	3	3	2	3	3	3	3	3	3	
# Bldgs	7	1	2	2	3	2	2	3	2	4	2	2	32
Units/Bldg	10	10	2	3	3	4	5	5	5	5	5	6	
Total Units	70	10	4	6	9	8	10	15	10	20	10	12	184
												Net Rentable SF	192,972
												Common Area SF	10,022

GENERAL INFORMATION

Total Size: 30 acres Scattered Site? Yes No
 Flood Zone: AH, BFE 4 Within 100-yr floodplain? Yes No
 Zoning: PD-4 Re-Zoning Required? Yes No N/A
 Density: 6.1 units/acre Utilities at Site? Yes No
 Title Issues? Yes No

Surrounding Uses:
 Vacant land, mixed use businesses.
 Other Observations:
 Light commercial zoning does allow multi-family.

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: Medina Consulting Company, Inc. Date: 3/20/2013

Recognized Environmental Conditions (RECs) and Other Concerns:

- A Noise assessment was performed at the site currently showing the noise level is within HUD's acceptable maximum limit of less than 65 decibels(dB). However, as operations at Jack Brooks Regional Airport (two miles from the site) increase, the ESA provider recommends incorporating sound dampening materials into the buildings' design. (p. 7)
- "The site is located in the 100-year floodplain identified as Shaded Zone AH according to the FEMA National Flood Insurance Program Flood Insurance Rate Map." (p. 20)

Comments:

"A PSSf (Palustrine, Scrub-Shrub – farmed) wetlands area is located on the Site according to a National Wetland Inventory Map for Port Arthur, Texas, provided by the United States Fish and Wildlife Service. The wetlands area crosses the northwestern boundary of the Site and continues onto the adjacent eastern and western properties." (p. 21)

MARKET ANALYSIS

Provider: The Gerald A. Teel Company, Inc. Date: 4/1/2013
 Contact: Tim N. Treadway Phone: 713.467.5858
 Number of Revisions: 1 Date of Last Applicant Revision: 8/9/2013

Primary Market Area (PMA): 144 sq. miles 7 mile equivalent radius
 The Primary Market Area is defined by the city limits of Port Arthur, Texas.

ELIGIBLE HOUSEHOLDS BY INCOME								
Jefferson County Income Limits								
HH size	30% of AMI		40% of AMI		50% of AMI		60% of AMI	
	min	max	min	max	min	max	min	max
1	\$0	\$11,490	---	---	---	---	\$11,490	\$22,980
2	\$0	\$13,140	---	---	---	---	\$13,140	\$26,280
3	\$0	\$14,790	---	---	---	---	\$14,790	\$29,580
4	\$0	\$16,410	---	---	---	---	\$16,410	\$32,820
5	\$0	\$17,730	---	---	---	---	\$17,730	\$35,460
6	---	---	---	---	---	---	---	---

AFFORDABLE HOUSING INVENTORY in PRIMARY MARKET AREA					
File #	Development	Type	Target Population	Comp Units	Total Units
Proposed, Under Construction, and Unstabilized Comparable Developments					
0	None.			0	
Other Affordable Developments in PMA since 2009					
	None.			n/a	
Stabilized Affordable Developments in PMA (pre-2009)					
Total Properties (pre-2009)		13	Total Units		2,130

Proposed, Under Construction, and Unstabilized Comparable Supply:
 None.

OVERALL DEMAND ANALYSIS			
	Market Analyst	Underwriter	
Total Households in the Primary Market Area	20,349	20,349	
	All units	HTC only	assisted units
Potential Demand from the Primary Market Area	7,168	1,446	3,866
Potential Demand from Other Sources	0	0	0
GROSS DEMAND	7,168	1,446	3,866
Subject Affordable Units	184	30	138
Unstabilized Comparable Units	0	0	0
RELEVANT SUPPLY	184	30	138
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE	2.6%	2.1%	3.6%

Demand Analysis:

The subject development includes units with three separate demand characteristics. The Underwriter determined Gross Demand for 1,446 units subject to HTC restrictions (from one-bedroom at 30% AMI up to three-bedroom at 60% AMI); and a Gross Capture Rate of 2.1% for 30 units. The maximum Gross Capture Rate for urban developments targeting family households is 10%; the analysis indicates sufficient demand to support the proposed development.

Households below the minimum HTC incomes provide demand for 3,866 units, and a Gross Capture Rate of 3.6% for 138 units with rental subsidies (public housing and Section 8 vouchers).

The Market Analyst reports Gross Demand for 7,168 units, and a Gross Capture Rate of 2.6% for all 184 proposed units.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE								
Unit Type	Market Analyst				Underwriter			
	Demand	Subject Units	Comp Units	Unit Capture Rate	Demand	Subject Units	Comp Units	Unit Capture Rate
1 BR/30% assisted	329	2	0	0.6%	973	2	0	0.2%
1 BR/60% assisted					897	25	0	2.8%
1 BR/60% HTC only	287	30	0	10.5%	144	5	0	3.5%
2 BR/30% assisted	675	4	0	0.6%	873	4	0	0.5%
2 BR/60% assisted					694	48	0	6.9%
2 BR/60% HTC only	274	58	0	21.2%	163	10	0	6.2%
3 BR/30% assisted	126	5	0	4.0%	481	5	0	1.0%
3 BR/60% assisted					427	54	0	12.6%
3 BR/60% HTC only	158	69	0	43.7%	92	15	0	16.3%

Primary Market Occupancy Rates:

The Market Analyst determined a 90% to 100% occupancy rate, with a mean of 98%, for 11 HTC restricted developments in the immediate vicinity, including Beaumont. (p. 35) These developments include new construction family and senior developments placed in service from 2001 through 2011. The average occupancy for 13 HTC developments in the PMA as determined by the Underwriter is 91%.

Absorption Projections:

The PMA does not contain any recently leased-up HTC properties so the Market Analyst used 09183 GraceLake Townhomes (126 units, new construction, family) and 09104 Stone Hearst Seniors Apartments (both located in Beaumont) to determine an absorption rate of 7 to 8 units per month for the senior development and a high of 25 to 26 units per month for GraceLake Townhomes. (p. 36)

Market Impact:

"Overall, the subject property appears to be viable in this area. An average long-term stabilized occupancy level for the subject property of approximately 94% to 95% appears reasonable in this vicinity, less 1% to 2% for credit or collection loss." (p. 37)

Comments:

Market Analysts reports that the unit mix may be out of balance, with 80 three-bedroom units (43% of total).

"The subject unit mix is too low on one bedroom units, higher in the three bedroom units, and more in line with the two bedroom units. It may be advisable to increase the one bedroom count and decrease the three bedroom count." (p. 38)

Lease-up risk for the three-bedroom units is mitigated by the fact that 55 of the 80 have rental assistance.

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (TDHCA's Pro forma)					
NOI:	\$460,555	Avg. Rent:	\$433	Expense Ratio:	62.1%
Debt Service:	\$398,909	B/E Rent:	\$405	Controllable Expenses:	\$2,569
Net Cash Flow:	\$61,647	Occupancy:	95.0%	Property Taxes/Unit:	\$82
Aggregate DCR:	1.15:1	B/E Occupancy:	91.2%	Program Rent Year:	2013

30 units (16% of total) are restricted to 60% HTC rent and income limits with no rental assistance. 92 units (50% of total) are public housing units supported by an operating subsidy. 46 units (25% of total) are supported by project-based Section 8 vouchers, with rents set at the Fair Market Rent. The remaining 16 units are unrestricted; underwriting analysis assumes they will achieve the Fair Market Rent.

Average rent is \$18 higher than break-even. Breakeven occupancy of 91% allows for 16 vacants. Breakeven will adjust due to the fact that PHU subsidy increases with increases in expenses.

Operating expenses proposed by Applicant are in line with other properties managed by Applicant. Applicant assumes that there will be a \$15,000 payment in lieu of taxes (PILOT) since property will be owned by the Housing Authority. Applicant computed PHU rents as tax credit rents whereas Underwriter treated PHU rents as a function of operating expense subsidy and nominal tenant payment of \$100. This treatment resulted in 9% more Operating Income in the Underwriter's pro forma.

Number of Revisions: 1 Date of Last Applicant Revision: 8/28/2013

ACQUISITION INFORMATION

SITE CONTROL

Type: Contract for sale Acreage: 25

Acquisition Cost: \$841,667 Contract Expiration: 10/31/2013

Cost Per Unit: \$4,574

Seller: Park Central West. Ltd. Related to Development Team? Yes No

Buyer: Port Arthur Re-Development Co. LLC.

Comments:

On or before the time of closing, the Contract will be assigned to the Port Arthur Housing Authority (PAHA). PAHA will enter a long -term land lease on 25 acres of the property with Port Arthur Housing Initiative I, LP. Contract also includes a provision to develop commercial on an additional five acres.

Applicant has not provided terms and conditions of the proposed lease.

DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	\$/ac	\$/unit	\$0	Contractor Fee	\$2,054,490
Offsite + Sitework		\$18,427/unit	\$3,390,529	Developer Fee	\$2,940,222
Building Cost	\$61.21/sf	\$64,197/unit	\$11,812,219	Soft Cost	\$2,494,314
Contingency	4.83%	\$3,988/unit	\$733,747	Reserves	\$1,131,615
Total Development Cost		\$24,557,136	\$133,463/unit		

Acquisition

The original application included \$841K as the pro rata acquisition cost for 25 acres of the 30-acre tract to be purchased by PAHA. Applicant revised the cost schedule to eliminate the land cost, indicating "PAHA will purchase the land and there will be a simple land lease".

Applicant must provide, before issuance of the Determination Notice, a draft of the proposed ground lease clearly indicating all anticipated rent payments.

Offsite

To connect to the city's water and sewer lines, two waterline bores under the highway are required and the sanitary sewer line will need to be extended 300 feet. In addition, a new city street with proper drainage will need to be constructed for access to the property from FM 365.

Sitework

Amenities include a fitness center, business center, swimming pool, water play area, basketball court, bbq pits, and community room. Nearly 200,000 feet of concrete work (\$1M) for streets and sidewalks.

Building Cost:

25% masonry veneer. Washer/dryer hookups in units. Mix of three story garden style apartment buildings and attached two story townhomes.

Reserves:

Capitalized reserves equal approximately 12 months operating expenses and debt service.

Conclusion:

Seller will execute a 120 foot easement from Hwy 365 to the south end of subject property and then southeast to the edge of seller's property that would connect with Jimmy Johnson.

\$22,543,009 total eligible cost would support a tax credit allocation of \$685,405.

Comments

Based on Applicant's original cost schedule, underwriting analysis indicated that the tax exempt bonds were paying for less than 50% of the aggregate basis for land and building cost. With the elimination of the land cost, the Development barely satisfies the 50% test. If the aggregate basis increases by 2% the tax exempt bond amount would fall below the 50% mark.

COST SCHEDULE Number of Revisions: 0 Date of Last Applicant Revision: NA

UNDERWRITTEN CAPITALIZATION

Applicant Revisions: 1 Last Update: 8/26/2013

INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
Community Bank of Texa	Conventional Loan	\$11,700,000	4.50%	40%
PAHA-Loan of CDBG	Local Government	\$12,528,012	0.00%	43%
PAHA-Loan of DHAP Res	Local Government	\$1,652,429	0.00%	6%
Raymond James	HTC	\$1,181,743	\$0.90	4%
Port Arthur Housing Initiative, L.P.	Deferred Dev Fee	\$2,280,912	0.00%	8%
		\$29,343,096	Total Sources	

PERMANENT SOURCES									
Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
Community Bank of Texa	\$4,463,796	4.50%	30	18	\$4,463,796	4.50%	30	18	18%
PAHA-Loan of CDBG	\$12,528,012	0.00%	40	40	\$5,100,000	0.00%	40	40	21%
					\$7,428,012	paid from cash flow			30%
PAHA-Loan of DHAP Res	\$1,652,429	0.00%	40	40	\$1,652,429	deferred	40	6.7%	
Total	\$20,296,666				\$20,296,666				

Comments:

Applicant states that the housing authority will loan the CDBG funds to the project for a term of 40 years. This is a must repay debt accruing 0% interest and is due in full at the end of the term.

PAHA will also provide a \$1.6M deferred loan from DHAP reserve funds. As HUD operating funds, this source is not subject to the federal grant restrictions with regard to eligible basis for tax credits.

CDBG is a federal source of funding which, if not determined to be bona fide debt, would be treated as a federal grant and removed from eligible basis for tax credits.

Underwriting analysis indicates \$5.1M of the CDBG funds can be fully amortized while maintaining a 1.15 debt coverage ratio. The \$4K deferred developer fee can be repaid within 1 year. And the \$7.4M remainder of CDBG funds can be repaid from cash flow within the 40-year term.

REA concludes the \$12.5M CDBG funds can be characterized as bona fide debt.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Raymond James	\$5,908,716	\$0.90		\$5,908,713	\$0.90	24%	
Port Arthur Housing Initiative, L.P.	\$4,183		0%	\$4,186		0%	0%
Total	\$5,912,899			\$5,912,899			
				\$26,209,565	Total Sources		

Comments:

\$0.90 equity price in line with similar deals.

CONCLUSIONS

Recommended Financing Structure:

The total development cost estimate of \$24,557,136 less \$16,991,808 in permanent funding leaves a gap of \$5,912,899.

The three possible tax credit allocations are:

Allocation determined by eligible basis:	\$687,464
Allocation limited by gap in financing:	\$657,055
Allocation requested by the Applicant:	\$656,590

A tax credit allocation of \$656,590 (as requested by Applicant) is recommended. At the credit price of \$0.90 this allocation provides \$5,908,713 in total equity proceeds.

The underwritten capital structure indicates the need to defer \$4,186 of the developer fee. This amount can be repaid from cash flow within 1 year of stabilized operations.

Underwriter: Eric Weiner

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

UNIT MIX/RENT SCHEDULE
Park Central, Port Arthur, 4% LIHTC #13409

LOCATION DATA	
CITY:	Port Arthur
COUNTY:	Jefferson
PROGRAM REGION:	5
PIS Date:	On or After 1/18/2013
IREM REGION:	

UNIT DISTRIBUTION		
# Beds	# Units	% Total
Eff		
1	36	19.6%
2	68	37.0%
3	80	43.5%
4		
TOTAL	184	100.0%

Applicable Programs
4% Housing Tax Credits

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjustment	100%
Applicable Fraction	91.30%
APP % Acquisition	3.34%
APP % Construction	3.34%
Average Unit Size	1,049 sf

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		Other		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market	
TC30%	\$307	PHU		1	1	1	705	\$154	\$54	\$100	\$218	\$0.45	\$318	\$318	\$100	\$100	\$0.14	\$0	\$650	0.92	\$550	
TC60%	\$615	PHU		8	1	1	705	\$154	\$54	\$100	\$218	\$0.45	\$318	\$2,544	\$800	\$100	\$0.14	\$0	\$650	0.92	\$550	
TC60%	\$615	0		2	1	1	705	\$615	\$54	\$561	\$0	\$0.80	\$561	\$1,122	\$1,122	\$561	\$0.80	\$0	\$650	0.92	\$89	
TC60%	\$615	PBV	645	5	1	1	705	\$645	\$54	\$591	\$0	\$0.84	\$591	\$2,955	\$2,955	\$591	\$0.84	\$0	\$650	0.92	\$59	
MR		0		2	1	1	705	\$0	\$54		NA	\$0.84	\$591	\$1,182	\$1,182	\$591	\$0.84	NA	\$650	0.92	\$59	
TC30%	\$307	PHU		1	1	1	720	\$154	\$54	\$100	\$218	\$0.44	\$318	\$318	\$100	\$100	\$0.14	\$0	\$650	0.90	\$550	
TC60%	\$615	PHU		8	1	1	720	\$154	\$54	\$100	\$218	\$0.44	\$318	\$2,544	\$800	\$100	\$0.14	\$0	\$650	0.90	\$550	
TC60%	\$615	0		3	1	1	720	\$615	\$54	\$561	\$0	\$0.78	\$561	\$1,683	\$1,683	\$561	\$0.78	\$0	\$650	0.90	\$89	
TC60%	\$615	PBV	645	4	1	1	720	\$645	\$54	\$591	\$0	\$0.82	\$591	\$2,364	\$2,364	\$591	\$0.82	\$0	\$650	0.90	\$59	
MR		0		2	1	1	720	\$0	\$54		NA	\$0.82	\$591	\$1,182	\$1,182	\$591	\$0.82	NA	\$650	0.90	\$59	
TC30%	\$369	PHU		1	2	2	972	\$166	\$66	\$100	\$218	\$0.33	\$318	\$318	\$100	\$100	\$0.10	\$0	\$775	0.80	\$675	
TC60%	\$739	PHU		6	2	2	972	\$166	\$66	\$100	\$218	\$0.33	\$318	\$1,908	\$600	\$100	\$0.10	\$0	\$775	0.80	\$675	
TC60%	\$739	0		1	2	2	972	\$739	\$66	\$673	\$0	\$0.69	\$673	\$673	\$673	\$673	\$0.69	\$0	\$775	0.80	\$102	
TC60%	\$739	PBV	799	4	2	2	972	\$799	\$66	\$733	\$0	\$0.75	\$733	\$2,932	\$2,932	\$733	\$0.75	\$0	\$775	0.80	\$42	
MR		0		2	2	2	972	\$0	\$66		NA	\$0.75	\$733	\$1,466	\$1,466	\$733	\$0.75	NA	\$775	0.80	\$42	
TC30%	\$369	PHU		1	2	2.5	986	\$166	\$66	\$100	\$218	\$0.32	\$318	\$318	\$100	\$100	\$0.10	\$0	\$775	0.79	\$675	
TC60%	\$739	PHU		15	2	2.5	986	\$166	\$66	\$100	\$218	\$0.32	\$318	\$4,770	\$1,500	\$100	\$0.10	\$0	\$775	0.79	\$675	
TC60%	\$739	0		6	2	2.5	986	\$739	\$66	\$673	\$0	\$0.68	\$673	\$4,038	\$4,038	\$673	\$0.68	\$0	\$775	0.79	\$102	
TC60%	\$739	PBV	799	8	2	2.5	986	\$799	\$66	\$733	\$0	\$0.74	\$733	\$5,864	\$5,864	\$733	\$0.74	\$0	\$775	0.79	\$42	
MR		0		2	2	2.5	986	\$0	\$66		NA	\$0.74	\$733	\$1,466	\$1,466	\$733	\$0.74	NA	\$775	0.79	\$42	
TC30%	\$369	PHU		1	2	2	987	\$166	\$66	\$100	\$218	\$0.32	\$318	\$318	\$100	\$100	\$0.10	\$0	\$775	0.79	\$675	
TC60%	\$739	PHU		6	2	2	987	\$166	\$66	\$100	\$218	\$0.32	\$318	\$1,908	\$600	\$100	\$0.10	\$0	\$775	0.79	\$675	
TC60%	\$739	0		2	2	2	987	\$739	\$66	\$673	\$0	\$0.68	\$673	\$1,346	\$1,346	\$673	\$0.68	\$0	\$775	0.79	\$102	
TC60%	\$739	PBV	799	3	2	2	987	\$799	\$66	\$733	\$0	\$0.74	\$733	\$2,199	\$2,199	\$733	\$0.74	\$0	\$775	0.79	\$42	
MR		0		2	2	2	987	\$0	\$66		NA	\$0.74	\$733	\$1,466	\$1,466	\$733	\$0.74	NA	\$775	0.79	\$42	
TC30%	\$369	PHU		1	2	2.5	1,000	\$166	\$66	\$100	\$218	\$0.32	\$318	\$318	\$100	\$100	\$0.10	\$0	\$775	0.78	\$675	
TC60%	\$739	PHU		3	2	2.5	1,000	\$166	\$66	\$100	\$218	\$0.32	\$318	\$954	\$300	\$100	\$0.10	\$0	\$775	0.78	\$675	
TC60%	\$739	0		1	2	2.5	1,000	\$739	\$66	\$673	\$0	\$0.67	\$673	\$673	\$673	\$673	\$0.67	\$0	\$775	0.78	\$102	
TC60%	\$739	PBV	799	3	2	2.5	1,000	\$799	\$66	\$733	\$0	\$0.73	\$733	\$2,199	\$2,199	\$733	\$0.73	\$0	\$775	0.78	\$42	
TC60%	\$853	PHU		4	3	2	1,182	\$179	\$79	\$100	\$218	\$0.27	\$318	\$1,272	\$400	\$100	\$0.08	\$0	\$899	0.76	\$799	
TC60%	\$853	0		1	3	2	1,182	\$853	\$79	\$774	\$0	\$0.65	\$774	\$774	\$774	\$774	\$0.65	\$0	\$899	0.76	\$125	
TC60%	\$853	PBV	1,040	2	3	2	1,182	\$1,040	\$79	\$961	\$0	\$0.81	\$961	\$1,922	\$1,922	\$961	\$0.81	\$0	\$899	0.76	(\$62)	
MR		0		1	3	2	1,182	\$0	\$79		NA	\$0.81	\$961	\$961	\$961	\$961	\$0.81	NA	\$899	0.76	(\$62)	
TC30%	\$426	PHU		1	3	2.5	1,233	\$179	\$79	\$100	\$218	\$0.26	\$318	\$318	\$100	\$100	\$0.08	\$0	\$899	0.73	\$799	
TC60%	\$853	PHU		6	3	2.5	1,233	\$179	\$79	\$100	\$218	\$0.26	\$318	\$1,908	\$600	\$100	\$0.08	\$0	\$899	0.73	\$799	
TC60%	\$853	0		3	3	2.5	1,233	\$853	\$79	\$774	\$0	\$0.63	\$774	\$2,322	\$2,322	\$774	\$0.63	\$0	\$899	0.73	\$125	
TC60%	\$853	PBV	1,040	3	3	2.5	1,233	\$1,040	\$79	\$961	\$0	\$0.78	\$961	\$2,883	\$2,883	\$961	\$0.78	\$0	\$899	0.73	(\$62)	
MR		0		1	3	2.5	1,233	\$0	\$79		NA	\$0.78	\$961	\$961	\$961	\$961	\$0.78	NA	\$899	0.73	(\$62)	
TC30%	\$426	PHU		3	3	2.5	1,253	\$179	\$79	\$100	\$218	\$0.25	\$318	\$954	\$300	\$100	\$0.08	\$0	\$899	0.72	\$799	
TC60%	\$853	PHU		22	3	2.5	1,253	\$179	\$79	\$100	\$218	\$0.25	\$318	\$6,996	\$2,200	\$100	\$0.08	\$0	\$899	0.72	\$799	
TC60%	\$853	0		10	3	2.5	1,253	\$853	\$79	\$774	\$0	\$0.62	\$774	\$7,740	\$7,740	\$774	\$0.62	\$0	\$899	0.72	\$125	
TC60%	\$853	PBV	\$1,040	12	3	2.5	1,253	\$1,040	\$79	\$961	\$0	\$0.77	\$961	\$11,532	\$11,532	\$961	\$0.77	\$0	\$899	0.72	(\$62)	
MR		0		3	3	2.5	1,253	\$0	\$79		NA	\$0.77	\$961	\$2,883	\$2,883	\$961	\$0.77	NA	\$899	0.72	(\$62)	
TC30%	\$426	PHU		1	3	2	1,372	\$179	\$79	\$100	\$218	\$0.23	\$318	\$318	\$100	\$100	\$0.07	\$0	\$899	0.66	\$799	
TC60%	\$853	PHU		3	3	2	1,372	\$179	\$79	\$100	\$218	\$0.23	\$318	\$954	\$300	\$100	\$0.07	\$0	\$899	0.66	\$799	
TC60%	\$853	0		1	3	2	1,372	\$853	\$79	\$774	\$0	\$0.56	\$774	\$774	\$774	\$774	\$0.56	\$0	\$899	0.66	\$125	
TC60%	\$853	PBV	\$1,040	2	3	2	1,372	\$1,040	\$79	\$961	\$0	\$0.70	\$961	\$1,922	\$1,922	\$961	\$0.70	\$0	\$899	0.66	(\$62)	
MR		0		1	3	2	1,372	\$0	\$79		NA	\$0.70	\$961	\$961	\$961	\$961	\$0.70	NA	\$899	0.66	(\$62)	
TOTALS/AVERAGES:				184			192,972				\$109	\$0.52	\$542	\$99,701	\$79,645	\$433	\$0.41	\$0	\$804	\$0.77	\$372	

ANNUAL POTENTIAL GROSS RENT:	\$1,196,412	\$955,740
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STABILIZED PRO FORMA

Park Central, Port Arthur, 4% LIHTC #13409

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	Port Arthur Comps	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT				\$0.52	\$542	\$1,196,412	\$955,740	\$433	\$0.41		-25.2%	(\$240,672)
Laundry Fee/NSF/Late Fees					\$15.00	\$33,120					0.0%	(33,120)
Capital Funds Subsidy					\$4.21	\$9,300					0.0%	(9,300)
Underwriter's Total Secondary Income							\$42,420	\$19.21			100.0%	42,420
POTENTIAL GROSS INCOME		\$ -				\$1,238,832	\$998,160				-24.1%	(\$240,672)
Vacancy & Collection Loss					5.0% PGI	(61,942)	(49,908)	5.0% PGI			-24.1%	12,034
PHU Operating Subsidy						-	266,896				100.0%	266,896
EFFECTIVE GROSS INCOME		\$ -				\$1,176,890	\$1,215,148				3.1%	\$38,258

General & Administrative	\$68,722	\$373/Unit	63,930	4.89%	\$0.30	\$313	\$57,500	\$63,930	\$347	\$0.33	5.26%	-10.1%	(6,430)
Management	\$68,721	4.7% EGI	63,281	4.65%	\$0.28	\$297	\$54,709	\$60,757	\$330	\$0.31	5.00%	-10.0%	(6,048)
Payroll & Payroll Tax	\$196,970	\$1,070/Unit	165,599	13.94%	\$0.85	\$891	\$164,000	\$164,000	\$891	\$0.85	13.50%	0.0%	-
Repairs & Maintenance	\$103,895	\$565/Unit	101,864	9.58%	\$0.58	\$613	\$112,720	\$112,720	\$613	\$0.58	9.28%	0.0%	-
Electric/Gas	\$53,208	\$289/Unit	27,093	2.38%	\$0.15	\$152	\$28,000	\$27,093	\$147	\$0.14	2.23%	3.3%	907
Water, Sewer, & Trash	\$117,335	\$638/Unit	104,928	10.62%	\$0.65	\$679	\$125,000	\$104,928	\$570	\$0.54	8.64%	19.1%	20,072
Property Insurance	\$55,800	\$0.29 /sf	110,794	8.60%	\$0.52	\$550	\$101,200	\$108,744	\$591	\$0.56	8.95%	-6.9%	(7,544)
Property Tax	\$118,826	\$646/Unit	64,537	1.27%	\$0.08	\$82	\$15,000	\$15,000	\$82	\$0.08	1.23%	0.0%	-
Reserve for Replacements	\$48,075	\$261/Unit	44,236	4.69%	\$0.29	\$300	\$55,200	\$55,200	\$300	\$0.29	4.54%	0.0%	-
Cable TV			2,330	0.68%	\$0.04	\$43	\$8,000	\$8,000	\$43	\$0.04	0.66%	0.0%	-
Supportive service contract fees			13,359	1.27%	\$0.08	\$82	\$15,000	\$15,000	\$82	\$0.08	1.23%	0.0%	-
TDHCA Compliance fees			13,271	0.63%	\$0.04	\$40	\$7,360	\$6,720	\$37	\$0.03	0.55%	9.5%	640
TDHCA Bond Administration Fees (TDHCA as Bond			20,843	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Security			1,838	1.06%	\$0.06	\$68	\$12,500	\$12,500	\$68	\$0.06	1.03%	0.0%	-
Describe				0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Describe				0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
TOTAL EXPENSES		\$ 797,904	64.25%	\$3.92	\$4,110	\$ 756,189	\$ 754,593	\$4,101	\$3.91	62.10%	0.2%	\$ 1,596	
NET OPERATING INCOME ("NOI")			35.75%	\$2.18	\$2,286	\$420,701	\$460,555	\$2,503	\$2.39	37.90%	-8.7%	(\$39,854)	

CONTROLLABLE EXPENSES	\$2,935/Unit	\$2,519/Unit		\$2,648/Unit		\$2,569/Unit	
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LONG TERM OPERATING PRO FORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
EFFECTIVE GROSS INCOME	\$1,215,148	\$1,243,009	\$1,271,534	\$1,300,740	\$1,330,642	\$1,491,241	\$1,672,073	\$1,875,809	\$2,105,482	\$2,364,542	\$2,656,926	\$2,987,111
LESS: TOTAL EXPENSES	754,593	776,801	799,666	823,209	847,450	979,860	1,133,092	1,310,435	1,515,698	1,753,295	2,028,338	2,346,750
NET OPERATING INCOME	\$460,555	\$466,208	\$471,868	\$477,530	\$483,193	\$511,381	\$538,982	\$565,374	\$589,784	\$611,247	\$628,588	\$640,360
LESS: DEBT SERVICE	398,909	398,909	398,909	398,909	398,909	398,909	398,909	398,909	398,909	398,909	127,500	127,500
NET CASH FLOW	\$61,647	\$67,300	\$72,959	\$78,621	\$84,284	\$112,473	\$140,073	\$166,466	\$190,875	\$212,338	\$501,088	\$512,860
CUMULATIVE NET CASH FLOW	\$61,647	\$128,946	\$201,905	\$280,527	\$364,811	\$870,924	\$1,516,436	\$2,296,607	\$3,203,134	\$4,223,294	\$6,695,968	\$9,239,276
DEFERRED DEVELOPER FEE BALANCE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.15	1.17	1.18	1.20	1.21	1.28	1.35	1.42	1.48	1.53	4.93	5.02
EXPENSE/EGI RATIO	62.10%	62.49%	62.89%	63.29%	63.69%	65.71%	67.77%	69.86%	71.99%	74.15%	76.34%	78.56%

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Park Central, Port Arthur, 4% LIHTC #13409

DEBT / GRANT SOURCES																	
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE							
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative			
		UW	App											DCR	LTC		
Community Bank of Texa		1.70	1.55	\$271,409	4.50%	30	18	\$4,463,796	\$4,463,796	18	30	4.50%	271,409	1.70	18.2%		
PAHA-Loan of CDBG		0.79	0.72	\$313,200	0.00%	40	40	\$12,528,012	\$5,100,000	40	40	0.00%	127,500	1.15	20.8%		
CASH FLOW DEBT / GRANTS																	
PAHA-Loan of CDBG		0.79	0.72		0.00%	40	40	\$0	\$7,428,012	40	40	0.00%		1.15	30.2%		
PAHA-Loan of DHAP Res		0.74	0.67	\$41,311	0.00%	40	40	\$1,652,429	\$1,652,429	40	40	0.00%		1.15	6.7%		
TOTAL DEBT / GRANT SOURCES				\$625,920				\$18,644,237	\$18,644,237				\$398,909		75.9%		
NET CASH FLOW		(\$165,364)	(\$205,218)									NET OPERATING INCOME	\$460,555	\$61,647	NET CASH FLOW		

EQUITY SOURCES												
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE						
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit		
Raymond James	LIHTC Equity	24.1%	\$656,590	0.90	\$5,908,716	\$5,908,713	\$0.8999	\$656,590	24.1%	\$32,113		
Port Arthur Housing Initiative, L.P.	Deferred Developer Fees	0.0%	(0% Deferred)		\$4,183	\$4,186	(0.1% Deferred)		0.0%		Total Developer Fee:	\$2,940,222
Additional (Excess) Funds Req'd		0.0%			(\$0)	\$0			0.0%		15-Year Cash Flow:	\$1,516,436
TOTAL EQUITY SOURCES		24.1%			\$5,912,899	\$5,912,899			24.1%		Cash Flow after Deferred Fee:	\$1,512,250
TOTAL CAPITALIZATION						\$24,557,136	\$24,557,136					

DEVELOPMENT COST / ITEMIZED BASIS												
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS					COST VARIANCE		
	Eligible Basis		Total Costs		Total Costs	Eligible Basis				%	\$	
	Acquisition	New Const. Rehab				New Const. Rehab	Acquisition					
Land Acquisition			\$ / Unit	\$0	\$0	\$ / Unit				0.0%	\$0	
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$ / Unit		\$0		0.0%	\$0	
				\$0	\$0						\$0	
Off-Sites			\$2,868 / Unit	\$527,799	\$527,799	\$2,868 / Unit				0.0%	\$0	
Sitework		\$2,387,730	\$12,977 / Unit	\$2,387,730	\$2,387,730	\$12,977 / Unit		\$2,387,730		0.0%	\$0	
Site Amenities		\$475,000	\$2,582 / Unit	\$475,000	\$475,000	\$2,582 / Unit		\$475,000		0.0%	\$0	
Building Costs		\$11,812,219	\$61.21 /sf	\$64,197/Unit	\$11,812,219	\$12,037,615	\$65,422/Unit	\$62.38 /sf	\$12,037,615	-1.9%	(\$225,396)	
Contingency		\$733,747	5.00%	4.83%	\$733,747	\$733,747	4.76%	4.92%	\$733,747	0.0%	\$0	
Contractor's Fees		\$2,054,490	13.33%	12.89%	\$2,054,490	\$2,054,490	12.71%	13.14%	\$2,054,490	0.0%	\$0	
Indirect Construction	0	\$1,184,200		\$6,490 / Unit	\$1,194,200	\$1,194,200	\$6,490 / Unit		\$1,184,200	0.0%	\$0	
Developer's Fees	\$0	\$2,940,222	15.00%	14.61%	\$2,940,222	\$2,940,222	14.44%	14.83%	\$2,940,222	0.0%	\$0	
Financing	0	\$955,401		\$7,066 / Unit	\$1,300,114	\$1,300,114	\$7,066 / Unit		\$955,401	0.0%	\$0	
Reserves				\$6,150 / Unit	\$1,131,615	\$1,131,615	\$6,150 / Unit			0.0%	\$0	
UNADJUSTED BASIS / COST		\$0	\$22,543,009		\$133,463 / Unit	\$24,557,136	\$24,782,532	\$134,688 / Unit	\$22,768,405	\$0	-0.9%	(\$225,396)
Acquisition Cost for Identity of Interest Seller					\$0							
Contingency		\$0										
Contractor's Fee		\$0										
Interim Interest		\$0										
Reserves		\$0			\$0							
Developer's Fee	\$0	\$0			\$0							
ADJUSTED BASIS / COST		\$0	\$22,543,009		\$133,463/unit	\$24,557,136	\$24,782,532	\$134,688/unit	\$22,768,405	\$0	-0.9%	(\$225,396)
TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):						\$24,557,136						

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Park Central, Port Arthur, 4% LIHTC #13409

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$0	\$22,543,009	\$0	\$22,768,405
Deduction of Federal Grants	\$0		\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$22,543,009	\$0	\$22,768,405
High Cost Area Adjustment		100%		100%
TOTAL ADJUSTED BASIS	\$0	\$22,543,009	\$0	\$22,768,405
Applicable Fraction	91.30%	91.30%	91.30%	91.30%
TOTAL QUALIFIED BASIS	\$0	\$20,582,747	\$0	\$20,788,543
Applicable Percentage	3.34%	3.34%	3.34%	3.34%
ANNUAL CREDIT ON BASIS	\$0	\$687,464	\$0	\$694,337
CREDITS ON QUALIFIED BASIS	\$687,464		\$694,337	

BUILDING CONSTRUCTION COST ESTIMATE				
CATEGORY	FACTOR	UNITS /SF	psf	AMOUNT
Base Cost:	Wrap (3 or 4-story)	192,972 SF	\$65.09	12,561,470
Adjustments				
Exterior Wall Finish			1.30	\$251,229
			0.00	0
9 ft. ceilings			2.12	408,248
Roofing			0.00	0
Subfloor			(0.08)	(15,763)
Floor Cover			3.41	658,035
Breezeways			0.66	127,884
Balconies			2.33	450,247
Plumbing Fixtures			0.85	164,250
Rough-ins			1.21	233,640
Built-In Appliances			3.99	770,400
Exterior Stairs			0.44	85,000
Heating/Cooling			2.06	397,522
Enclosed Corridors			0.00	0
Carports			0.00	0
Garages			0.00	0
Comm &/or Aux Bldgs			3.36	647,672
Elevators			0.00	0
Other:			0.00	0
Other: fire sprinkler			0.00	0
SUBTOTAL			86.75	16,739,834
Current Cost Multiplier	0.98		(1.73)	(334,797)
Local Multiplier	0.87		(11.28)	(2,176,178)
TOTAL DIRECT CONSTRUCTION COSTS			73.74	\$14,228,859
Plans, specs, survey, bldg permits	3.90%		(2.88)	(554,926)
Contractor's OH & Profit	11.50%		(8.48)	(1,636,319)
NET DIRECT CONSTRUCTION COSTS		\$65,422/unit	\$62.38/sf	\$12,037,615

ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS

Method	Annual Credits	Proceeds
Eligible Basis	\$687,464	\$6,186,552
Gap	\$657,055	\$5,912,899
Original Request	\$656,590	\$5,908,716
Current Request	\$656,590	\$5,908,713

FINAL ANNUAL LIHTC ALLOCATION

Method	Current Request	Variance to Request
Credits	\$656,590	\$0
Total Equity Proceeds	\$5,908,713	\$0

50% Test for Bond Financing for 4% Tax Credits

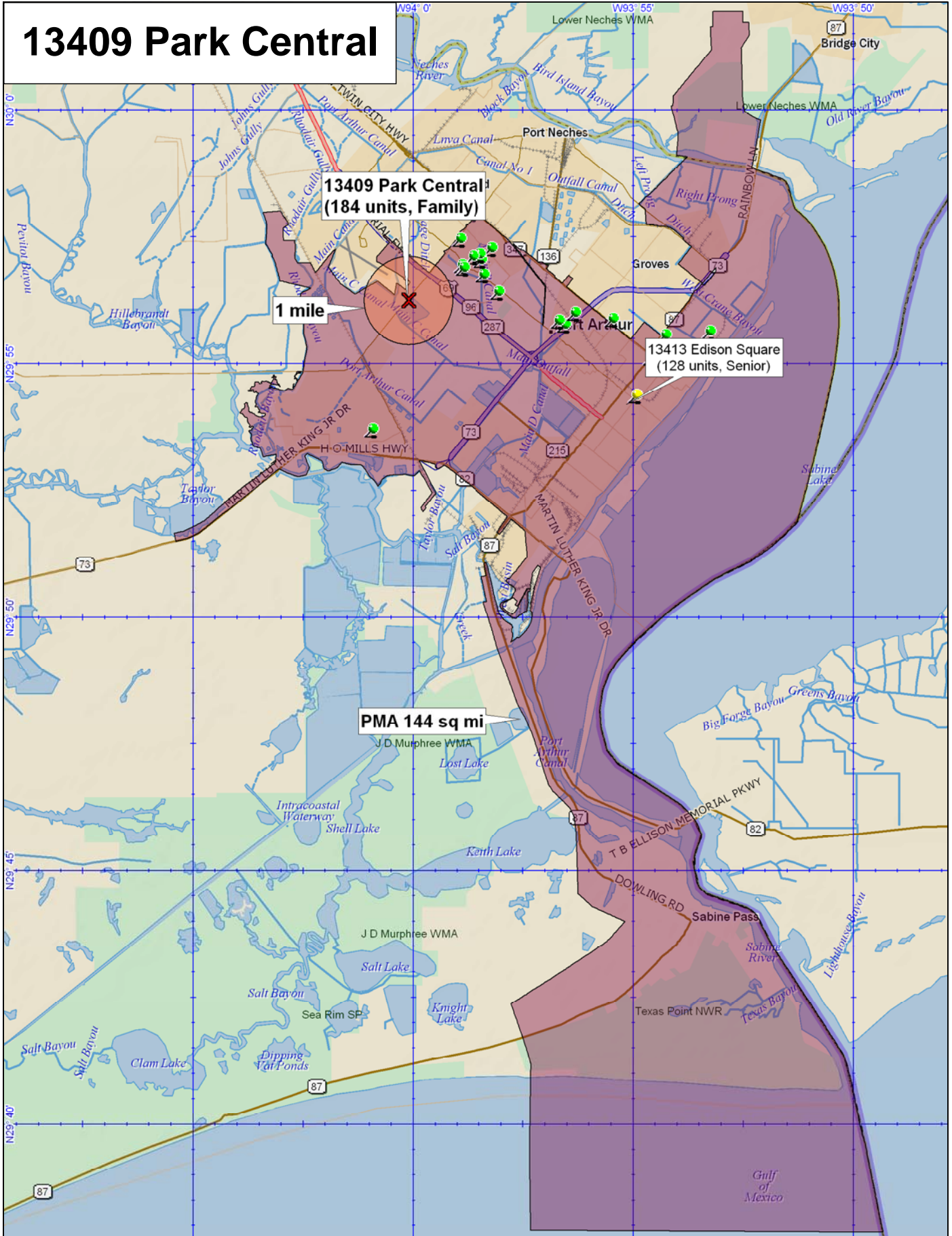
Tax-Exempt Bond Amount	\$11,700,000	Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
Aggregate Basis Limit for 50% Test	\$23,400,000		50.7%	50.2%
Land Cost	\$0			
Depreciable Bldg Cost	\$23,080,808			
Aggregate Basis for 50% Test	\$23,080,808	\$23,306,204		
		amount aggregate basis can increase before 50% test fails	\$319,192	\$93,796
			1.4%	0.4%

Building Cost/SF

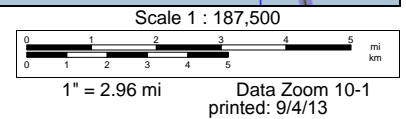
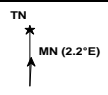
Development Category	New Construction	Category Building Cost/SF (Mean)	\$62.03 /sf
NRA	192,972	Calculated Building Cost/SF ⁽³⁾	\$61.21 /sf
Elevator Served Enclosed Corridors ⁽¹⁾	0	Building Cost Variance (\$)	\$0.82 /sf
Common Area ⁽²⁾	0	Variance to Mean (%)	1.3%
Total SF for QAP Calculation	192,972	Building Cost/SF reported in Application ⁽³⁾	\$61.21 /sf
		Variance to Mean based on Application	1.3%

(1) Supportive Housing, Qualified Elderly or 4-Story Development

13409 Park Central



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 13409 Park Central



Applicant Evaluation

Project ID # **13409**

Name **Port Arthur Housing Initiative I**

City: **Port Arthur**

HTC 9% HTC 4% HOME BOND HTF NSP ESG Other

No Previous Participation in Texas Members of the development team have been disbarred by HUD

Compliance

Total # of MF awards monitored:	20	Projects in Material Noncompliance Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Projects grouped by score	0-9:	16
Total # of MF awards not yet monitored or pending review:	6	Unresolved Audit Findings Identified w/ Contract(s)		10-19:	4
SF Contract Experience <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Total # of MF Projects in Material Noncompliance:		20-29:	0
Total # of SF Contracts:	1			Total monitored with a score 0-29:	20

Completed by: James Roper Reviewer: Patricia Murphy

Date: 5/23/2013 Date: 5/24/2013

Comments (if applicable):

Single Audit

<input type="checkbox"/> Single audit review not applicable	<input type="checkbox"/> Late single audit certification form (see comments)
<input checked="" type="checkbox"/> Single audit requirements current	<input type="checkbox"/> Past due single audit or unresolved single audit issue (see comments)

Reviewer: Rosy Falcon Date: 5/31/2013

Comments (if applicable):

Loan Servicing

No delinquencies found Delinquencies found (see comments)

Reviewer: Sandra Molina Date: 5/28/2013

Comments (if applicable):

Financial Services

No delinquencies found Delinquencies found (See Comments)

Reviewer: Monica Guerra Date: 6/5/2013

Comments (if applicable):

Community Affairs

No identified issues Identified Issues (see comments)

Reviewer: Stephen Jung Date: 5/31/2013

Comments (if applicable):

5d

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on Inducement Resolution No. 14-002 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority for the 2013 Waiting List

RECOMMENDED ACTION

WHEREAS, the Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department;

WHEREAS, the inducement allows staff to submit an application to the Bond Review Board (“BRB”) to await a Certificate of Reservation; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the approval of the Inducement Resolution;

NOW, therefore, it is hereby

RESOLVED, that Inducement Resolution No. 14-002 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2013 Private Activity Bond Program for Peoples El Shaddai Village (#13606), St. James Manor (#13607), and Decatur-Angle Apartments (#13608).

BACKGROUND

The Texas Bond Review Board administers the state’s annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the Applicant’s complete application for compliance with the Department’s Rules and underwrite the transaction in accordance with the Underwriting and Loan Policy Rules. The Department will conduct a public hearing in the community of each development. The complete application including a transcript from the hearing will then be presented before the Board for a decision on the issuance of the bonds as well as the determination of housing tax credits.

Each year, the State of Texas is notified of the cap on the amount of private activity tax exempt revenue bonds that may be issued within the state. Approximately \$545 million is set aside for multifamily until August 15th for the 2013 program year which includes the TDHCA set aside of approximately \$108 million. Inducement Resolution 14-002 represents three applications anticipated to be submitted to the BRB for the 2013 program year and reserves approximately \$36 million in state volume cap.

Peoples El Shaddai Village (#13606)

General Information: The existing development is located at 2836 E. Overton Rd. in Dallas, Dallas County. The application proposes the acquisition and rehabilitation of the existing development which consists of 100 total units serving the general population. This transaction is proposed to be Priority 3 consisting entirely of low income units that will be rent and income restricted.

Census Demographics: Demographics for the census tract (0088.02) include an AMFI of \$23,991; the total population is 5,206; the percent of population that is minority is 99.14%; the percent of population that is below the poverty line is 40.15%; the number of owner occupied units is 1,027 and the number of renter units is 867. (Census information from FFIEC Geocoding 2013).

Public Comment: The Department has not received any letters of support or opposition for this development.

St. James Manor (#13607)

General Information: The existing development is located at 3119 Easter Ave. in Dallas, Dallas County. The application proposes the acquisition and rehabilitation of the existing development which consists of 100 total units serving the general population. This transaction is proposed to be Priority 3 consisting entirely of low income units that will be rent and income restricted.

Census Demographics: Demographics for the census tract (0088.02) include an AMFI of \$23,991; the total population is 5,206; the percent of population that is minority is 99.14%; the percent of population that is below the poverty line is 40.15%; the number of owner occupied units is 1,027 and the number of renter units is 867. (Census information from FFIEC Geocoding 2013).

Public Comment: The Department has not received any letters of support or opposition for this development.

Decatur-Angle Apartments (#13608)

General Information: The new construction development is proposed to be located at the northeast corner of Old Decatur Rd. and Angle Ave. in Fort Worth, Tarrant County. The development will consist of 302 total units serving the general population. This transaction is proposed to be Priority 3 consisting entirely of low income units that will be rent and income restricted.

Census Demographics: Demographics for the census tract (1003.00) include an AMFI of \$33,477; the total population is 4,690; the percent of population that is minority is 95.07%; the percent of population that is below the poverty line is 28.47%; the number of owner occupied units is 739 and the number of renter units is 569. (Census information from FFIEC Geocoding 2013).

Public Comment: The Department has received letters of support from Texas State Senator Wendy R. Davis and Texas State Representative Lon Burnam. The Department has not received any letters of opposition.

RESOLUTION NO. 14-002

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENTS; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

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, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental developments (the “Developments”) more fully described in Exhibit A attached hereto. The ownership of the Developments as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the “Owners”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Developments and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Developments from the proceeds of tax-exempt and taxable obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Developments listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable obligations for purposes of paying the costs of the Developments described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Developments one or more Applications for Allocation of Private Activity Bonds (the “Application”) with the Texas Bond Review Board (the “Bond Review Board”) with respect to the tax-exempt Bonds to qualify for the Bond Review Board’s Allocation Program in connection with the Bond Review Board’s authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the “Board”) has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Developments on the terms and conditions hereinafter set forth; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the “Bonds”) in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department’s credit underwriters for financial feasibility; (ii) review by the Department’s staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the “Attorney General”); (v) satisfaction of the Board that the respective Development meets the Department’s public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto (“Costs of the Developments”) from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in

connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Developments will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Developments, which Developments will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Developments. The Costs of the Developments may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Developments. Without limiting the generality of the foregoing, the Costs of the Developments shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Developments, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Developments, the placing of the Developments in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature.

Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell & Giuliani LLP or other nationally recognized bond counsel acceptable to the Department (“Bond Counsel”), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Developments’ necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Developments may be undertaken by any company or partnership that is a “related person” to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department’s official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, 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 1.15. 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 of the Department, the Director of Multifamily Finance of the Department and the Secretary or any 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.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Developments and Owners. The Board finds that:

- (a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Developments is a public purpose and will provide a public benefit;
and
- (e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Developments will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. 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 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 12th day of September, 2013.

[SEAL]

By: _____
Chair, Governing Board

ATTEST:

Secretary to the Governing Board

Signature Page to Inducement Resolution

September 12, 2013 Inducement Resolution – Decatur-Angle Apts.; St. James Manor Apts.; People's El Shaddai Village

#4351416.2

EXHIBIT “A”

Description of the Owners and the Developments

Project Name	Owner	Principals	Amount Not to Exceed
Decatur-Angle Apartments	Decatur-Angle Ltd.	General Partner: Decatur-Angle GP, LLC; Sole Member of General Partner; Fort Worth Housing Finance Corp.: Class B Special Limited Partner; NRP Decatur-Angle SLP, LLC	\$23,000,000
Costs: Construction of a 302-unit affordable, multifamily, rental community located at the Northeast corner of Old Decatur Road and Angle Avenue in Fort Worth, Tarrant County, Texas 76106.			
Project Name	Owner	Principals	Amount Not to Exceed
St. James Manor Apartments	PSJ Tax Credit Investors LLC	General Partner: PSJ Tax Credit Investors Manager LLC	\$6,000,000
Costs: Acquisition and rehabilitation of a 100-unit affordable, multifamily, rental community located at 3119 Easter Avenue, Dallas, Dallas County, Texas 75216.			
Project Name	Owner	Principals	Amount Not to Exceed
People’s El Shaddai Village	PSJ Tax Credit Investors LLC	General Partner: PSJ Tax Credit Investors Manager LLC	\$7,000,000
Costs: Acquisition and rehabilitation of a 100-unit affordable, multifamily, rental community located at 2836 Overton Road, Dallas, Dallas County, Texas 75216.			

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on Inducement Resolution No. 14-003 Amending Prior Inducement Resolution No. 13-008 for Multifamily Housing Revenue Bonds for Park Creek Manor and an Authorization for Filing Applications for Private Activity Bond Authority for the 2013 Waiting List

RECOMMENDED ACTION

WHEREAS, the Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department;

WHEREAS, the inducement allows staff to submit an application to the Bond Review Board (“BRB”) to await a Certificate of Reservation;

WHEREAS, the Board previously approved Inducement Resolution No. 13-008 on September 6, 2012, for Park Creek Manor that is hereby amended to allow the filing of an Application for the 2013 program year; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the approval of the Inducement Resolution;

NOW, therefore, it is hereby

RESOLVED, that Inducement Resolution 14-003 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2013 Private Activity Bond Program for Park Creek Manor is hereby adopted.

BACKGROUND

The Texas Bond Review Board administers the state’s annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the Applicant’s complete application for compliance with the Department’s Rules and underwrite the transaction in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing in the community of each development. The complete application including a transcript from the

hearing will then be presented before the Board for a decision on the same issuance of the bonds as well as the determination of housing tax credits.

Each year, the State of Texas is notified of the cap on the amount of private activity tax exempt revenue bonds that may be issued within the state. Approximately \$545 million is set aside for multifamily until August 15th for the 2013 program year which includes the TDHCA set aside of approximately \$108 million. Inducement Resolution 14-003 represents the seventh application, including the three other inducement applications also on the agenda today, that are anticipated to be submitted to the BRB for the 2013 program year and reserves approximately \$30 million in state volume cap.

Park Creek Manor

General Information: The existing development is located at 2520 Coombs Creek St. in Dallas, Dallas County. The application proposes the acquisition and rehabilitation of the existing development which consists of 322 total units serving the general population. This transaction is proposed to be Priority 3 consisting entirely of low income units that will be rent and income restricted.

Census Demographics: Demographics for the census tract (0064.02) include an AMFI of \$35,735; the total population is 5,328; the percent of population that is minority is 95.91%; the percent of population that is below the poverty line is 22.75%; the number of owner occupied units is 651 and the number of renter units is 826. (Census information from FFIEC Geocoding 2013).

Public Comment: The Department has not received any letters of support or opposition for this development.

RESOLUTION NO. 14-003

RESOLUTION AMENDING OFFICIAL INTENT RESOLUTION AND AUTHORIZING THE FILING OF AN APPLICATION FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD (PARK CREEK MANOR); AND AUTHORIZING OTHER ACTION RELATED THERETO

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, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, on September 6, 2012, the Governing Board of the Department (the “Board”) adopted Resolution No. 13-008 entitled “Resolution Declaring Intent to Issue Multifamily Revenue Bonds with Respect to Residential Rental Development; Authorizing the Filing of an Application for Allocation of Private Activity Bonds with the Texas Bond Review Board; and Authorizing Other Action Related Thereto,” a true and correct copy of which is attached hereto as Exhibit A (the “Intent Resolution”); and

WHEREAS, it is proposed that the Department issue its multifamily housing revenue bonds (the “Bonds”) for the purpose of providing financing for the multifamily residential rental development known as Park Creek Manor (the “Development”) more fully described in the Intent Resolution, the ownership of which will consist of the ownership entity and its principals described in the Intent Resolution or a related person (the “Owner”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, in connection with the proposed issuance of the Bonds, the Department, as issuer of the Bonds, is required to submit for the Development an Application for Allocation of Private Activity Bonds (the “Application”) with the Texas Bond Review Board (the “Bond Review Board”) with respect to the tax-exempt Bonds to qualify for the Bond Review Board’s Allocation Program in connection with the Bond Review Board’s authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Board has determined to amend Section 14 of the Intent Resolution and authorize the submission of an Application with respect to the Bonds to be issued for the Development; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF CERTAIN ACTIONS; CERTAIN FINDINGS

Section 1.1 Authorization to File Application. Section 14 of the Intent Resolution is hereby amended to read: “The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Development’s necessary review and legal documentation for the filing of an Application and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by the Owner.”

Section 1.2 Amendment to Intent Resolution. All requirements in the Intent Resolution relating to Eligible Tenants are hereby deleted.

Section 1.3 Intent Resolution Ratified and Reaffirmed. Except as amended hereby, the Intent Resolution is hereby ratified and reaffirmed.

Section 1.4 Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, 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 1.5 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 of the Department, the Director of Multifamily Finance of the Department and the Secretary or any 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.

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 12th day of September, 2013.

[SEAL]

By: _____
Chair, Governing Board

Attest:

By: _____
Secretary to the Governing Board

EXHIBIT "A"

RESOLUTION NO. 13-008

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENT; AUTHORIZING THE FILING OF APPLICATION FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

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, as amended, (the "Act") for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds for the purpose of providing financing for the multifamily residential rental development (the "Development") more fully described in Exhibit A attached hereto. The ownership of the Development as more fully described in Exhibit A will consist of the ownership entity and its principals or a related person (the "Owner") within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Owner has made not more than 60 days prior to the date hereof, payments with respect to the Development and expects to make additional payments in the future and desires that it be reimbursed for such payments and other costs associated with the Development from the proceeds of tax-exempt and taxable obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owner has indicated its willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that 100 percent of the units of the Development will be occupied at all times by eligible tenants, as determined by the Board pursuant to the Act ("Eligible Tenants"), that the other requirements of the Act and the Department will be satisfied and that the Development will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owner for the costs associated with the Development listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owner, the Department reasonably expects to incur debt in the form of tax-exempt and taxable obligations for purposes of paying the costs of the Development described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Development an Application for Allocation of Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the state to issue private activity bonds; and

WHEREAS, the Board has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owner to finance the Development on the terms and conditions hereinafter set forth; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD THAT:

Section 1. Certain Findings. The Board finds that:

- (a) the Development is necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owner will supply, in its Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owner is financially responsible;
- (d) the financing of the Development is a public purpose and will provide a public benefit; and
- (e) the Development will be undertaken within the authority granted by the Act to the Department and the Owner.

Section 2. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in amounts estimated to be sufficient to (a) fund a loan or loans to the Owner to provide financing for its Development in an aggregate principal amount not to exceed those amounts, corresponding to the Development, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and state law requirements regarding tenancy in each Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that each Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and state laws applicable to the issuance of such Bonds.

Section 3. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but

in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 4. Reimbursement. The Department reasonably expects to reimburse the Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto (“Costs of the Development”) from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Development; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 5. Principal Amount. Based on representations of the Owner, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owner for the costs of the Development will not exceed the amount set forth in Exhibit A.

Section 6. Limited Obligations. The Owner may commence with the acquisition and construction or rehabilitation of the Development, which Development will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, the Owner will enter into a loan agreement on an installment payment basis with the Department under which the Department will make a loan to the Owner for the purpose of reimbursing the Owner for the costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for the Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 7. The Development. Substantially all of the proceeds of the Bonds shall be used to finance the Development, which is to be occupied entirely by Eligible Tenants, as determined by the Department, and which is to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 8. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owner for costs of its Development.

Section 9. Costs of Development. The Costs of the Development may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Development. Without limiting the generality of the foregoing, the Costs of the Development shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Development, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Development, the placing of the Development in operation and that satisfy the Code

and the Act. The Owner shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 10. No Commitment to Issue Bonds. Neither the Owner nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owner nor any one claiming by, through or under the Owner shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 11. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds.

Section 12. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owner and the Department of contractual arrangements providing assurance satisfactory to the Department that 100 percent of the units for each Development will be occupied at all times by Eligible Tenants, that all other requirements of the Act will be satisfied and that each Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell & Giuliani LLP or other nationally recognized bond counsel acceptable to the Department, substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 13. Certain Findings. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Development will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

Section 14. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Development's necessary review and legal documentation for the filing of an Application for the 2012 program year and the issuance of the Bonds, subject to satisfaction of the conditions specified in Section 2(i) and (ii) hereof. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner so long as the Application is re-submitted within the current or following program year.

Section 15. Related Persons. The Department acknowledges that financing of all or any part of the Development may be undertaken by any company or partnership that is a "related person" to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owner.

Section 16. Declaration of Official Intent. This Resolution constitutes the Department's official intent for expenditures on Costs of the Development which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal

Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Development may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 17. Authorization of Certain Actions. The Department hereby authorizes the filing of and directs the filing of the Application in such form presented to the Board with the Bond Review Board and each director of the Board are hereby severally authorized and directed to execute the Application on behalf of the Department and to cause the same to be filed with the Bond Review Board.

Section 18. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 19. 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 20. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 6th day of September, 2012.

[SEAL]

By: 
Chairman, Governing Board


Attest: 
Assistant Secretary to the Governing Board

EXHIBIT "A"

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Park Creek Manor	Park Creek Manor, Ltd., a Texas limited partnership	The Co-General Partners are PCM Managing GP, LLC and Park Creek Manor I, LLC. The sole member of PCM Managing GP, LLC is Ruel Hamilton; the sole member of Park Creek Manor I, LLC is Rick J. Deyoe	\$30,000,000
<p>Costs: Rehabilitation construction of a 322 unit affordable, multifamily, rental community located on +/- 12.5218 acres of land located in South Dallas at 2520 Coombs Creek Drive, Dallas, TX 75211 (Dallas County).</p>			

September 6, 2012 Inducement Resolution – Park Creek Manor
#4147898.1

5f

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on Resolution No. 14-001 for the First Supplemental Trust Indenture and Modification Agreement relating to the Multifamily Housing Revenue Bonds for Homes at Pecan Grove, Series 2005

RECOMMENDED ACTION

WHEREAS, the Department issued Series 2005 tax-exempt bonds in the aggregate principal amount of \$14,030,000 to the Homes at Pecan Grove development in Dallas, Texas to construct 250 units of affordable multifamily rental housing;

WHEREAS, the Owner is requesting the Department's approval for modifications to the existing financing structure, including the mandatory sinking fund and redemption provisions, stabilization requirements, and final maturity under the original bond covenants; and

WHEREAS, such changes are necessary to improve the financial strength of the development and reduce the ongoing operating deficits;

NOW, therefore, it is hereby

RESOLVED, that Resolution No. 14-001 relating to the First Supplemental Trust Indenture and Modification Agreement for the Homes at Pecan Grove is hereby approved as presented to this meeting; and

FURTHER RESOLVED, that staff is authorized, empowered and directed for and on behalf of the Department to execute and deliver such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND AND SUMMARY OF THE FINANCING STRUCTURE

The bonds for Homes at Pecan Grove were originally issued through the Department in January 2005. The Series 2005 tax-exempt bond amount was \$14,030,000 and the original financing structure included privately placed bonds with Charter Municipal Mortgage Acceptance Company and as such were unrated with no credit enhancement. The interest rate on the bonds is currently 6.50% per annum.

The applicant is requesting the Department's approval to modify some aspects of the financing structure under the original bond covenants. The sections below outline the specific changes to these provisions.

Based upon the Department's review of the information submitted by the applicant, a failure to approve the modifications requested would result in a continuation by Centerline to fund operating deficits and lengthen the time by which the property could reach break-even. In contrast, approval of the modifications would reduce debt service and from a financial viability perspective, better position the property.

Redemption

The original bonds were subject to mandatory redemption at the bondholder's direction in the amounts needed in order to achieve stabilization, which is defined as 90% occupancy and a 1.15 to 1.0 debt service ratio for three months by June 30, 2008. The inability of the property to reach stabilization is the result of historical below break-even operations. The principal balance of the bonds is being reduced by \$250,000 thereby decreasing the required hard debt service and reducing the property's operating deficit to a more manageable level. The definition of stabilization is being amended to reflect that stabilization shall be deemed to have occurred on April 16, 2016.

Maturity and Sinking Fund Redemption

The original maturity date of January 1, 2045 will be shortened to January 1, 2038. The principal reduction of \$250,000 will result in a reset of the amortization to 480 months on the remainder of the loan. Due to the acceleration, the weighted average maturity will not increase and as such will not result in a new public hearing pursuant to federal tax law.

OTHER INFORMATION

Organizational Structure and Compliance: The Borrower is Chicory Court – Simpson Stuart, LP and the General Partner is Simpson Stuart Dallas, LLC which is comprised of Centerline Guaranteed Manager LLC, a wholly owned subsidiary of the investor limited partner. On December 14, 2011 the Department approved an ownership transfer request to replace the original General Partner, 3111 Simpson Stuart, LLC and its sole member Agape Pecan Grove, Inc. with the aforementioned entity.

Census Demographics: The site is located at 3111 Simpson Stuart Road, Dallas, Dallas County. Demographics for the census tract (0114.01) include AMFI of \$18,844; the total population is 4,781; the percent of the population that is minority is 98.64%; the number of owner occupied units is 572; the number of renter occupied units is 1,150; and the number of vacant units is 0. (Census Information from FFIEC Geocoding for 2013).

RESOLUTION NO. 14-001

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE AND MODIFICATION AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (HOMES AT PECAN GROVE) SERIES 2005; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the “Issuer”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the “Act”), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as defined in the Act and determined by the Governing Board of the Issuer (the “Board”) from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multi-family residential rental project loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Act further authorizes the Department to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department under such terms, conditions and details as shall be determined by the Board; and

WHEREAS, the Issuer previously issued its Multifamily Housing Mortgage Revenue Bonds (Homes at Pecan Grove) Series 2005 in the original principal amount of \$14,030,000 (the “2005 Bonds pursuant to the terms and provisions of that certain Trust Indenture dated as of January 1, 2005 (the “Indenture”), between the Issuer and Wells Fargo Bank, National Association, as trustee (the “Trustee”); and

WHEREAS, the proceeds of the 2005 Bonds were loaned to Chicory Court - Simpson Stuart, LP, a limited partnership organized and existing under the laws of the State of Texas (the “Borrower”) for the purpose of financing a portion of the costs of a multifamily housing development known as Homes at Pecan Grove (the “Project”), pursuant to that certain Loan Agreement dated as of January 1, 2005 (the “Loan Agreement”) among the Issuer, the Borrower and the Trustee; and

WHEREAS, the Borrower and Centerline Mortgage Capital Inc. (the “Servicer”) (on behalf of the holder of the 2005 Bonds) have requested that the Issuer enter into a supplemental trust indenture and modification agreement (the “Supplement”) to make certain modifications to the terms of the 2005 Bonds and conforming changes to the Indenture; and

WHEREAS, the Issuer’s execution of the Supplement shall be subject to receipt of the consents, opinions, approvals or notices required by the Indenture; and

WHEREAS, the Issuer now desires to take certain actions with respect to the Supplement;

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 Approval, Execution and Delivery of Supplement. The Supplement, in substantially the form presented at this meeting, is hereby approved and adopted by the Issuer, and the Authorized Representatives are each hereby authorized and empowered to execute and deliver the Supplement on behalf of the Issuer, with such changes as may be approved by the authorized representative executing the same, such approval to be evidenced by such Authorized Representative's execution thereof.

Section 1.2 Execution and Delivery of Other Documents. The Authorized Representatives shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments and other documents, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this resolution, as well as the terms and provisions of the Supplement, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument or other document.

Section 1.3 Consents and Approvals. The Issuer's execution of the Supplement is expressly subject to receipt of the consents, opinions, approvals or notices required by the Indenture.

Section 1.4 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 of the Department, the Director of Bond Finance or the Director of Multifamily Finance of the Department, and the Secretary or any 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 1.5 Certification of Records. The Secretary and Assistant Secretary to the Board hereby are authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

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 12th day of September, 2013.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

**SUPPLEMENTAL TRUST INDENTURE
AND MODIFICATION AGREEMENT**

\$14,030,000

Texas Department of Housing and Community Affairs
Multifamily Housing Mortgage Revenue Bonds
(Homes at Pecan Grove) Series 2005

This SUPPLEMENTAL TRUST INDENTURE AND MODIFICATION AGREEMENT, dated as of [October] 1, 2013 (this “**Supplement**”), among the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (together with its successors and assigns, the “**Issuer**”), Chicory Court-Simpson Stuart, LP, a limited partnership duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the “**Borrower**”) and Wells Fargo Bank, National Association, a national banking association duly organized, validly existing and authorized to accept the duties and obligations set out by virtue of the laws of the United States of America, as trustee (together with any successor trustee and their respective successors and assigns, the “**Trustee**”) under a Trust Indenture, dated as of January 1, 2005 (as amended, modified or supplemented from time to time, the “**Indenture**”), from the Issuer to the Trustee (capitalized terms used herein and not otherwise defined having the meaning assigned to them in the Indenture),

WITNESSETH:

WHEREAS, pursuant to the Indenture, the Issuer has previously issued its Multifamily Housing Mortgage Revenue Bonds (Homes at Pecan Grove) Series 2005 in the original aggregate principal amount of \$14,030,000 (the “**Bonds**”), to finance a portion of the costs of the acquisition, construction and equipping of a 250-unit residential rental development known as “Homes at Pecan Grove” and located in Dallas, Texas (the “**Project**”); and

WHEREAS, pursuant to a Loan Agreement, dated as of January 1, 2005, among the Issuer, the Trustee and the Borrower, the Issuer loaned the proceeds of the Bonds to the Borrower to finance a portion of the cost of the Project; and

WHEREAS, among other things, the Borrower was obligated pursuant to Section 6.2 of the Loan Agreement to make a prepayment in the amount specified by the Majority Owner to effectuate a partial redemption of Bonds pursuant to Section 4.01(b) of the Indenture in the event the Project did not achieve “Stabilization” on or before the date which is twenty-four (24) months following Completion (i.e., June 30, 2008); and

WHEREAS, prior to the date hereof, such payment has not been made as required; and

WHEREAS, the Borrower and the Servicer have asked the Issuer and the Trustee to enter into this Supplement (i) to modify the mandatory sinking fund and other redemption provisions, (ii) to provide for a redemption payment concurrently with the execution and delivery hereof, and (iii) to make certain other modifications to the terms of the Bonds as more fully described herein with the consent of the Owners of not less than two-thirds in aggregate principal amount of the Bonds then Outstanding; and

WHEREAS, Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) is the registered owner of 100% of the Outstanding Bonds and as the single Owner of all Bonds Outstanding is the Majority Owner, as such term is defined in the Indenture; and

WHEREAS, Sections 9.02, 9.03, 9.04, 9.06 and 9.07 of the Indenture provide that the Indenture and the Loan Agreement can be amended for such purposes by a supplemental trust indenture accompanied by the consent of the Majority Owner and the Borrower and upon delivery of an opinion of Bond Counsel.

NOW, THEREFORE, in consideration of the foregoing and subject to the requirements of Sections 9.02, 9.03, 9.04, 9.06 and 9.07 of the Indenture, the Issuer, the Trustee, the Servicer and the Borrower, with the consent of the Majority Owner, hereby agree that the Indenture and the Loan Agreement be amended, modified and supplemented as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions.

(a) The definition of “**Stabilization**” in the Loan Agreement is hereby amended to add the following sentence at the end of such definition:

“Notwithstanding the foregoing, provided the Work-Out Support Provider is not in default with respect to its payment obligations secured by the Work-Out Account Control Agreement due to a Bankruptcy, “**Stabilization**” shall be deemed to have occurred on April 16, 2016.”

(b) The following new defined terms are hereby added to the Indenture as follows:

“**Bankruptcy**” means Work-Out Support Provider’s making an assignment for the benefit of creditors, becoming a party to any liquidation or dissolution action or proceeding with respect to Work-Out Support Provider or any bankruptcy, reorganization, insolvency or other proceeding for the relief of financially distressed debtors with respect to Work-Out Support Provider, or the appointment of a receiver, liquidator, custodian or trustee for Work-Out Support Provider or a substantial part of Work-Out Support Provider’s assets.

“**Work-Out Account Control Agreement**” means that certain pledge and deposit account control agreement dated as of April 16, 2013, among Deutsche Bank National Trust Company, the Work-Out Support Provider, Natixis Financial Products, LLC, and Federal Home Loan Mortgage Corporation, as the same may be amended, modified or supplemented from time to time, under which the Work-Out Support Provider has agreed (subject to the terms and limitations contained therein) to provide cash flow support in the form of loans to the owners of certain other multifamily housing projects identified therein (which does not include the Project).

“**Work-Out Support Provider**” means Centerline Financial Holdings LLC, a Delaware limited liability company, together with its permitted successors and assigns.

(c) The definition of “**Maturity Date**” in the Indenture is hereby amended to read as follows:

“**Maturity Date**” means January 1, 2038.

(d) All other capitalized terms used herein unless otherwise defined shall have the same meaning as used in Article I of the Indenture or Article I of the Loan Agreement.

ARTICLE II THE AMENDMENTS

Section 2.01 Amendments to Section 4.01 of the Indenture.

(a) Section 4.01(b) of the Indenture is hereby amended to add the following to the end of such Section:

“Notwithstanding the foregoing, the requirements of this Section 4.01(b) are hereby suspended until April 16, 2016, unless the Work-Out Support Provider shall be in default with respect to its payment obligations secured by the Work-Out Account Control Agreement due to a Bankruptcy, in which event the requirements of this Section 4.01(b) shall be reinstated. Provided the Work-Out Support Provider is not then in default with respect to such payment obligations due to a Bankruptcy, from and after April 16, 2016, this Section 4.01(b) shall be deleted in its entirety, all references in the Bonds, the Indenture and the Loan Documents to Section 4.01(b) of the Indenture shall be of no further force or effect whatsoever and the Majority Owner shall no longer have the right to direct any mandatory redemption of the Bonds as a result of the failure of the Project to achieve “Stabilization” under the original terms of the Loan Documents.”

(b) A new subparagraph (g) is hereby added to Section 4.01 of the Indenture which subparagraph (g) shall provide in full as follows:

“(g) in part in an amount equal to \$250,000 on or about the date of execution and delivery of the Supplement, without any further notice or direction by the Majority Owner, the Issuer, the Borrower or any other person.”

Section 2.02 Amendment to Section 8.11 of Indenture. Section 8.11 of the Indenture is hereby amended and restated in its entirety to provide in full as follows:

“The Majority Owner may, by written notice to the Trustee, the Issuer and the Borrower, appoint a third party Servicer to service the Loan and remove any Servicer so appointed. The selection or removal of any Servicer shall be in the sole discretion of the Majority Owner. The Majority Owner may also choose to

act in the capacity of Servicer of the Loan. The Servicer shall have the right to receive copies of all reports and notices provided for by the Loan Documents.”

Section 2.03 Amendment to Exhibit A of the Indenture; Replacement for Form of Bond. The form of Bond attached to the Indenture as Exhibit A is hereby replaced with the form of Bond attached as Exhibit A to this Supplement. Promptly following the execution and delivery of this Supplement, the Trustee shall deliver to the Majority Owner, or upon its order, an executed and authenticated replacement Bond certificate in the form set forth in Exhibit A to this Supplement.

Section 2.04 Amendment to Exhibit B of the Indenture. The schedule of mandatory sinking fund redemption amounts set forth on Exhibit B of the Indenture is hereby replaced with the schedule attached as Exhibit B to this Supplement.

ARTICLE III CONDITIONS; REPRESENTATIONS AND COVENANTS

Section 3.01 Conditions to Effectiveness.

It shall be a condition to the effectiveness of this Supplement that the following shall be satisfied:

- (a) \$250,000 shall have been deposited with the Trustee for application to the partial redemption of the Bonds as described in Section 2.01(b) of this Supplement;
- (b) all of the conditions set forth in the Indenture and the Loan Agreement to the amendment or modification thereof shall have been met or waived in writing, which waiver is evidenced by the parties' execution of this Supplement;
- (c) the previously issued and authenticated Bonds have been cancelled by the Trustee; and
- (d) there shall have been delivered an unqualified opinion of Bond Counsel, addressed to the Issuer, the Trustee, the Servicer and the Majority Owner substantially to the effect that (i) interest on the Bonds is excludable from the gross income of the owners of the Bonds for federal income tax purposes, and (ii) this Supplement has been duly authorized, executed and delivered by the Issuer and is enforceable against the Issuer in accordance with its terms, subject to customary exclusions.

Section 3.02 Representations and Covenants of Borrower. By its execution and delivery hereof, the Borrower hereby:

- (a) Represents that it is the owner of the Project and the borrower of the loan made from the proceeds of the Bonds;
- (b) Acknowledges and understands that the Project has failed to achieve Stabilization on or before June 30, 2008, and requests that the Issuer and the Trustee amend the

Indenture to eliminate the requirement for a mandatory redemption under Section 4.01(b) of the Indenture;

(c) Consents to the amendments of the Indenture and the Loan Agreement contained in this Supplement;

(d) Irrevocably waives, without recourse, all irregularities in the timing, content and delivery of all notices that are required by the Indenture or the Loan Agreement with respect to the amendment of the Indenture and the Loan Agreement referred to above;

(e) Agrees to be bound by the terms of the Indenture, as amended by this Supplement, including, without limitation, agreeing to make the payments to the Trustee required to pay the redemption price of Bonds subject to mandatory redemption in the principal amount of \$250,000 on the date of execution and delivery hereof; and

(f) Agrees that, prior to [April] 1, 2014, it shall not cause, permit or permit the General Partner to cause or permit, (a) a change in ownership of the Project or (b) the transfer of any equity interest in the Borrower, the admission of any new equity investors in the Borrower or the withdrawal of any existing equity investors in the Borrower, without, in each case, delivery to the Trustee of an opinion of Bond Counsel to the effect that such change, transfer, admission or withdrawal will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation; and

(g) Certifies that the federal tax-related representations of the Borrower in the Loan Agreement, in the Regulatory Agreement, and in the Borrower Tax Certificate dated January 27, 2005 (the “**Borrower’s Tax Certificate**”) remain true and correct in all material respects as of the date hereof and that the Borrower is not in material default under or breach of any covenant contained in the Borrower Tax Certificate or the Regulatory Agreement or any of the federal tax-related covenants of the Borrower contained in the Loan Agreement.

Section 3.03 Stabilization. The parties hereto acknowledge and agree that, upon the effectiveness of this Supplement, the requirement that the Project achieve Stabilization shall be suspended for all purposes under the Indenture and the Loan Documents until April 16, 2016, unless the Work-Out Support Provider fails to meet its payment obligations secured by the Work-Out Account Control Agreement as a result of a Bankruptcy during such period. Provided the Work-Out Support Provider has not defaulted with respect to such payment obligations due to a Bankruptcy during such period, from and after April 16, 2016, Stabilization shall be deemed to have occurred for all purposes under the Indenture and the Loan Documents.

Section 3.04 Waiver of Certain Amounts; Bonds Outstanding. In consideration for and subject to compliance by the Borrower with the terms and conditions of this Supplement, there is hereby waived, without recourse, the payment of all amounts in respect of the Bonds as are set forth on Schedule 1 to this Supplement which shall have become due and payable prior to the effectiveness of this Supplement. Upon the effectiveness of this Supplement, the principal amount of Bonds outstanding under the Indenture shall be \$_____.

ARTICLE IV FURTHER SUPPLEMENTS

Section 4.01 Further Supplements. This Supplement may be supplemented or amended in the manner and subject to the conditions set forth in Article IX of the Indenture for amendments to the Indenture.

ARTICLE V MISCELLANEOUS

Section 5.01 Supplement as Part of Indenture and Loan Agreement. This Supplement shall be construed in connection with and as a part of the Indenture and the Loan Agreement to the extent of the provisions herein that are amendatory thereof or supplemental thereto.

Section 5.02 Severability. If any provision of this Supplement shall be held or deemed to be, or shall, in fact, be, illegal, inoperative or unenforceable, the same shall not affect any other provision herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever.

Section 5.03 Counterparts; Electronic Signatures. This Supplement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law, signatures transmitted by facsimile or other electronic means shall constitute original signatures for all purposes hereunder.

Section 5.04 Rules of Interpretation. Unless expressly indicated otherwise, references to Sections or Articles are to be construed as references to Sections or Articles of this instrument as originally executed. Use of the words “herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Supplement as a whole, and not solely to the particular portion in which any such word is used.

Section 5.05 Captions. The captions and headings in this Supplement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Supplement.

Section 5.06 Governing Law. This Supplement shall be governed by the internal laws of the State of Texas, without regard to conflict of laws principles.

Section 5.07 Successors and Assigns. This Supplement shall inure to the benefit of, and shall be binding upon, the Issuer and its successors and assigns, the Borrower and its successors and assigns, and the Trustee, any successor trustee and their respective successors and assigns. In addition, this Supplement shall be binding upon the current Owners of the Bonds and all future Owners from time to time of the Bonds and their respective successors and assigns.

Section 5.08 Tax Matters. The Issuer certifies that the federal tax-related representations of the Issuer contained in the Indenture, in the Regulatory Agreement and in the Tax Certificate remain true and correct in all material respects as of the date hereof and that the Issuer is not in material default under or breach of any covenants contained in the Tax Certificate

and the Regulatory Agreement or any of the federal tax-related covenants of the Issuer contained in the Indenture.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have caused this Supplemental Trust Indenture and Modification Agreement to be executed and delivered by their respective duly authorized representatives, all as of the date first above written.

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: _____
Title: _____

(SEAL)

ATTEST:

Secretary

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as trustee

By: _____
Name: _____
Title: _____

CHICORY COURT-SIMPSON STUART, LP, a Texas
limited partnership

By: SIMPSON STUART DALLAS LLC, a Delaware
limited liability company, its general partner

By: CENTERLINE GUARANTEED MANAGER
LLC, a Delaware limited liability company, its
manager

By: CENTERLINE AFFORDABLE
HOUSING ADVISORS LLC, a Delaware
limited liability company, its sole member

By: _____
Name: James P. Flynn
Title: Director

MAJORITY OWNER CONSENT

\$14,030,000

Texas Department of Housing and Community Affairs
Multifamily Housing Mortgage Revenue Bonds
(Homes at Pecan Grove) Series 2005

THE UNDERSIGNED HEREBY:

1. Represents that it is the registered owner of 100% in aggregate principal amount of the above-referenced bonds (the “Bonds”) and, as such, is the Majority Owner of the Bonds under the Indenture;
2. Hereby consents to the amendments of the Indenture and the Loan Agreement contained in the Supplemental Trust Indenture and Modification Agreement to which this Majority Owner Consent is attached (including, but not limited to, the waiver of certain amounts payable with respect to the Bonds as provided in Section 3.04 hereof);
3. Irrevocably waives, without recourse, all irregularities in the timing, content and delivery of all notices that are required by the Indenture or the Loan Agreement with respect to the amendment of the Indenture and the Loan Agreement referred to above and the partial redemption of the Bonds to be effected concurrently with the execution of the above-referenced Supplemental Trust Indenture and Modification Agreement pursuant to Section 2.01 thereof; and

Terms used in this Majority Owner Consent with initial capital letters, but not defined herein, shall have the same meanings given such terms in the Supplemental Trust Indenture and Modification Agreement to which this Majority Owner Consent is attached.

IN WITNESS WHEREOF, the undersigned has caused this Majority Owner Consent to be executed by its duly authorized representative as of the ____ day of _____, 2013.

FEDERAL HOME LOAN MORTGAGE
CORPORATION

By: _____

Name: _____

Title: _____

Acknowledged and Agreed solely for the purposes of Section 3.03

CENTERLINE MORTGAGE CAPITAL INC.,
as Servicer

By: _____

Name: Michael P. Larsen

Title: Chief Financial Officer

EXHIBIT A

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF TEXAS

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY HOUSING MORTGAGE REVENUE BOND
(HOMES AT PECAN GROVE*)
SERIES 2005

THE STATE OF TEXAS IS NOT OBLIGATED TO PAY THE PRINCIPAL OR INTEREST ON THIS BOND. THE FAITH, CREDIT OR TAXING POWER OF THE STATE OF TEXAS IS NOT PLEDGED, GIVEN OR LOANED TO PAYMENT OF THIS BOND'S PRINCIPAL OR INTEREST.

THIS BOND IS A RESTRICTED SECURITY AND MAY BE TRANSFERRED ONLY AS PROVIDED HEREIN AND IN THE HEREIN DESCRIBED INDENTURE.

Number: _____ \$ _____

<u>Maturity Date:</u>	<u>Dated Date:</u>	<u>Interest Rate:</u>
January 1, 2038	[October] 1, 2013	As described herein

REGISTERED OWNER: Federal Home Loan Mortgage Corporation

PRINCIPAL AMOUNT: _____

FOR VALUE RECEIVED, TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the "Issuer"), a public and official agency of the State of Texas (the "State"), hereby acknowledges itself indebted and for value received promises to pay to the registered owner hereof stated above, or registered assigns, at the maturity date stated above, but only from the sources and as hereinafter provided, upon presentation and surrender of this Bond at the operations office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota or its successor as trustee (the "Trustee"), under the Indenture (described below), the principal amount stated above, and to pay interest on said principal amount at the interest rate set forth above, from and including the date of issuance hereof until the principal amount shall have been paid in accordance with the terms of this Bond and the Indenture, as and when set forth below,

* Formerly known as Rose Court at Simpson Stuart

but only from the sources and as hereinafter provided, by wire transfer to an account in the United States if there be one Owner of all of the Bonds or otherwise by check or draft mailed to the record Owners of Bonds as the same appear upon the books of registry to be maintained by the Trustee, as registrar.

This Bond is one of a series of bonds (the “Bonds”) issued pursuant to, and is subject to, the Trust Indenture dated as of January 1, 2005 between the Issuer and the Trustee as supplemented by that certain Supplemental Trust Indenture and Modification Agreement (the “Supplement”) dated as of _____ 1, 2013, (and as further amended and supplemented from time to time, the “Indenture”), the bond resolution of the Issuer duly approved and adopted by the Issuer (the “Resolution”), and Chapter 2306, Texas Government Code, as amended (the “Act”). Reference is made to the Indenture, the Resolution and the Act for a full statement of their respective terms. Capitalized terms used herein and not otherwise defined herein have the respective meanings accorded such terms in the Indenture, which are hereby incorporated herein by reference. The Bonds issued under the Indenture are expressly limited to \$ _____ (new bond amount) in aggregate principal amount of the Bonds and are all of like tenor, except as to numbers and denominations, and are issued for the purposes of providing construction and permanent financing for qualified multifamily rental housing units in the State and of paying certain expenses incidental thereto. Pursuant to a Loan Agreement dated as of January 1, 2005, and a Promissory Note (the “Note”) dated January 1, 2005, Chicory Court – Simpson Stuart, L.P., a Texas limited partnership (the “Borrower”), has agreed to make payments to the Issuer in amounts equal to amounts of principal of and premium, if any, and interest on the Bonds.

THE BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF AND ARE SECURED BY AN ASSIGNMENT OF THE MORTGAGE AND OTHER ASSETS DESCRIBED HEREIN. NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF SUCH BONDS. THE STATE OF TEXAS IS NOT LIABLE ON SUCH BONDS AND SUCH BONDS ARE NOT A DEBT OF THE STATE OF TEXAS. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED BY THE ACT FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE BONDS ARE ISSUED UNDER CHAPTER 2306, TEXAS GOVERNMENT CODE, AS AMENDED. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE OFFICER, DIRECTOR, MEMBER, EMPLOYEE OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

The State shall not be liable for the Bonds, and the Bonds shall not constitute a debt of the State. The Act does not provide any procedure for the State to make appropriations for deposit into any reserve funds established under the Indenture.

Interest on the Bonds. The Bonds (including this Bond) shall bear interest on the outstanding principal amount thereof from the date of issuance at a rate of five percent (5.00%) per annum to and including June 30, 2006 or upon earlier redemption or acceleration, in each case, computed on the basis of a 360-day year comprised of twelve 30-day months. After June 30, 2006, the Bonds (including this Bond) shall bear interest on the outstanding principal amount thereof from the date of issuance at a rate of six and one-half percent (6.50%) per annum until paid on the Maturity Date or upon or upon earlier redemption or acceleration, in each case, computed on the basis of a 360-day year comprised of twelve 30-day months. The interest payable on the Bonds as provided above shall be payable on each Interest Payment Date.

Registration and Transfer. This Bond is transferable by the registered owner hereof in person or by his attorney duly authorized in writing at the office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds, of any Authorized Denomination or Authorized Denominations, of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Bonds are issuable as fully registered Bonds in Authorized Denominations as provided in the Indenture. The Issuer, the Trustee, and any other person may treat the person in whose name this Bond is registered on the books of registry as the Owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, and no person shall be affected by notice to the contrary.

This Bond may be transferred in whole or in part by the Owner, only (i) to any subsidiary of the Owner or any entity under common management or control with the Owner, any affiliate of the Owner, any entity arising out of any merger or consolidation of the Owner, or a trustee in bankruptcy of the Owner, (ii) to any Accredited Investor (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act of 1933) or any Qualified Institutional Buyer (as defined in Rule 144A promulgated under the Securities Act of 1933), (iii) to any bank, savings institution or insurance company (whether acting in a trustee or custodial

capacity for any Accredited Investor or Qualified Institutional Buyer or on its own behalf), or (iv) to any trust or custodial arrangement with respect to which the ultimate beneficial owner or owners of which are each an Accredited Investor or Qualified Institutional Buyer.

THE TRUSTEE SHALL NOT REGISTER ANY TRANSFER OR EXCHANGE OF ANY BONDS UNLESS SUCH HOLDER'S PROSPECTIVE TRANSFEREE DELIVERS TO THE TRUSTEE AN INVESTOR'S LETTER SUBSTANTIALLY IN THE APPROPRIATE FORM SET FORTH IN EXHIBIT D TO THE INDENTURE.

Mandatory Redemption. The Bonds shall be subject to mandatory redemption, and shall be redeemed, prior to maturity as follows:

(a) (i) in whole or in part on the first Interest Payment Date for which notice can be given in accordance with the Indenture after the Completion Date to the extent funds remain on deposit on such date in the Loan Account of the Construction Fund, as provided in Section 6.03 of the Indenture, and (ii) on the first Interest Payment Date for which notice can be given in accordance with the Indenture after receipt by the Trustee from the Majority Owner of direction to redeem Bonds from amounts on deposit in the Earnout Account of the Construction Fund, as contemplated by Section 6.02(b)(iii) of the Indenture, and Section 5.23 of the Loan Agreement; or

(b) in part on the first Interest Payment Date for which notice can be given in accordance with the Indenture, in the amount and allocated for payment of the Bonds as specified by the Majority Owner, if the Project has not achieved Stabilization (as evidenced by a certificate of the Servicer to the Majority Owner, Trustee and Issuer) within twenty-four (24) months after the earlier of (A) the date the Project achieves Completion or (B) the Completion Date. Notwithstanding the foregoing, the requirements of Section 4.01(b) of the Indenture shall be suspended until April 16, 2016, unless the Work-Out Support Provider shall be in default with respect to its payment obligations secured by the Work-Out Account Control Agreement due to a Bankruptcy, in which event the requirements of Section 4.01(b) of the Indenture shall be reinstated. Provided the Work-Out Support Provider is not then in default with respect to such payment obligations due to a Bankruptcy, from and after April 16, 2016, Section 4.01(b) of the Indenture shall be deleted in its entirety, all references in the Bonds, the Indenture and the Loan Documents to Section 4.01(b) of the Indenture shall be of no further force or effect whatsoever and the Majority Owner shall no longer have the right to direct any mandatory redemption of the Bonds as a result of the failure of the Project to achieve "Stabilization" under the original terms of the Loan Documents; or

(c) in whole or in part on the first Interest Payment Date for which adequate notice can be given in accordance with the Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project are deposited in the Revenue Fund and are not to be used to repair or restore the Project; or

(d) upon a Determination of Taxability if the Owner of a Bond presents his Bond for redemption, on any date selected by such Owner, specified in a notice in writing delivered to the Trustee, the Borrower and the Issuer at least thirty (30) days prior to such date; or

(e) in whole on any specified Interest Payment Date on or after March 1, 2005, if the Owners of all of the Bonds elect redemption by giving not less than 180 days' prior written notice thereof to the Issuer, the Trustee and the Borrower, which notice shall specify the Interest Payment Date on which the Bonds are to be redeemed; or

(f) in part on the Interest Payment Dates and in the amounts set forth on Exhibit B of the Indenture subject to adjustment as provided in Section 4.07(b) of the Indenture; or

(g) in part in an amount equal to \$250,000 on or about the date of execution and delivery of the Supplement, without any further notice or direction by the Majority Owner, the Issuer, the Borrower or any other person.

Redemption Price of Bonds Redeemed Pursuant to Mandatory Redemption. The Bonds being redeemed before maturity as described above shall be redeemed at a redemption price equal to the principal amount of the Bonds being redeemed, together with accrued interest to the date of redemption.

Optional Redemption. The Bonds shall be subject to redemption prior to maturity in whole but not in part on any Interest Payment Date on or after March 1, 2005, from the proceeds of an optional prepayment of the Loan by the Borrower, at a redemption price equal to the principal amount thereof, plus accrued interest thereon to the date fixed for redemption.

Purchase in Lieu of Redemption. At the election of the Borrower or the Investor Limited Partner upon a redemption in whole of the Bonds, if the Borrower obtains a Favorable Opinion of Bond Counsel, by written notice to the Trustee and the Majority Owner given not less than five (5) Business Days in advance of the proposed redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and shall be payable on the date of redemption thereof. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower or the Investor Limited Partner.

Notice of Redemption.

(a) Notice of redemption shall be given by the Trustee by telephone, telegram or other electronic means, promptly confirmed in writing, not less than ten (10) Business Days prior to the date fixed for redemption; provided, however, that no notice of redemption shall be required for a redemption pursuant to Section 4.01(d), (e) or (f) of the Indenture.

(b) Notice of redemption shall be given to the Owners of all Bonds to be redeemed, by telephone, telex, telecopier or other electronic means, promptly confirmed in writing, at their

addresses appearing on the books of registry. Receipt of such notice of redemption shall not be a condition precedent to such redemption, and failure so to notify any of such registered Owners shall not affect the validity of the proceedings for the redemption of the Bonds.

(c) Notice of redemption having been given as provided in subsection (a) or (b) of Section 4.05 of the Indenture and all conditions precedent, if any, specified in such notice having been met to the satisfaction of the Majority Owner, as evidenced in writing by the Majority Owner to the Trustee, the Bonds or portions thereof so to be redeemed shall become due and payable on the date fixed for redemption at the redemption price specified therein plus any accrued interest to the redemption date, and upon presentation and surrender thereof at the place specified in such notice, such Bonds or portions thereof shall be paid at the redemption price, plus any accrued interest to the redemption date. On and after the redemption date (unless funds for the payment of the redemption price and accrued interest of the Bonds called for redemption shall not have been provided to the Trustee), (i) such Bonds shall cease to bear interest and (ii) such Bonds shall no longer be considered as Outstanding under the Indenture.

1. Selection of Bonds To Be Redeemed.

(a) Except as otherwise expressly set forth herein, if less than all of the Bonds are to be redeemed, the particular Bonds or portions of Bonds to be redeemed shall be selected by the Trustee randomly.

(b) In making such selection randomly, the Trustee may treat each Bond to be redeemed as representing that number of Bonds of the lowest Authorized Denomination as is obtained by dividing the principal amount of such Bond by such Authorized Denomination.

Partial Redemption of Registered Bonds.

(a) In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the Principal Office of the Trustee of such Bond by the Owner thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee) the Trustee shall authenticate and deliver to or upon the order of such Owner, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Owner, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, that such surrender of Bonds shall not be required for payment of the redemption price pursuant to subsection (f) under the heading "Mandatory Redemption" above. For all purposes of the Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with the Indenture. Notwithstanding the foregoing, surrender of the Bonds shall not be a condition to payment of redemption price pursuant to subsection (f) under the heading "Mandatory Redemption" above.

(b) In the event of a partial redemption of Bonds other than pursuant to subsection (f) under the heading “Mandatory Redemption” above, the amount of each payment required under the mandatory sinking fund schedule set forth on Exhibit B to the Indenture on or after the date of such redemption shall be adjusted to provide for level debt service payment of such Bonds over their remaining term from and after the first Interest Payment Date following such redemption. The Majority Owner shall provide the Trustee with a revised Exhibit B to the Indenture reflecting such adjusted schedule.

Enforcement. Only the Majority Owner shall have the right to enforce the provisions of this Bond or the Indenture or to institute any action to enforce the covenants herein or therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. If an Event of Default occurs and is continuing, the principal of all Bonds then outstanding may be declared due and payable by the Majority Owner upon the conditions and in the manner and with the effect provided in the Indenture. As provided in the Indenture, and to the extent permitted by law, interest and a penalty rate of interest shall be payable on unpaid amounts due hereon.

Discharge. The Indenture prescribes the manner in which it may be discharged and after which the Bonds shall be deemed to be paid and no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of registration and exchange of Bonds and of such payment.

Modifications. Modifications or alterations of the Indenture, or of any supplements thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond shall not be valid or obligatory for any purpose until it shall have been authenticated by a duly authorized officer of the Trustee, as Authenticating Agent.

It is hereby certified and recited that all conditions, acts and things required by the statutes of the State or by the Act or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed and that the issue of the Bonds, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by said statutes.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed as of the Dated Date stated above.

TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS

By: _____
Chair

(SEAL)

ATTEST:

By: _____
Secretary

[To be inserted on Initial Bond submitted to Attorney General]

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _____
THE STATE OF TEXAS §

• I HEREBY CERTIFY that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas and duly registered by the Comptroller of Public Accounts of the State of Texas.

• ITNESS my signature and seal of office this _____ W

(SEAL)

Comptroller of Public Accounts of
the State of Texas

[To be inserted on Bonds other than the Initial Bond]

FORM OF CERTIFICATE OF AUTHENTICATION

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Indenture and is one of the Texas Department of Housing and Community Affairs Multifamily Housing Mortgage Revenue Bonds (Homes at Pecan Grove^{*}) Series 2005.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee and Authenticating
Agent

By: _____
Authorized Signatory

Date of Authentication: _____

^{*} Formerly known as Rose Court at Simpson Stuart

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite Name and Address, including Zip Code, and Federal Taxpayer Identification or Social Security Number of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints Attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated _____

Signature: _____

Signature guaranteed by:

NOTICE: Signature must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

EXHIBIT B

ADJUSTED SINKING FUND REDEMPTION SCHEDULE

SCHEDULE 1

WAIVED ARREARAGES

Unpaid Principal Waived at Reissuance: \$[_____]

Reissued Bond Amount: \$_____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Multifamily Housing Mortgage Revenue Bonds
(Homes of Pecan Grove)
Restructuring of Series 2005 Bonds

September 2013

Introduction

Texas Department of Housing and Community Affairs (“TDHCA”) received an application from Chicory Court – Simpson Stuart, LP (the “Applicant”) to approve a restructuring of Multifamily Housing Mortgage Revenue Bonds (Homes of Pecan Grove) Series 2005. The bonds were originally issued on January 7, 2005 for \$14,030,000, tax-exempt.

Borrower / Owner

The Borrower is Chicory Court – Simpson Stuart, LP, a Texas limited partnership organized under the laws of the State of Texas on May 7, 2004:

- **General Partner** – Simpson Stuart Dallas LLC, a Delaware limited liability company;
- **Manager** – Centerline Guaranteed Manager LLC, a Delaware limited liability company.

Description of the Property



Description of the Property (con't)

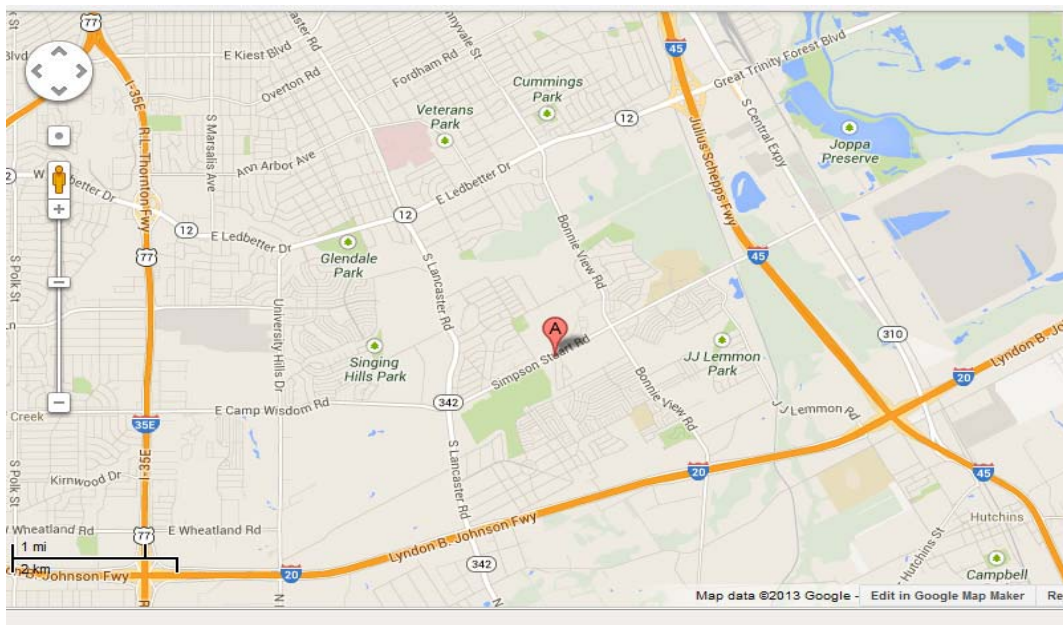
The Applicant has provided the following description of the property:

- Homes of Pecan Grove (“Pecan Grove Townhomes”) is a new construction of 250 garden style flats and townhouses for families in Dallas (built in 2006).
- The 250 units are spread out in 20 two-story townhouse structures.
- Of the 250 units, 50% are set aside for tenants earning no more than 50% of the area median income and the remaining 50% are at the 60% level.
- Pecan Grove Townhomes is a former Odyssey Residential Holdings transaction located in Dallas, Texas.
- Odyssey withdrew at the end of December 2008 and was replaced with Agape Reserve Partners. Centerline and Agape agreed to a withdrawal of Agape as the General Partner in December 2011.
- The new General Partner is a Centerline controlled entity.
- Cumulative advances as of March 31, 2013 for Centerline Credit Enhanced Partners LP-Series B is over \$580,000.

Num Of Units	Num Of Bedrooms	Num Of Baths	Unit Size (Net Rentable Sq. Ft.)	Total net Rentable Sq. Ft.	Monthly Rent	Monthly Rent Total
(A)			(B)	(A) x (B)	(C)	(A) x (C)
25	1	1	780	19,500	\$580	\$14,500
25	1	1	780	19,500	\$665	\$16,625
56	2	2	1,112	62,272	\$721	\$40,376
56	2	2	1,112	62,272	\$824	\$46,144
44	3	2	1,268	55,792	\$799	\$35,156
44	3	2	1,268	55,792	\$951	\$41,844
250			1,101	275,128	\$779	\$194,645
Total			Average	Total	Average	Total

Location of Property:

The Pecan Grove Townhomes are located at 3111 Simpson Stuart Road, Dallas, Texas 75241:



Reason For the Restructuring:

The Applicant states the following reasons for the restructuring:

- The reason for the proposed restructuring of the aforementioned bonds is that the property has yet to be deemed Stabilized as a result of historical below break-even operations.
- Stabilization (per the Loan Agreement) is defined as three (3) months of operations at a 1.15x DSCR and 90% physical occupancy.
- The deal was originally structured with \$14,030,000 in tax-exempt bonds. As of 1Q 2013, Centerline Credit Enhanced Partners LP – Series B had advanced over \$580,000 to the property.

Benefits to the Development:

The Applicant states:

- The reissuance would reduce the principal balance on the bonds by \$250,000 and reset the amortization to 480 months.
- Annual debt service would decrease, improving the financial strength of the asset.
- This will reduce the property’s operating deficit to a more manageable level and hopefully reduce future recapture risk.
- The restructuring will alleviate Centerline’s obligation to continuously fund deficits as well as reduce Natixis’ liability as guarantor of the yield on the fund for which the property is part of.
- If the asset went into foreclosure and the fund yield decreased, Natixis would be responsible for compensating the Investor for the loss.
- Historically, it has been less expensive to advance funds to the property than to allow a property to foreclose.
- The restructuring would also reduce exposure and default risk to Freddie Mac as lender. The debt will be bought down using unfunded equity.

Financing Structure:

Pecan Grove Townhomes	
SOURCES:	
Bond Redemption	\$250,000
Revised UPB on Tax Exempt Bonds (10/01/2013)	\$13,178,222
Centerline Entity Contribution	\$137,111
Total Sources	\$13,565,333
USES:	
UPB on Tax Exempt Bonds (09/01/2013)	\$13,428,222
TDCHA - Application Fee	\$5,000
TDCHA - Reissuance Fee	\$67,111
Professional Fees	\$65,000
Total Uses	\$13,565,333

The Applicant summarizes the financing structure as follows:

- The Series 2005 bond issuance totaled \$14,030,000.
- The application for restructuring is based on a \$250,000 reduction of the bond balance on or about October 1, 2013.
- The interest rate on the bonds will remain the same at 6.50%. However, the amortization period on the bonds will be reset to 480 months beginning with the April 1, 2013 payment.
- The principal on the bonds will be reduced by an aggregate amount of \$250,000.
- The maturity date will be accelerated to January 1, 2038 to keep the “average maturity date” (commonly referred to as average life or weighted average maturity (WAM) from being extended.



Average Maturity Date:

Section 147(f)(2)(D) of the Internal Revenue Code states:

“(D) Refunding bonds

*No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) **unless the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue.** For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A).”*

We have attached a spreadsheet titled “Pecan Grove Townhomes” which calculates the average maturity date on the Series 2005, before and after the proposed restructuring. For our analysis we use the term “Average Life” which is the municipal bond equivalent to the IRS Code’s “Average Maturity Date”. Our analysis shows that:

- **The Average Maturity Date of the Series 2005 Bonds:**
 - **before** the proposed restructuring is **29.693 years.**
 - **after** the proposed restructuring is **28.664 years.**

- **The Average Life of the Series 2005 Bonds from the first principal receipt date of 11/01/2013 to final maturity date of 01/01/2038:**
 - **before** the proposed restructuring is **22.008 years.**
 - **After** the proposed restructuring is **21.365 years.**

Based on the information provided by the Applicant, the proposed restructuring meets the average maturity date requirements of the IRS Code, Section 147(f)(2)(D).

Other Considerations:

- The maturity date is accelerated to 01/01/2038 (originally 02/01/2048).
- At this date the outstanding balance due will be approximately \$8.8 million, however the outstanding balance without a restructuring would be approximately \$6.6 million.
- Although the restructuring will decrease debt service payments by approximately \$1.0 million (D/S savings from April 2013 through January 2038 on original less reissued bonds), interest expense will increase by approximately \$1.0 million and principal amortization will be deferred by approximately \$2.2 million.
- We asked the Applicant what the plan is to take out the \$8.8 million balance on 01/01/2038. Their response is that in 2022 the 15 year compliance period for the project will be over and at or about that time, the project would most likely be sold or refinanced.
- A shortfall is not projected to exist after the restructuring.

CASHFLOW AND RESIDUAL ANALYSIS - PROVIDED BY THE APPLICANT				
<u>Pecan Grove Townhomes</u>				
	Income Growth Rate:	3.0%		
	Expense Growth Rate:	3.0%		
	Final Year of Analysis:	25		
		Year 1	Year 8	
		(Annualized)	(End of Comp)	
		2014	2022	
			Year 25	
			(FINAL)	
			2038	
GROSS RENTAL & OTHER INCOME		\$ 2,373,528	\$ 3,006,714	\$ 4,824,893
VACANCY		\$ (195,960)	\$ (248,236)	\$ (398,345)
EFFECTIVE GROSS INCOME		\$ 2,177,568	\$ 2,758,478	\$ 4,426,548
NET OTHER INCOME		\$ 46,603	\$ 59,036	\$ 94,735
		\$ 2,224,172	\$ 2,817,514	\$ 4,521,283
TOTAL EXPENSES & REPLACEMENT RESERVES		\$ 1,249,960	\$ 1,583,411	\$ 2,540,910
NET OPERATING INCOME		\$ 974,212	\$ 1,234,103	\$ 1,980,373
ANNUAL DEBT SERVICE		\$ 928,306	\$ 928,306	\$ 928,306
EXCESS/SHORTAGE		\$ 45,906	\$ 305,797	\$ 1,052,067
DEBT SERVICE COVERAGE RATIO		104.9%	132.9%	213.3%
VALUE OF REAL ESTATE - CAP. METHOD @ 8.00%		\$ 12,177,651	\$ 15,426,284	\$ 24,754,658
OUTSTANDING BALANCE - Centerline / Freddie Mac Bond Debt		\$ 13,070,511	12,247,352	\$ 8,931,726
<u>EXCESS VALUE</u>		\$ (892,860)	\$ 3,178,933	\$ 15,822,932
<u>EXCESS VALUE RATIO (times)</u>		0.93	1.26	2.77



Pecan Grove Townhomes - Three Year Physical Occupancy Report

Property Name	Date Reported	Percent Occupied	Total Residential Units	Occupied Units	Vacant Units
Pecan Grove Townhomes	05/01/2010	92.00%	250	230	20
Pecan Grove Townhomes	06/01/2010	91.60%	250	229	21
Pecan Grove Townhomes	07/01/2010	92.00%	250	230	20
Pecan Grove Townhomes	08/01/2010	92.40%	250	231	19
Pecan Grove Townhomes	09/01/2010	91.60%	250	229	21
Pecan Grove Townhomes	10/01/2010	95.20%	250	238	12
Pecan Grove Townhomes	11/30/2010	94.00%	250	235	15
Pecan Grove Townhomes	12/31/2010	95.20%	250	238	12
Pecan Grove Townhomes	01/31/2011	97.60%	250	244	6
Pecan Grove Townhomes	02/28/2011	98.00%	250	245	5
Pecan Grove Townhomes	03/31/2011	97.60%	250	244	6
Pecan Grove Townhomes	04/30/2011	97.20%	250	243	7
Pecan Grove Townhomes	05/31/2011	95.60%	250	239	11
Pecan Grove Townhomes	06/30/2011	95.60%	250	239	11
Pecan Grove Townhomes	07/31/2011	93.60%	250	234	16
Pecan Grove Townhomes	08/31/2011	93.20%	250	233	17
Pecan Grove Townhomes	09/30/2011	93.20%	250	233	17
Pecan Grove Townhomes	10/31/2011	94.40%	250	236	14
Pecan Grove Townhomes	11/30/2011	94.40%	250	236	14
Pecan Grove Townhomes	12/31/2011	94.80%	250	237	13
Pecan Grove Townhomes	01/31/2012	94.80%	250	237	13
Pecan Grove Townhomes	02/29/2012	96.40%	250	241	9
Pecan Grove Townhomes	03/31/2012	97.20%	250	243	7
Pecan Grove Townhomes	04/30/2012	95.20%	250	238	12
Pecan Grove Townhomes	05/31/2012	95.60%	250	239	11
Pecan Grove Townhomes	06/30/2012	93.20%	250	233	17
Pecan Grove Townhomes	07/31/2012	92.80%	250	232	18
Pecan Grove Townhomes	08/31/2012	93.20%	250	233	17
Pecan Grove Townhomes	09/30/2012	90.80%	250	227	23
Pecan Grove Townhomes	10/31/2012	90.80%	250	227	23
Pecan Grove Townhomes	11/30/2012	91.60%	250	229	21
Pecan Grove Townhomes	12/31/2012	91.60%	250	229	21
Pecan Grove Townhomes	01/31/2013	93.20%	250	233	17
Pecan Grove Townhomes	02/28/2013	91.60%	250	229	21
Pecan Grove Townhomes	03/31/2013	91.60%	250	229	21
Pecan Grove Townhomes	04/30/2013	92.40%	250	231	19
Average 3 year occupancy		93.92%			

Recommendation:

Based on the information we received from the Applicant and taking into consideration the assumptions that:

- The Project is just about breakeven in its ability to meet debt service requirements without cash infusions.
- The proposed restructuring will reduce the outstanding bond balance by \$250,000.
- The new structure will reduce annual debt service starting on 5/01/2013 by approximately \$57,369.
- All future cashflow (projected through 2022) will be funded by Natixis.
- The Applicant intends to sell or refinance the project in 2022 (end of the 15 year compliance period) which is 16 years prior to the maturity date of 01/01/2038 (per our discussions with Centerline). At maturity the Project's value is estimated to be \$24.7 million and the outstanding balance is projected to be \$8.9 million (2.77x).
- Bond Counsel will provide all necessary legal reviews and opinions.

We recommend that TDHCA approve the transaction to restructure Multifamily Housing Mortgage Revenue Bonds (Homes of Pecan Grove) Series 2005.

Please note that we have relied upon the information provided to us and TDHCA by the Applicant as the basis for our review. Users of this report should recognize that cashflow projections are based upon hypothetical assumptions, the reasonableness of which we have not examined, with respect to revenues and expenses. This report makes no attestation to the ability of the indenture to meet its financial obligations to bond holders.

Original Amortization Schedule

Pecan Grove Townhomes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
	01/07/2005						14,030,000.00		01/07/2005						14,030,000.00
1	02/01/2007	1,899,895.83	6,144.00		1,906,039.83		14,023,856.00	1	02/01/2007	1,899,895.83	6,144.00		1,906,039.83		14,023,856.00
2	03/01/2007	75,962.55	6,177.00		82,139.55		14,017,679.00	2	03/01/2007	75,962.55	6,177.00		82,139.55		14,017,679.00
3	04/01/2007	75,929.09	6,210.00		82,139.09		14,011,469.00	3	04/01/2007	75,929.09	6,210.00		82,139.09		14,011,469.00
4	05/01/2007	75,895.46	6,244.00		82,139.46		14,005,225.00	4	05/01/2007	75,895.46	6,244.00		82,139.46		14,005,225.00
5	06/01/2007	75,861.64	6,278.00		82,139.64		13,998,947.00	5	06/01/2007	75,861.64	6,278.00		82,139.64		13,998,947.00
6	07/01/2007	75,827.63	6,312.00		82,139.63		13,992,635.00	6	07/01/2007	75,827.63	6,312.00		82,139.63		13,992,635.00
7	08/01/2007	75,793.44	6,346.00		82,139.44		13,986,289.00	7	08/01/2007	75,793.44	6,346.00		82,139.44		13,986,289.00
8	09/01/2007	75,759.07	6,381.00		82,140.07		13,979,908.00	8	09/01/2007	75,759.07	6,381.00		82,140.07		13,979,908.00
9	10/01/2007	75,724.50	6,415.00		82,139.50		13,973,493.00	9	10/01/2007	75,724.50	6,415.00		82,139.50		13,973,493.00
10	11/01/2007	75,689.75	6,450.00		82,139.75		13,967,043.00	10	11/01/2007	75,689.75	6,450.00		82,139.75		13,967,043.00
11	12/01/2007	75,654.82	6,485.00		82,139.82		13,960,558.00	11	12/01/2007	75,654.82	6,485.00		82,139.82		13,960,558.00
12	01/01/2008	75,619.69	6,520.00		82,139.69		13,954,038.00	12	01/01/2008	75,619.69	6,520.00		82,139.69		13,954,038.00
13	02/01/2008	75,584.37	6,555.00		82,139.37		13,947,483.00	13	02/01/2008	75,584.37	6,555.00		82,139.37		13,947,483.00
14	03/01/2008	75,548.87	6,591.00		82,139.87		13,940,892.00	14	03/01/2008	75,548.87	6,591.00		82,139.87		13,940,892.00
15	04/01/2008	75,513.17	6,626.00		82,139.17		13,934,266.00	15	04/01/2008	75,513.17	6,626.00		82,139.17		13,934,266.00
16	05/01/2008	75,477.27	6,662.00		82,139.27		13,927,604.00	16	05/01/2008	75,477.27	6,662.00		82,139.27		13,927,604.00
17	06/01/2008	75,441.19	6,698.00		82,139.19		13,920,906.00	17	06/01/2008	75,441.19	6,698.00		82,139.19		13,920,906.00
18	07/01/2008	75,404.91	6,735.00		82,139.91		13,914,171.00	18	07/01/2008	75,404.91	6,735.00		82,139.91	985,675.05	13,914,171.00
19	08/01/2008	75,368.43	6,771.00		82,139.43	985,675.04	13,907,400.00	19	08/01/2008	75,368.43	6,771.00		82,139.43		13,907,400.00
20	09/01/2008	75,331.75	6,808.00		82,139.75		13,900,592.00	20	09/01/2008	75,331.75	6,808.00		82,139.75		13,900,592.00
21	10/01/2008	75,294.87	6,845.00		82,139.87		13,893,747.00	21	10/01/2008	75,294.87	6,845.00		82,139.87		13,893,747.00
22	11/01/2008	75,257.80	6,882.00		82,139.80		13,886,865.00	22	11/01/2008	75,257.80	6,882.00		82,139.80		13,886,865.00
23	12/01/2008	75,220.52	6,919.00		82,139.52		13,879,946.00	23	12/01/2008	75,220.52	6,919.00		82,139.52		13,879,946.00
24	01/01/2009	75,183.04	6,957.00		82,140.04		13,872,989.00	24	01/01/2009	75,183.04	6,957.00		82,140.04		13,872,989.00
25	02/01/2009	75,145.36	6,994.00		82,139.36		13,865,995.00	25	02/01/2009	75,145.36	6,994.00		82,139.36		13,865,995.00
26	03/01/2009	75,107.47	7,032.00		82,139.47		13,858,963.00	26	03/01/2009	75,107.47	7,032.00		82,139.47		13,858,963.00
27	04/01/2009	75,069.38	7,070.00		82,139.38		13,851,893.00	27	04/01/2009	75,069.38	7,070.00		82,139.38		13,851,893.00
28	05/01/2009	75,031.09	7,109.00		82,140.09		13,844,784.00	28	05/01/2009	75,031.09	7,109.00		82,140.09		13,844,784.00
29	06/01/2009	74,992.58	7,147.00		82,139.58		13,837,637.00	29	06/01/2009	74,992.58	7,147.00		82,139.58		13,837,637.00
30	07/01/2009	74,953.87	7,186.00		82,139.87		13,830,451.00	30	07/01/2009	74,953.87	7,186.00		82,139.87	985,676.16	13,830,451.00
31	08/01/2009	74,914.94	7,225.00		82,139.94	985,676.67	13,823,226.00	31	08/01/2009	74,914.94	7,225.00		82,139.94		13,823,226.00
32	09/01/2009	74,875.81	7,264.00		82,139.81		13,815,962.00	32	09/01/2009	74,875.81	7,264.00		82,139.81		13,815,962.00
33	10/01/2009	74,836.46	7,303.00		82,139.46		13,808,659.00	33	10/01/2009	74,836.46	7,303.00		82,139.46		13,808,659.00
34	11/01/2009	74,796.90	7,343.00		82,139.90		13,801,316.00	34	11/01/2009	74,796.90	7,343.00		82,139.90		13,801,316.00
35	12/01/2009	74,757.13	7,382.00		82,139.13		13,793,934.00	35	12/01/2009	74,757.13	7,382.00		82,139.13		13,793,934.00
36	01/01/2010	74,717.14	7,422.00		82,139.14		13,786,512.00	36	01/01/2010	74,717.14	7,422.00		82,139.14		13,786,512.00
37	02/01/2010	74,676.94	7,463.00		82,139.94		13,779,049.00	37	02/01/2010	74,676.94	7,463.00		82,139.94		13,779,049.00
38	03/01/2010	74,636.52	7,503.00		82,139.52		13,771,546.00	38	03/01/2010	74,636.52	7,503.00		82,139.52		13,771,546.00
39	04/01/2010	74,595.87	7,544.00		82,139.87		13,764,002.00	39	04/01/2010	74,595.87	7,544.00		82,139.87		13,764,002.00
40	05/01/2010	74,555.01	7,585.00		82,140.01		13,756,417.00	40	05/01/2010	74,555.01	7,585.00		82,140.01		13,756,417.00
41	06/01/2010	74,513.93	7,626.00		82,139.93		13,748,791.00	41	06/01/2010	74,513.93	7,626.00		82,139.93		13,748,791.00
42	07/01/2010	74,472.62	7,667.00		82,139.62		13,741,124.00	42	07/01/2010	74,472.62	7,667.00		82,139.62	985,676.27	13,741,124.00
43	08/01/2010	74,431.09	7,708.00		82,139.09	985,675.42	13,733,416.00	43	08/01/2010	74,431.09	7,708.00		82,139.09		13,733,416.00
44	09/01/2010	74,389.34	7,750.00		82,139.34		13,725,666.00	44	09/01/2010	74,389.34	7,750.00		82,139.34		13,725,666.00
45	10/01/2010	74,347.36	7,792.00		82,139.36		13,717,874.00	45	10/01/2010	74,347.36	7,792.00		82,139.36		13,717,874.00
46	11/01/2010	74,305.15	7,834.00		82,139.15		13,710,040.00	46	11/01/2010	74,305.15	7,834.00		82,139.15		13,710,040.00
47	12/01/2010	74,262.72	7,877.00		82,139.72		13,702,163.00	47	12/01/2010	74,262.72	7,877.00		82,139.72		13,702,163.00

Original Amortization Schedule

Pecan Grove Townhomes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
48	01/01/2011	74,220.05	7,920.00		82,140.05		13,694,243.00	48	01/01/2011	74,220.05	7,920.00		82,140.05		13,694,243.00
49	02/01/2011	74,177.15	7,962.00		82,139.15		13,686,281.00	49	02/01/2011	74,177.15	7,962.00		82,139.15		13,686,281.00
50	03/01/2011	74,134.02	8,006.00		82,140.02		13,678,275.00	50	03/01/2011	74,134.02	8,006.00		82,140.02		13,678,275.00
51	04/01/2011	74,090.66	8,049.00		82,139.66		13,670,226.00	51	04/01/2011	74,090.66	8,049.00		82,139.66		13,670,226.00
52	05/01/2011	74,047.06	8,093.00		82,140.06		13,662,133.00	52	05/01/2011	74,047.06	8,093.00		82,140.06		13,662,133.00
53	06/01/2011	74,003.22	8,136.00		82,139.22		13,653,997.00	53	06/01/2011	74,003.22	8,136.00		82,139.22		13,653,997.00
54	07/01/2011	73,959.15	8,180.00		82,139.15		13,645,817.00	54	07/01/2011	73,959.15	8,180.00		82,139.15	985,673.97	13,645,817.00
55	08/01/2011	73,914.84	8,225.00		82,139.84	985,674.72	13,637,592.00	55	08/01/2011	73,914.84	8,225.00		82,139.84		13,637,592.00
56	09/01/2011	73,870.29	8,269.00		82,139.29		13,629,323.00	56	09/01/2011	73,870.29	8,269.00		82,139.29		13,629,323.00
57	10/01/2011	73,825.50	8,314.00		82,139.50		13,621,009.00	57	10/01/2011	73,825.50	8,314.00		82,139.50		13,621,009.00
58	11/01/2011	73,780.47	8,359.00		82,139.47		13,612,650.00	58	11/01/2011	73,780.47	8,359.00		82,139.47		13,612,650.00
59	12/01/2011	73,735.19	8,404.00		82,139.19		13,604,246.00	59	12/01/2011	73,735.19	8,404.00		82,139.19		13,604,246.00
60	01/01/2012	73,689.67	8,450.00		82,139.67		13,595,796.00	60	01/01/2012	73,689.67	8,450.00		82,139.67		13,595,796.00
61	02/01/2012	73,643.90	8,496.00		82,139.90		13,587,300.00	61	02/01/2012	73,643.90	8,496.00		82,139.90		13,587,300.00
62	03/01/2012	73,597.88	8,542.00		82,139.88		13,578,758.00	62	03/01/2012	73,597.88	8,542.00		82,139.88		13,578,758.00
63	04/01/2012	73,551.61	8,588.00		82,139.61		13,570,170.00	63	04/01/2012	73,551.61	8,588.00		82,139.61		13,570,170.00
64	05/01/2012	73,505.09	8,634.00		82,139.09		13,561,536.00	64	05/01/2012	73,505.09	8,634.00		82,139.09		13,561,536.00
65	06/01/2012	73,458.32	8,681.00		82,139.32		13,552,855.00	65	06/01/2012	73,458.32	8,681.00		82,139.32		13,552,855.00
66	07/01/2012	73,411.30	8,728.00		82,139.30		13,544,127.00	66	07/01/2012	73,411.30	8,728.00		82,139.30	985,674.06	13,544,127.00
67	08/01/2012	73,364.02	8,776.00		82,140.02	985,674.24	13,535,351.00	67	08/01/2012	73,364.02	8,776.00		82,140.02		13,535,351.00
68	09/01/2012	73,316.48	8,823.00		82,139.48		13,526,528.00	68	09/01/2012	73,316.48	8,823.00		82,139.48		13,526,528.00
69	10/01/2012	73,268.69	8,871.00		82,139.69		13,517,657.00	69	10/01/2012	73,268.69	8,871.00		82,139.69		13,517,657.00
70	11/01/2012	73,220.64	8,919.00		82,139.64		13,508,738.00	70	11/01/2012	73,220.64	8,919.00		82,139.64		13,508,738.00
71	12/01/2012	73,172.33	8,967.00		82,139.33		13,499,771.00	71	12/01/2012	73,172.33	8,967.00		82,139.33		13,499,771.00
72	01/01/2013	73,123.76	9,016.00		82,139.76		13,490,755.00	72	01/01/2013	73,123.76	9,016.00		82,139.76		13,490,755.00
73	02/01/2013	73,074.92	9,065.00		82,139.92		13,481,690.00	73	02/01/2013	73,074.92	9,065.00		82,139.92		13,481,690.00
74	03/01/2013	73,025.82	9,114.00		82,139.82		13,472,576.00	74	03/01/2013	73,025.82	9,114.00		82,139.82		13,472,576.00
75	04/01/2013	72,976.45	9,163.00		82,139.45		13,463,413.00	75	04/01/2013	72,976.45	9,163.00		82,139.45		13,463,413.00
76	05/01/2013	72,926.82	9,213.00		82,139.82		13,454,200.00	76	05/01/2013	72,926.82	4,432.01		77,358.83		13,458,980.99
77	06/01/2013	72,876.92	9,263.00		82,139.92		13,444,937.00	77	06/01/2013	72,902.81	4,456.02		77,358.83		13,454,524.97
78	07/01/2013	72,826.74	9,313.00		82,139.74		13,435,624.00	78	07/01/2013	72,878.68	4,480.15		77,358.83	971,333.60	13,450,044.82
79	08/01/2013	72,776.30	9,363.00		82,139.30	985,675.87	13,426,261.00	79	08/01/2013	72,854.41	4,504.42		77,358.83		13,445,540.40
80	09/01/2013	72,725.58	9,414.00		82,139.58		13,416,847.00	80	09/01/2013	72,830.01	4,528.82		77,358.83		13,441,011.58
81	10/01/2013	72,674.59	9,465.00		82,139.59		13,407,382.00	81	10/01/2013	72,805.48	4,553.35	258,235.81	77,358.83		13,178,222.42
82	11/01/2013	72,623.32	9,516.00		82,139.32		13,397,866.00	82	11/01/2013	71,382.04	5,976.79		77,358.83		13,172,245.63
83	12/01/2013	72,571.77	9,568.00		82,139.77		13,388,298.00	83	12/01/2013	71,349.66	6,009.17		77,358.83		13,166,236.46
84	01/01/2014	72,519.95	9,620.00		82,139.95		13,378,678.00	84	01/01/2014	71,317.11	6,041.72		77,358.83		13,160,194.74
85	02/01/2014	72,467.84	9,672.00		82,139.84		13,369,006.00	85	02/01/2014	71,284.39	6,074.44		77,358.83		13,154,120.30
86	03/01/2014	72,415.45	9,724.00		82,139.45		13,359,282.00	86	03/01/2014	71,251.48	6,107.35		77,358.83		13,148,012.95
87	04/01/2014	72,362.78	9,777.00		82,139.78		13,349,505.00	87	04/01/2014	71,218.40	6,140.43		77,358.83		13,141,872.52
88	05/01/2014	72,309.82	9,830.00		82,139.82		13,339,675.00	88	05/01/2014	71,185.14	6,173.69		77,358.83		13,135,698.83
89	06/01/2014	72,256.57	9,883.00		82,139.57		13,329,792.00	89	06/01/2014	71,151.70	6,207.13		77,358.83		13,129,491.70
90	07/01/2014	72,203.04	9,937.00		82,140.04		13,319,855.00	90	07/01/2014	71,118.08	6,240.75		77,358.83	928,305.96	13,123,250.95
91	08/01/2014	72,149.21	9,990.00		82,139.21	985,675.92	13,309,865.00	91	08/01/2014	71,084.28	6,274.55		77,358.83		13,116,976.40
92	09/01/2014	72,095.10	10,044.00		82,139.10		13,299,821.00	92	09/01/2014	71,050.29	6,308.54		77,358.83		13,110,667.86
93	10/01/2014	72,040.70	10,099.00		82,139.70		13,289,722.00	93	10/01/2014	71,016.12	6,342.71		77,358.83		13,104,325.15
94	11/01/2014	71,985.99	10,154.00		82,139.99		13,279,568.00	94	11/01/2014	70,981.76	6,377.07		77,358.83		13,097,948.08
95	12/01/2014	71,930.99	10,209.00		82,139.99		13,269,359.00	95	12/01/2014	70,947.22	6,411.61		77,358.83		13,091,536.47

Original Amortization Schedule

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	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
96	01/01/2015	71,875.69	10,264.00		82,139.69		13,259,095.00	96	01/01/2015	70,912.49	6,446.34		77,358.83		13,085,090.13
97	02/01/2015	71,820.10	10,319.00		82,139.10		13,248,776.00	97	02/01/2015	70,877.57	6,481.26		77,358.83		13,078,608.87
98	03/01/2015	71,764.20	10,375.00		82,139.20		13,238,401.00	98	03/01/2015	70,842.46	6,516.37		77,358.83		13,072,092.50
99	04/01/2015	71,708.01	10,432.00		82,140.01		13,227,969.00	99	04/01/2015	70,807.17	6,551.66		77,358.83		13,065,540.84
100	05/01/2015	71,651.50	10,488.00		82,139.50		13,217,481.00	100	05/01/2015	70,771.68	6,587.15		77,358.83		13,058,953.69
101	06/01/2015	71,594.69	10,545.00		82,139.69		13,206,936.00	101	06/01/2015	70,736.00	6,622.83		77,358.83		13,052,330.86
102	07/01/2015	71,537.57	10,602.00		82,139.57		13,196,334.00	102	07/01/2015	70,700.13	6,658.70		77,358.83	928,305.96	13,045,672.16
103	08/01/2015	71,480.14	10,659.00		82,139.14	985,674.68	13,185,675.00	103	08/01/2015	70,664.06	6,694.77		77,358.83		13,038,977.39
104	09/01/2015	71,422.41	10,717.00		82,139.41		13,174,958.00	104	09/01/2015	70,627.79	6,731.04		77,358.83		13,032,246.35
105	10/01/2015	71,364.36	10,775.00		82,139.36		13,164,183.00	105	10/01/2015	70,591.33	6,767.50		77,358.83		13,025,478.85
106	11/01/2015	71,305.99	10,834.00		82,139.99		13,153,349.00	106	11/01/2015	70,554.68	6,804.15		77,358.83		13,018,674.70
107	12/01/2015	71,247.31	10,892.00		82,139.31		13,142,457.00	107	12/01/2015	70,517.82	6,841.01		77,358.83		13,011,833.69
108	01/01/2016	71,188.31	10,951.00		82,139.31		13,131,506.00	108	01/01/2016	70,480.77	6,878.06		77,358.83		13,004,955.63
109	02/01/2016	71,128.99	11,011.00		82,139.99		13,120,495.00	109	02/01/2016	70,443.51	6,915.32		77,358.83		12,998,040.31
110	03/01/2016	71,069.35	11,070.00		82,139.35		13,109,425.00	110	03/01/2016	70,406.05	6,952.78		77,358.83		12,991,087.53
111	04/01/2016	71,009.39	11,130.00		82,139.39		13,098,295.00	111	04/01/2016	70,368.39	6,990.44		77,358.83		12,984,097.09
112	05/01/2016	70,949.10	11,190.00		82,139.10		13,087,105.00	112	05/01/2016	70,330.53	7,028.30		77,358.83		12,977,068.79
113	06/01/2016	70,888.49	11,251.00		82,139.49		13,075,854.00	113	06/01/2016	70,292.46	7,066.37		77,358.83		12,970,002.42
114	07/01/2016	70,827.54	11,312.00		82,139.54		13,064,542.00	114	07/01/2016	70,254.18	7,104.65		77,358.83	928,305.96	12,962,897.77
115	08/01/2016	70,766.27	11,373.00		82,139.27	985,673.51	13,053,169.00	115	08/01/2016	70,215.70	7,143.13		77,358.83		12,955,754.64
116	09/01/2016	70,704.67	11,435.00		82,139.67		13,041,734.00	116	09/01/2016	70,177.00	7,181.83		77,358.83		12,948,572.81
117	10/01/2016	70,642.73	11,497.00		82,139.73		13,030,237.00	117	10/01/2016	70,138.10	7,220.73		77,358.83		12,941,352.08
118	11/01/2016	70,580.45	11,559.00		82,139.45		13,018,678.00	118	11/01/2016	70,098.99	7,259.84		77,358.83		12,934,092.24
119	12/01/2016	70,517.84	11,622.00		82,139.84		13,007,056.00	119	12/01/2016	70,059.67	7,299.16		77,358.83		12,926,793.08
120	01/01/2017	70,454.89	11,685.00		82,139.89		12,995,371.00	120	01/01/2017	70,020.13	7,338.70		77,358.83		12,919,454.38
121	02/01/2017	70,391.59	11,748.00		82,139.59		12,983,623.00	121	02/01/2017	69,980.38	7,378.45		77,358.83		12,912,075.93
122	03/01/2017	70,327.96	11,812.00		82,139.96		12,971,811.00	122	03/01/2017	69,940.41	7,418.42		77,358.83		12,904,657.51
123	04/01/2017	70,263.98	11,876.00		82,139.98		12,959,935.00	123	04/01/2017	69,900.23	7,458.60		77,358.83		12,897,198.91
124	05/01/2017	70,199.65	11,940.00		82,139.65		12,947,995.00	124	05/01/2017	69,859.83	7,499.00		77,358.83		12,889,699.91
125	06/01/2017	70,134.97	12,005.00		82,139.97		12,935,990.00	125	06/01/2017	69,819.21	7,539.62		77,358.83		12,882,160.29
126	07/01/2017	70,069.95	12,070.00		82,139.95		12,923,920.00	126	07/01/2017	69,778.37	7,580.46		77,358.83	928,305.96	12,874,579.83
127	08/01/2017	70,004.57	12,135.00		82,139.57	985,677.25	12,911,785.00	127	08/01/2017	69,737.31	7,621.52		77,358.83		12,866,958.31
128	09/01/2017	69,938.84	12,201.00		82,139.84		12,899,584.00	128	09/01/2017	69,696.02	7,662.81		77,358.83		12,859,295.50
129	10/01/2017	69,872.75	12,267.00		82,139.75		12,887,317.00	129	10/01/2017	69,654.52	7,704.31		77,358.83		12,851,591.19
130	11/01/2017	69,806.30	12,333.00		82,139.30		12,874,984.00	130	11/01/2017	69,612.79	7,746.04		77,358.83		12,843,845.15
131	12/01/2017	69,739.50	12,400.00		82,139.50		12,862,584.00	131	12/01/2017	69,570.83	7,788.00		77,358.83		12,836,057.15
132	01/01/2018	69,672.33	12,467.00		82,139.33		12,850,117.00	132	01/01/2018	69,528.64	7,830.19		77,358.83		12,828,226.96
133	02/01/2018	69,604.80	12,535.00		82,139.80		12,837,582.00	133	02/01/2018	69,486.23	7,872.60		77,358.83		12,820,354.36
134	03/01/2018	69,536.90	12,603.00		82,139.90		12,824,979.00	134	03/01/2018	69,443.59	7,915.24		77,358.83		12,812,439.12
135	04/01/2018	69,468.64	12,671.00		82,139.64		12,812,308.00	135	04/01/2018	69,400.71	7,958.12		77,358.83		12,804,481.00
136	05/01/2018	69,400.00	12,740.00		82,140.00		12,799,568.00	136	05/01/2018	69,357.61	8,001.22		77,358.83		12,796,479.78
137	06/01/2018	69,330.99	12,809.00		82,139.99		12,786,759.00	137	06/01/2018	69,314.27	8,044.56		77,358.83		12,788,435.22
138	07/01/2018	69,261.61	12,878.00		82,139.61		12,773,881.00	138	07/01/2018	69,270.69	8,088.14		77,358.83	928,305.96	12,780,347.08
139	08/01/2018	69,191.86	12,948.00		82,139.86	985,676.52	12,760,933.00	139	08/01/2018	69,226.88	8,131.95		77,358.83		12,772,215.13
140	09/01/2018	69,121.72	13,018.00		82,139.72		12,747,915.00	140	09/01/2018	69,182.83	8,176.00		77,358.83		12,764,039.13
141	10/01/2018	69,051.21	13,088.00		82,139.21		12,734,827.00	141	10/01/2018	69,138.55	8,220.28		77,358.83		12,755,818.85
142	11/01/2018	68,980.31	13,159.00		82,139.31		12,721,668.00	142	11/01/2018	69,094.02	8,264.81		77,358.83		12,747,554.04
143	12/01/2018	68,909.04	13,231.00		82,140.04		12,708,437.00	143	12/01/2018	69,049.25	8,309.58		77,358.83		12,739,244.46

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	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
144	01/01/2019	68,837.37	13,302.00		82,139.37		12,695,135.00	144	01/01/2019	69,004.24	8,354.59		77,358.83		12,730,889.87
145	02/01/2019	68,765.31	13,374.00		82,139.31		12,681,761.00	145	02/01/2019	68,958.99	8,399.84		77,358.83		12,722,490.03
146	03/01/2019	68,692.87	13,447.00		82,139.87		12,668,314.00	146	03/01/2019	68,913.49	8,445.34		77,358.83		12,714,044.69
147	04/01/2019	68,620.03	13,520.00		82,140.03		12,654,794.00	147	04/01/2019	68,867.74	8,491.09		77,358.83		12,705,553.60
148	05/01/2019	68,546.80	13,593.00		82,139.80		12,641,201.00	148	05/01/2019	68,821.75	8,537.08		77,358.83		12,697,016.52
149	06/01/2019	68,473.17	13,666.00		82,139.17		12,627,535.00	149	06/01/2019	68,775.51	8,583.32		77,358.83		12,688,433.20
150	07/01/2019	68,399.15	13,740.00		82,139.15		12,613,795.00	150	07/01/2019	68,729.01	8,629.82		77,358.83	928,305.96	12,679,803.38
151	08/01/2019	68,324.72	13,815.00		82,139.72	985,674.70	12,599,980.00	151	08/01/2019	68,682.27	8,676.56		77,358.83		12,671,126.82
152	09/01/2019	68,249.89	13,890.00		82,139.89		12,586,090.00	152	09/01/2019	68,635.27	8,723.56		77,358.83		12,662,403.26
153	10/01/2019	68,174.65	13,965.00		82,139.65		12,572,125.00	153	10/01/2019	68,588.02	8,770.81		77,358.83		12,653,632.45
154	11/01/2019	68,099.01	14,041.00		82,140.01		12,558,084.00	154	11/01/2019	68,540.51	8,818.32		77,358.83		12,644,814.13
155	12/01/2019	68,022.96	14,117.00		82,139.96		12,543,967.00	155	12/01/2019	68,492.74	8,866.09		77,358.83		12,635,948.04
156	01/01/2020	67,946.49	14,193.00		82,139.49		12,529,774.00	156	01/01/2020	68,444.72	8,914.11		77,358.83		12,627,033.93
157	02/01/2020	67,869.61	14,270.00		82,139.61		12,515,504.00	157	02/01/2020	68,396.43	8,962.40		77,358.83		12,618,071.53
158	03/01/2020	67,792.31	14,347.00		82,139.31		12,501,157.00	158	03/01/2020	68,347.89	9,010.94		77,358.83		12,609,060.59
159	04/01/2020	67,714.60	14,425.00		82,139.60		12,486,732.00	159	04/01/2020	68,299.08	9,059.75		77,358.83		12,600,000.84
160	05/01/2020	67,636.47	14,503.00		82,139.47		12,472,229.00	160	05/01/2020	68,250.00	9,108.83		77,358.83		12,590,892.01
161	06/01/2020	67,557.91	14,582.00		82,139.91		12,457,647.00	161	06/01/2020	68,200.67	9,158.16		77,358.83		12,581,733.85
162	07/01/2020	67,478.92	14,661.00		82,139.92		12,442,986.00	162	07/01/2020	68,151.06	9,207.77		77,358.83	928,305.96	12,572,526.08
163	08/01/2020	67,399.51	14,740.00		82,139.51	985,676.33	12,428,246.00	163	08/01/2020	68,101.18	9,257.65		77,358.83		12,563,268.43
164	09/01/2020	67,319.67	14,820.00		82,139.67		12,413,426.00	164	09/01/2020	68,051.04	9,307.79		77,358.83		12,553,960.64
165	10/01/2020	67,239.39	14,900.00		82,139.39		12,398,526.00	165	10/01/2020	68,000.62	9,358.21		77,358.83		12,544,602.43
166	11/01/2020	67,158.68	14,981.00		82,139.68		12,383,545.00	166	11/01/2020	67,949.93	9,408.90		77,358.83		12,535,193.53
167	12/01/2020	67,077.54	15,062.00		82,139.54		12,368,483.00	167	12/01/2020	67,898.96	9,459.87		77,358.83		12,525,733.66
168	01/01/2021	66,995.95	15,144.00		82,139.95		12,353,339.00	168	01/01/2021	67,847.72	9,511.11		77,358.83		12,516,222.55
169	02/01/2021	66,913.92	15,226.00		82,139.92		12,338,113.00	169	02/01/2021	67,796.21	9,562.62		77,358.83		12,506,659.93
170	03/01/2021	66,831.45	15,308.00		82,139.45		12,322,805.00	170	03/01/2021	67,744.41	9,614.42		77,358.83		12,497,045.51
171	04/01/2021	66,748.53	15,391.00		82,139.53		12,307,414.00	171	04/01/2021	67,692.33	9,666.50		77,358.83		12,487,379.01
172	05/01/2021	66,665.16	15,474.00		82,139.16		12,291,940.00	172	05/01/2021	67,639.97	9,718.86		77,358.83		12,477,660.15
173	06/01/2021	66,581.34	15,558.00		82,139.34		12,276,382.00	173	06/01/2021	67,587.33	9,771.50		77,358.83		12,467,888.65
174	07/01/2021	66,497.07	15,642.00		82,139.07		12,260,740.00	174	07/01/2021	67,534.40	9,824.43		77,358.83	928,305.96	12,458,064.22
175	08/01/2021	66,412.34	15,727.00		82,139.34	985,674.04	12,245,013.00	175	08/01/2021	67,481.18	9,877.65		77,358.83		12,448,186.57
176	09/01/2021	66,327.15	15,812.00		82,139.15		12,229,201.00	176	09/01/2021	67,427.68	9,931.15		77,358.83		12,438,255.42
177	10/01/2021	66,241.51	15,898.00		82,139.51		12,213,303.00	177	10/01/2021	67,373.88	9,984.95		77,358.83		12,428,270.47
178	11/01/2021	66,155.39	15,984.00		82,139.39		12,197,319.00	178	11/01/2021	67,319.80	10,039.03		77,358.83		12,418,231.44
179	12/01/2021	66,068.81	16,071.00		82,139.81		12,181,248.00	179	12/01/2021	67,265.42	10,093.41		77,358.83		12,408,138.03
180	01/01/2022	65,981.76	16,158.00		82,139.76		12,165,090.00	180	01/01/2022	67,210.75	10,148.08		77,358.83		12,397,989.95
181	02/01/2022	65,894.24	16,245.00		82,139.24		12,148,845.00	181	02/01/2022	67,155.78	10,203.05		77,358.83		12,387,786.90
182	03/01/2022	65,806.24	16,333.00		82,139.24		12,132,512.00	182	03/01/2022	67,100.51	10,258.32		77,358.83		12,377,528.58
183	04/01/2022	65,717.77	16,422.00		82,139.77		12,116,090.00	183	04/01/2022	67,044.95	10,313.88		77,358.83		12,367,214.70
184	05/01/2022	65,628.82	16,511.00		82,139.82		12,099,579.00	184	05/01/2022	66,989.08	10,369.75		77,358.83		12,356,844.95
185	06/01/2022	65,539.39	16,600.00		82,139.39		12,082,979.00	185	06/01/2022	66,932.91	10,425.92		77,358.83		12,346,419.03
186	07/01/2022	65,449.47	16,690.00		82,139.47		12,066,289.00	186	07/01/2022	66,876.44	10,482.39		77,358.83	928,305.96	12,335,936.64
187	08/01/2022	65,359.07	16,781.00		82,140.07	985,674.62	12,049,508.00	187	08/01/2022	66,819.66	10,539.17		77,358.83		12,325,397.47
188	09/01/2022	65,268.17	16,871.00		82,139.17		12,032,637.00	188	09/01/2022	66,762.57	10,596.26		77,358.83		12,314,801.21
189	10/01/2022	65,176.78	16,963.00		82,139.78		12,015,674.00	189	10/01/2022	66,705.17	10,653.66		77,358.83		12,304,147.55
190	11/01/2022	65,084.90	17,055.00		82,139.90		11,998,619.00	190	11/01/2022	66,647.47	10,711.36		77,358.83		12,293,436.19
191	12/01/2022	64,992.52	17,147.00		82,139.52		11,981,472.00	191	12/01/2022	66,589.45	10,769.38		77,358.83		12,282,666.81

Original Amortization Schedule

Pecan Grove Townhomes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
192	01/01/2023	64,899.64	17,240.00		82,139.64		11,964,232.00	192	01/01/2023	66,531.11	10,827.72		77,358.83		12,271,839.09
193	02/01/2023	64,806.26	17,333.00		82,139.26		11,946,899.00	193	02/01/2023	66,472.46	10,886.37		77,358.83		12,260,952.72
194	03/01/2023	64,712.37	17,427.00		82,139.37		11,929,472.00	194	03/01/2023	66,413.49	10,945.34		77,358.83		12,250,007.38
195	04/01/2023	64,617.97	17,522.00		82,139.97		11,911,950.00	195	04/01/2023	66,354.21	11,004.62		77,358.83		12,239,002.76
196	05/01/2023	64,523.06	17,617.00		82,140.06		11,894,333.00	196	05/01/2023	66,294.60	11,064.23		77,358.83		12,227,938.53
197	06/01/2023	64,427.64	17,712.00		82,139.64		11,876,621.00	197	06/01/2023	66,234.67	11,124.16		77,358.83		12,216,814.37
198	07/01/2023	64,331.70	17,808.00		82,139.70		11,858,813.00	198	07/01/2023	66,174.41	11,184.42		77,358.83	928,305.96	12,205,629.95
199	08/01/2023	64,235.24	17,904.00		82,139.24	985,675.25	11,840,909.00	199	08/01/2023	66,113.83	11,245.00		77,358.83		12,194,384.95
200	09/01/2023	64,138.26	18,001.00		82,139.26		11,822,908.00	200	09/01/2023	66,052.92	11,305.91		77,358.83		12,183,079.04
201	10/01/2023	64,040.75	18,099.00		82,139.75		11,804,809.00	201	10/01/2023	65,991.68	11,367.15		77,358.83		12,171,711.89
202	11/01/2023	63,942.72	18,197.00		82,139.72		11,786,612.00	202	11/01/2023	65,930.11	11,428.72		77,358.83		12,160,283.17
203	12/01/2023	63,844.15	18,295.00		82,139.15		11,768,317.00	203	12/01/2023	65,868.20	11,490.63		77,358.83		12,148,792.54
204	01/01/2024	63,745.05	18,395.00		82,140.05		11,749,922.00	204	01/01/2024	65,805.96	11,552.87		77,358.83		12,137,239.67
205	02/01/2024	63,645.41	18,494.00		82,139.41		11,731,428.00	205	02/01/2024	65,743.38	11,615.45		77,358.83		12,125,624.22
206	03/01/2024	63,545.24	18,594.00		82,139.24		11,712,834.00	206	03/01/2024	65,680.46	11,678.37		77,358.83		12,113,945.85
207	04/01/2024	63,444.52	18,695.00		82,139.52		11,694,139.00	207	04/01/2024	65,617.21	11,741.62		77,358.83		12,102,204.23
208	05/01/2024	63,343.25	18,796.00		82,139.25		11,675,343.00	208	05/01/2024	65,553.61	11,805.22		77,358.83		12,090,399.01
209	06/01/2024	63,241.44	18,898.00		82,139.44		11,656,445.00	209	06/01/2024	65,489.66	11,869.17		77,358.83		12,078,529.84
210	07/01/2024	63,139.08	19,000.00		82,139.08		11,637,445.00	210	07/01/2024	65,425.37	11,933.46		77,358.83	928,305.96	12,066,596.38
211	08/01/2024	63,036.16	19,103.00		82,139.16	985,673.03	11,618,342.00	211	08/01/2024	65,360.73	11,998.10		77,358.83		12,054,598.28
212	09/01/2024	62,932.69	19,207.00		82,139.69		11,599,135.00	212	09/01/2024	65,295.74	12,063.09		77,358.83		12,042,535.19
213	10/01/2024	62,828.65	19,311.00		82,139.65		11,579,824.00	213	10/01/2024	65,230.40	12,128.43		77,358.83		12,030,406.76
214	11/01/2024	62,724.05	19,416.00		82,140.05		11,560,408.00	214	11/01/2024	65,164.70	12,194.13		77,358.83		12,018,212.63
215	12/01/2024	62,618.88	19,521.00		82,139.88		11,540,887.00	215	12/01/2024	65,098.65	12,260.18		77,358.83		12,005,952.45
216	01/01/2025	62,513.14	19,626.00		82,139.14		11,521,261.00	216	01/01/2025	65,032.24	12,326.59		77,358.83		11,993,625.86
217	02/01/2025	62,406.83	19,733.00		82,139.83		11,501,528.00	217	02/01/2025	64,965.47	12,393.36		77,358.83		11,981,232.50
218	03/01/2025	62,299.94	19,840.00		82,139.94		11,481,688.00	218	03/01/2025	64,898.34	12,460.49		77,358.83		11,968,772.01
219	04/01/2025	62,192.48	19,947.00		82,139.48		11,461,741.00	219	04/01/2025	64,830.85	12,527.98		77,358.83		11,956,244.03
220	05/01/2025	62,084.43	20,055.00		82,139.43		11,441,686.00	220	05/01/2025	64,762.99	12,595.84		77,358.83		11,943,648.19
221	06/01/2025	61,975.80	20,164.00		82,139.80		11,421,522.00	221	06/01/2025	64,694.76	12,664.07		77,358.83		11,930,984.12
222	07/01/2025	61,866.58	20,273.00		82,139.58		11,401,249.00	222	07/01/2025	64,626.16	12,732.67		77,358.83	928,305.96	11,918,251.45
223	08/01/2025	61,756.77	20,383.00		82,139.77	985,676.24	11,380,866.00	223	08/01/2025	64,557.20	12,801.63		77,358.83		11,905,449.82
224	09/01/2025	61,646.36	20,493.00		82,139.36		11,360,373.00	224	09/01/2025	64,487.85	12,870.98		77,358.83		11,892,578.84
225	10/01/2025	61,535.35	20,604.00		82,139.35		11,339,769.00	225	10/01/2025	64,418.14	12,940.69		77,358.83		11,879,638.15
226	11/01/2025	61,423.75	20,716.00		82,139.75		11,319,053.00	226	11/01/2025	64,348.04	13,010.79		77,358.83		11,866,627.36
227	12/01/2025	61,311.54	20,828.00		82,139.54		11,298,225.00	227	12/01/2025	64,277.56	13,081.27		77,358.83		11,853,546.09
228	01/01/2026	61,198.72	20,941.00		82,139.72		11,277,284.00	228	01/01/2026	64,206.71	13,152.12		77,358.83		11,840,393.97
229	02/01/2026	61,085.29	21,054.00		82,139.29		11,256,230.00	229	02/01/2026	64,135.47	13,223.36		77,358.83		11,827,170.61
230	03/01/2026	60,971.25	21,168.00		82,139.25		11,235,062.00	230	03/01/2026	64,063.84	13,294.99		77,358.83		11,813,875.62
231	04/01/2026	60,856.59	21,283.00		82,139.59		11,213,779.00	231	04/01/2026	63,991.83	13,367.00		77,358.83		11,800,508.62
232	05/01/2026	60,741.30	21,398.00		82,139.30		11,192,381.00	232	05/01/2026	63,919.42	13,439.41		77,358.83		11,787,069.21
233	06/01/2026	60,625.40	21,514.00		82,139.40		11,170,867.00	233	06/01/2026	63,846.62	13,512.21		77,358.83		11,773,557.00
234	07/01/2026	60,508.86	21,631.00		82,139.86		11,149,236.00	234	07/01/2026	63,773.43	13,585.40		77,358.83	928,305.96	11,759,971.60
235	08/01/2026	60,391.70	21,748.00		82,139.70	985,674.11	11,127,488.00	235	08/01/2026	63,699.85	13,658.98		77,358.83		11,746,312.62
236	09/01/2026	60,273.89	21,866.00		82,139.89		11,105,622.00	236	09/01/2026	63,625.86	13,732.97		77,358.83		11,732,579.65
237	10/01/2026	60,155.45	21,984.00		82,139.45		11,083,638.00	237	10/01/2026	63,551.47	13,807.36		77,358.83		11,718,772.29
238	11/01/2026	60,036.37	22,103.00		82,139.37		11,061,535.00	238	11/01/2026	63,476.68	13,882.15		77,358.83		11,704,890.14
239	12/01/2026	59,916.65	22,223.00		82,139.65		11,039,312.00	239	12/01/2026	63,401.49	13,957.34		77,358.83		11,690,932.80

Original Amortization Schedule

Pecan Grove Townhomes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
240	01/01/2027	59,796.27	22,343.00		82,139.27		11,016,969.00	240	01/01/2027	63,325.89	14,032.94		77,358.83		11,676,899.86
241	02/01/2027	59,675.25	22,464.00		82,139.25		10,994,505.00	241	02/01/2027	63,249.87	14,108.96		77,358.83		11,662,790.90
242	03/01/2027	59,553.57	22,586.00		82,139.57		10,971,919.00	242	03/01/2027	63,173.45	14,185.38		77,358.83		11,648,605.52
243	04/01/2027	59,431.23	22,708.00		82,139.23		10,949,211.00	243	04/01/2027	63,096.61	14,262.22		77,358.83		11,634,343.30
244	05/01/2027	59,308.23	22,831.00		82,139.23		10,926,380.00	244	05/01/2027	63,019.36	14,339.47		77,358.83		11,620,003.83
245	06/01/2027	59,184.56	22,955.00		82,139.56		10,903,425.00	245	06/01/2027	62,941.69	14,417.14		77,358.83		11,605,586.69
246	07/01/2027	59,060.22	23,079.00		82,139.22		10,880,346.00	246	07/01/2027	62,863.59	14,495.24		77,358.83	928,305.96	11,591,091.45
247	08/01/2027	58,935.21	23,204.00		82,139.21	985,672.90	10,857,142.00	247	08/01/2027	62,785.08	14,573.75		77,358.83		11,576,517.70
248	09/01/2027	58,809.52	23,330.00		82,139.52		10,833,812.00	248	09/01/2027	62,706.14	14,652.69		77,358.83		11,561,865.01
249	10/01/2027	58,683.15	23,456.00		82,139.15		10,810,356.00	249	10/01/2027	62,626.77	14,732.06		77,358.83		11,547,132.95
250	11/01/2027	58,556.10	23,583.00		82,139.10		10,786,773.00	250	11/01/2027	62,546.97	14,811.86		77,358.83		11,532,321.09
251	12/01/2027	58,428.35	23,711.00		82,139.35		10,763,062.00	251	12/01/2027	62,466.74	14,892.09		77,358.83		11,517,429.00
252	01/01/2028	58,299.92	23,840.00		82,139.92		10,739,222.00	252	01/01/2028	62,386.07	14,972.76		77,358.83		11,502,456.24
253	02/01/2028	58,170.79	23,969.00		82,139.79		10,715,253.00	253	02/01/2028	62,304.97	15,053.86		77,358.83		11,487,402.38
254	03/01/2028	58,040.95	24,099.00		82,139.95		10,691,154.00	254	03/01/2028	62,223.43	15,135.40		77,358.83		11,472,266.98
255	04/01/2028	57,910.42	24,229.00		82,139.42		10,666,925.00	255	04/01/2028	62,141.45	15,217.38		77,358.83		11,457,049.60
256	05/01/2028	57,779.18	24,360.00		82,139.18		10,642,565.00	256	05/01/2028	62,059.02	15,299.81		77,358.83		11,441,749.79
257	06/01/2028	57,647.23	24,492.00		82,139.23		10,618,073.00	257	06/01/2028	61,976.14	15,382.69		77,358.83		11,426,367.10
258	07/01/2028	57,514.56	24,625.00		82,139.56		10,593,448.00	258	07/01/2028	61,892.82	15,466.01		77,358.83	928,305.96	11,410,901.09
259	08/01/2028	57,381.18	24,758.00		82,139.18	985,673.35	10,568,690.00	259	08/01/2028	61,809.05	15,549.78		77,358.83		11,395,351.31
260	09/01/2028	57,247.07	24,893.00		82,140.07		10,543,797.00	260	09/01/2028	61,724.82	15,634.01		77,358.83		11,379,717.30
261	10/01/2028	57,112.23	25,027.00		82,139.23		10,518,770.00	261	10/01/2028	61,640.14	15,718.69		77,358.83		11,363,998.61
262	11/01/2028	56,976.67	25,163.00		82,139.67		10,493,607.00	262	11/01/2028	61,554.99	15,803.84		77,358.83		11,348,194.77
263	12/01/2028	56,840.37	25,299.00		82,139.37		10,468,308.00	263	12/01/2028	61,469.39	15,889.44		77,358.83		11,332,305.33
264	01/01/2029	56,703.34	25,436.00		82,139.34		10,442,872.00	264	01/01/2029	61,383.32	15,975.51		77,358.83		11,316,329.82
265	02/01/2029	56,565.56	25,574.00		82,139.56		10,417,298.00	265	02/01/2029	61,296.79	16,062.04		77,358.83		11,300,267.78
266	03/01/2029	56,427.03	25,713.00		82,140.03		10,391,585.00	266	03/01/2029	61,209.78	16,149.05		77,358.83		11,284,118.73
267	04/01/2029	56,287.75	25,852.00		82,139.75		10,365,733.00	267	04/01/2029	61,122.31	16,236.52		77,358.83		11,267,882.21
268	05/01/2029	56,147.72	25,992.00		82,139.72		10,339,741.00	268	05/01/2029	61,034.36	16,324.47		77,358.83		11,251,557.74
269	06/01/2029	56,006.93	26,133.00		82,139.93		10,313,608.00	269	06/01/2029	60,945.94	16,412.89		77,358.83		11,235,144.85
270	07/01/2029	55,865.38	26,274.00		82,139.38		10,287,334.00	270	07/01/2029	60,857.03	16,501.80		77,358.83	928,305.96	11,218,643.05
271	08/01/2029	55,723.06	26,417.00		82,140.06	985,676.11	10,260,917.00	271	08/01/2029	60,767.65	16,591.18		77,358.83		11,202,051.87
272	09/01/2029	55,579.97	26,560.00		82,139.97		10,234,357.00	272	09/01/2029	60,677.78	16,681.05		77,358.83		11,185,370.82
273	10/01/2029	55,436.10	26,703.00		82,139.10		10,207,654.00	273	10/01/2029	60,587.43	16,771.40		77,358.83		11,168,599.42
274	11/01/2029	55,291.46	26,848.00		82,139.46		10,180,806.00	274	11/01/2029	60,496.58	16,862.25		77,358.83		11,151,737.17
275	12/01/2029	55,146.03	26,994.00		82,140.03		10,153,812.00	275	12/01/2029	60,405.24	16,953.59		77,358.83		11,134,783.58
276	01/01/2030	54,999.82	27,140.00		82,139.82		10,126,672.00	276	01/01/2030	60,313.41	17,045.42		77,358.83		11,117,738.16
277	02/01/2030	54,852.81	27,287.00		82,139.81		10,099,385.00	277	02/01/2030	60,221.08	17,137.75		77,358.83		11,100,600.41
278	03/01/2030	54,705.00	27,435.00		82,140.00		10,071,950.00	278	03/01/2030	60,128.25	17,230.58		77,358.83		11,083,369.83
279	04/01/2030	54,556.40	27,583.00		82,139.40		10,044,367.00	279	04/01/2030	60,034.92	17,323.91		77,358.83		11,066,045.92
280	05/01/2030	54,406.99	27,733.00		82,139.99		10,016,634.00	280	05/01/2030	59,941.08	17,417.75		77,358.83		11,048,628.17
281	06/01/2030	54,256.77	27,883.00		82,139.77		9,988,751.00	281	06/01/2030	59,846.74	17,512.09		77,358.83		11,031,116.08
282	07/01/2030	54,105.73	28,034.00		82,139.73		9,960,717.00	282	07/01/2030	59,751.88	17,606.95		77,358.83	928,305.96	11,013,509.13
283	08/01/2030	53,953.88	28,186.00		82,139.88	985,676.96	9,932,531.00	283	08/01/2030	59,656.51	17,702.32		77,358.83		10,995,806.81
284	09/01/2030	53,801.21	28,338.00		82,139.21		9,904,193.00	284	09/01/2030	59,560.62	17,798.21		77,358.83		10,978,008.60
285	10/01/2030	53,647.71	28,492.00		82,139.71		9,875,701.00	285	10/01/2030	59,464.21	17,894.62		77,358.83		10,960,113.98
286	11/01/2030	53,493.38	28,646.00		82,139.38		9,847,055.00	286	11/01/2030	59,367.28	17,991.55		77,358.83		10,942,122.43
287	12/01/2030	53,338.21	28,801.00		82,139.21		9,818,254.00	287	12/01/2030	59,269.83	18,089.00		77,358.83		10,924,033.43

Original Amortization Schedule

Pecan Grove Townhomes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
288	01/01/2031	53,182.21	28,957.00		82,139.21		9,789,297.00	288	01/01/2031	59,171.85	18,186.98		77,358.83		10,905,846.45
289	02/01/2031	53,025.36	29,114.00		82,139.36		9,760,183.00	289	02/01/2031	59,073.33	18,285.50		77,358.83		10,887,560.95
290	03/01/2031	52,867.66	29,272.00		82,139.66		9,730,911.00	290	03/01/2031	58,974.29	18,384.54		77,358.83		10,869,176.41
291	04/01/2031	52,709.10	29,430.00		82,139.10		9,701,481.00	291	04/01/2031	58,874.71	18,484.12		77,358.83		10,850,692.29
292	05/01/2031	52,549.69	29,590.00		82,139.69		9,671,891.00	292	05/01/2031	58,774.58	18,584.25		77,358.83		10,832,108.04
293	06/01/2031	52,389.41	29,750.00		82,139.41		9,642,141.00	293	06/01/2031	58,673.92	18,684.91		77,358.83		10,813,423.13
294	07/01/2031	52,228.26	29,911.00		82,139.26		9,612,230.00	294	07/01/2031	58,572.71	18,786.12		77,358.83	928,305.96	10,794,637.01
295	08/01/2031	52,066.25	30,073.00		82,139.25	985,672.45	9,582,157.00	295	08/01/2031	58,470.95	18,887.88		77,358.83		10,775,749.13
296	09/01/2031	51,903.35	30,236.00		82,139.35		9,551,921.00	296	09/01/2031	58,368.64	18,990.19		77,358.83		10,756,758.94
297	10/01/2031	51,739.57	30,400.00		82,139.57		9,521,521.00	297	10/01/2031	58,265.78	19,093.05		77,358.83		10,737,665.89
298	11/01/2031	51,574.91	30,565.00		82,139.91		9,490,956.00	298	11/01/2031	58,162.36	19,196.47		77,358.83		10,718,469.42
299	12/01/2031	51,409.35	30,730.00		82,139.35		9,460,226.00	299	12/01/2031	58,058.38	19,300.45		77,358.83		10,699,168.97
300	01/01/2032	51,242.89	30,897.00		82,139.89		9,429,329.00	300	01/01/2032	57,953.83	19,405.00		77,358.83		10,679,763.97
301	02/01/2032	51,075.53	31,064.00		82,139.53		9,398,265.00	301	02/01/2032	57,848.72	19,510.11		77,358.83		10,660,253.86
302	03/01/2032	50,907.27	31,232.00		82,139.27		9,367,033.00	302	03/01/2032	57,743.04	19,615.79		77,358.83		10,640,638.07
303	04/01/2032	50,738.10	31,401.00		82,139.10		9,335,632.00	303	04/01/2032	57,636.79	19,722.04		77,358.83		10,620,916.03
304	05/01/2032	50,568.01	31,572.00		82,140.01		9,304,060.00	304	05/01/2032	57,529.96	19,828.87		77,358.83		10,601,087.16
305	06/01/2032	50,396.99	31,743.00		82,139.99		9,272,317.00	305	06/01/2032	57,422.56	19,936.27		77,358.83		10,581,150.89
306	07/01/2032	50,225.05	31,915.00		82,140.05		9,240,402.00	306	07/01/2032	57,314.57	20,044.26		77,358.83	928,305.96	10,561,106.63
307	08/01/2032	50,052.18	32,087.00		82,139.18	985,675.20	9,208,315.00	307	08/01/2032	57,205.99	20,152.84		77,358.83		10,540,953.79
308	09/01/2032	49,878.37	32,261.00		82,139.37		9,176,054.00	308	09/01/2032	57,096.83	20,262.00		77,358.83		10,520,691.79
309	10/01/2032	49,703.63	32,436.00		82,139.63		9,143,618.00	309	10/01/2032	56,987.08	20,371.75		77,358.83		10,500,320.04
310	11/01/2032	49,527.93	32,612.00		82,139.93		9,111,006.00	310	11/01/2032	56,876.73	20,482.10		77,358.83		10,479,837.94
311	12/01/2032	49,351.28	32,788.00		82,139.28		9,078,218.00	311	12/01/2032	56,765.79	20,593.04		77,358.83		10,459,244.90
312	01/01/2033	49,173.68	32,966.00		82,139.68		9,045,252.00	312	01/01/2033	56,654.24	20,704.59		77,358.83		10,438,540.31
313	02/01/2033	48,995.12	33,144.00		82,139.12		9,012,108.00	313	02/01/2033	56,542.09	20,816.74		77,358.83		10,417,723.57
314	03/01/2033	48,815.59	33,324.00		82,139.59		8,978,784.00	314	03/01/2033	56,429.34	20,929.49		77,358.83		10,396,794.08
315	04/01/2033	48,635.08	33,505.00		82,140.08		8,945,279.00	315	04/01/2033	56,315.97	21,042.86		77,358.83		10,375,751.22
316	05/01/2033	48,453.59	33,686.00		82,139.59		8,911,593.00	316	05/01/2033	56,201.99	21,156.84		77,358.83		10,354,594.38
317	06/01/2033	48,271.13	33,868.00		82,139.13		8,877,725.00	317	06/01/2033	56,087.39	21,271.44		77,358.83		10,333,322.94
318	07/01/2033	48,087.68	34,052.00		82,139.68		8,843,673.00	318	07/01/2033	55,972.17	21,386.66		77,358.83	928,305.96	10,311,936.28
319	08/01/2033	47,903.23	34,236.00		82,139.23	985,674.31	8,809,437.00	319	08/01/2033	55,856.32	21,502.51		77,358.83		10,290,433.77
320	09/01/2033	47,717.78	34,422.00		82,139.78		8,775,015.00	320	09/01/2033	55,739.85	21,618.98		77,358.83		10,268,814.79
321	10/01/2033	47,531.33	34,608.00		82,139.33		8,740,407.00	321	10/01/2033	55,622.75	21,736.08		77,358.83		10,247,078.71
322	11/01/2033	47,343.87	34,796.00		82,139.87		8,705,611.00	322	11/01/2033	55,505.01	21,853.82		77,358.83		10,225,224.89
323	12/01/2033	47,155.39	34,984.00		82,139.39		8,670,627.00	323	12/01/2033	55,386.63	21,972.20		77,358.83		10,203,252.69
324	01/01/2034	46,965.90	35,174.00		82,139.90		8,635,453.00	324	01/01/2034	55,267.62	22,091.21		77,358.83		10,181,161.48
325	02/01/2034	46,775.37	35,364.00		82,139.37		8,600,089.00	325	02/01/2034	55,147.96	22,210.87		77,358.83		10,158,950.61
326	03/01/2034	46,583.82	35,556.00		82,139.82		8,564,533.00	326	03/01/2034	55,027.65	22,331.18		77,358.83		10,136,619.43
327	04/01/2034	46,391.22	35,748.00		82,139.22		8,528,785.00	327	04/01/2034	54,906.69	22,452.14		77,358.83		10,114,167.29
328	05/01/2034	46,197.59	35,942.00		82,139.59		8,492,843.00	328	05/01/2034	54,785.07	22,573.76		77,358.83		10,091,593.53
329	06/01/2034	46,002.90	36,137.00		82,139.90		8,456,706.00	329	06/01/2034	54,662.80	22,696.03		77,358.83		10,068,897.50
330	07/01/2034	45,807.16	36,332.00		82,139.16		8,420,374.00	330	07/01/2034	54,539.86	22,818.97		77,358.83	928,305.96	10,046,078.53
331	08/01/2034	45,610.36	36,529.00		82,139.36	985,674.69	8,383,845.00	331	08/01/2034	54,416.26	22,942.57		77,358.83		10,023,135.96
332	09/01/2034	45,412.49	36,727.00		82,139.49		8,347,118.00	332	09/01/2034	54,291.99	23,066.84		77,358.83		10,000,069.12
333	10/01/2034	45,213.56	36,926.00		82,139.56		8,310,192.00	333	10/01/2034	54,167.04	23,191.79		77,358.83		9,976,877.33
334	11/01/2034	45,013.54	37,126.00		82,139.54		8,273,066.00	334	11/01/2034	54,041.42	23,317.41		77,358.83		9,953,559.92
335	12/01/2034	44,812.44	37,327.00		82,139.44		8,235,739.00	335	12/01/2034	53,915.12	23,443.71		77,358.83		9,930,116.21

Original Amortization Schedule

Pecan Grove Townhomes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
336	01/01/2035	44,610.25	37,529.00		82,139.25		8,198,210.00	336	01/01/2035	53,788.13	23,570.70		77,358.83		9,906,545.51
337	02/01/2035	44,406.97	37,733.00		82,139.97		8,160,477.00	337	02/01/2035	53,660.45	23,698.38		77,358.83		9,882,847.13
338	03/01/2035	44,202.58	37,937.00		82,139.58		8,122,540.00	338	03/01/2035	53,532.09	23,826.74		77,358.83		9,859,020.39
339	04/01/2035	43,997.09	38,142.00		82,139.09		8,084,398.00	339	04/01/2035	53,403.03	23,955.80		77,358.83		9,835,064.59
340	05/01/2035	43,790.49	38,349.00		82,139.49		8,046,049.00	340	05/01/2035	53,273.27	24,085.56		77,358.83		9,810,979.03
341	06/01/2035	43,582.77	38,557.00		82,139.77		8,007,492.00	341	06/01/2035	53,142.80	24,216.03		77,358.83		9,786,763.00
342	07/01/2035	43,373.92	38,766.00		82,139.92		7,968,726.00	342	07/01/2035	53,011.63	24,347.20		77,358.83	928,305.96	9,762,415.80
343	08/01/2035	43,163.93	38,976.00		82,139.93	985,675.03	7,929,750.00	343	08/01/2035	52,879.75	24,479.08		77,358.83		9,737,936.72
344	09/01/2035	42,952.81	39,187.00		82,139.81		7,890,563.00	344	09/01/2035	52,747.16	24,611.67		77,358.83		9,713,325.05
345	10/01/2035	42,740.55	39,399.00		82,139.55		7,851,164.00	345	10/01/2035	52,613.84	24,744.99		77,358.83		9,688,580.06
346	11/01/2035	42,527.14	39,612.00		82,139.14		7,811,552.00	346	11/01/2035	52,479.81	24,879.02		77,358.83		9,663,701.04
347	12/01/2035	42,312.57	39,827.00		82,139.57		7,771,725.00	347	12/01/2035	52,345.05	25,013.78		77,358.83		9,638,687.26
348	01/01/2036	42,096.84	40,043.00		82,139.84		7,731,682.00	348	01/01/2036	52,209.56	25,149.27		77,358.83		9,613,537.99
349	02/01/2036	41,879.94	40,260.00		82,139.94		7,691,422.00	349	02/01/2036	52,073.33	25,285.50		77,358.83		9,588,252.49
350	03/01/2036	41,661.87	40,478.00		82,139.87		7,650,944.00	350	03/01/2036	51,936.37	25,422.46		77,358.83		9,562,830.03
351	04/01/2036	41,442.61	40,697.00		82,139.61		7,610,247.00	351	04/01/2036	51,798.66	25,560.17		77,358.83		9,537,269.86
352	05/01/2036	41,222.17	40,917.00		82,139.17		7,569,330.00	352	05/01/2036	51,660.21	25,698.62		77,358.83		9,511,571.24
353	06/01/2036	41,000.54	41,139.00		82,139.54		7,528,191.00	353	06/01/2036	51,521.01	25,837.82		77,358.83		9,485,733.42
354	07/01/2036	40,777.70	41,362.00		82,139.70		7,486,829.00	354	07/01/2036	51,381.06	25,977.77		77,358.83	928,305.96	9,459,755.65
355	08/01/2036	40,553.66	41,586.00		82,139.66	985,675.40	7,445,243.00	355	08/01/2036	51,240.34	26,118.49		77,358.83		9,433,637.16
356	09/01/2036	40,328.40	41,811.00		82,139.40		7,403,432.00	356	09/01/2036	51,098.87	26,259.96		77,358.83		9,407,377.20
357	10/01/2036	40,101.92	42,038.00		82,139.92		7,361,394.00	357	10/01/2036	50,956.63	26,402.20		77,358.83		9,380,975.00
358	11/01/2036	39,874.22	42,265.00		82,139.22		7,319,129.00	358	11/01/2036	50,813.61	26,545.22		77,358.83		9,354,429.78
359	12/01/2036	39,645.28	42,494.00		82,139.28		7,276,635.00	359	12/01/2036	50,669.83	26,689.00		77,358.83		9,327,740.78
360	01/01/2037	39,415.11	42,724.00		82,139.11		7,233,911.00	360	01/01/2037	50,525.26	26,833.57		77,358.83		9,300,907.21
361	02/01/2037	39,183.68	42,956.00		82,139.68		7,190,955.00	361	02/01/2037	50,379.91	26,978.92		77,358.83		9,273,928.29
362	03/01/2037	38,951.01	43,189.00		82,140.01		7,147,766.00	362	03/01/2037	50,233.78	27,125.05		77,358.83		9,246,803.24
363	04/01/2037	38,717.07	43,423.00		82,140.07		7,104,343.00	363	04/01/2037	50,086.85	27,271.98		77,358.83		9,219,531.26
364	05/01/2037	38,481.86	43,658.00		82,139.86		7,060,685.00	364	05/01/2037	49,939.13	27,419.70		77,358.83		9,192,111.56
365	06/01/2037	38,245.38	43,894.00		82,139.38		7,016,791.00	365	06/01/2037	49,790.60	27,568.23		77,358.83		9,164,543.33
366	07/01/2037	38,007.62	44,132.00		82,139.62		6,972,659.00	366	07/01/2037	49,641.28	27,717.55		77,358.83	928,305.96	9,136,825.78
367	08/01/2037	37,768.57	44,371.00		82,139.57	985,675.12	6,928,288.00	367	08/01/2037	49,491.14	27,867.69		77,358.83		9,108,958.09
368	09/01/2037	37,528.23	44,611.00		82,139.23		6,883,677.00	368	09/01/2037	49,340.19	28,018.64		77,358.83		9,080,939.45
369	10/01/2037	37,286.58	44,853.00		82,139.58		6,838,824.00	369	10/01/2037	49,188.42	28,170.41		77,358.83		9,052,769.04
370	11/01/2037	37,043.63	45,096.00		82,139.63		6,793,728.00	370	11/01/2037	49,035.83	28,323.00		77,358.83		9,024,446.04
371	12/01/2037	36,799.36	45,340.00		82,139.36		6,748,388.00	371	12/01/2037	48,882.42	28,476.41		77,358.83		8,995,969.63
372	01/01/2038	36,553.77	45,586.00		82,139.77		6,702,802.00	372	01/01/2038	48,728.17	28,630.66	8,967,338.97	77,358.83		-
373	02/01/2038	36,306.84	45,833.00		82,139.84		6,656,969.00	373	02/01/2038	-	-		-		-
374	03/01/2038	36,058.58	46,081.00		82,139.58		6,610,888.00	374	03/01/2038	-	-		-		-
375	04/01/2038	35,808.98	46,331.00		82,139.98		6,564,557.00	375	04/01/2038	-	-		-		-
376	05/01/2038	35,558.02	46,582.00		82,140.02		6,517,975.00	376	05/01/2038	-	-		-		-
377	06/01/2038	35,305.70	46,834.00		82,139.70		6,471,141.00	377	06/01/2038	-	-		-		-
378	07/01/2038	35,052.01	47,088.00		82,140.01		6,424,053.00	378	07/01/2038	-	-		-		-
379	08/01/2038	34,796.95	47,343.00		82,139.95	985,676.65	6,376,710.00	379	08/01/2038	-	-		-		-
380	09/01/2038	34,540.51	47,599.00		82,139.51		6,329,111.00	380	09/01/2038	-	-		-		-
381	10/01/2038	34,282.68	47,857.00		82,139.68		6,281,254.00	381	10/01/2038	-	-		-		-
382	11/01/2038	34,023.46	48,116.00		82,139.46		6,233,138.00	382	11/01/2038	-	-		-		-
383	12/01/2038	33,762.83	48,377.00		82,139.83		6,184,761.00	383	12/01/2038	-	-		-		-

Original Amortization Schedule

Pecan Grove Townhomes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
384	01/01/2039	33,500.79	48,639.00		82,139.79		6,136,122.00	384	01/01/2039	-	-				-
385	02/01/2039	33,237.33	48,902.00		82,139.33		6,087,220.00	385	02/01/2039	-	-				-
386	03/01/2039	32,972.44	49,167.00		82,139.44		6,038,053.00	386	03/01/2039	-	-				-
387	04/01/2039	32,706.12	49,433.00		82,139.12		5,988,620.00	387	04/01/2039	-	-				-
388	05/01/2039	32,438.36	49,701.00		82,139.36		5,938,919.00	388	05/01/2039	-	-				-
389	06/01/2039	32,169.14	49,970.00		82,139.14		5,888,949.00	389	06/01/2039	-	-				-
390	07/01/2039	31,898.47	50,241.00		82,139.47		5,838,708.00	390	07/01/2039	-	-				-
391	08/01/2039	31,626.34	50,513.00		82,139.34	985,673.47	5,788,195.00	391	08/01/2039	-	-				-
392	09/01/2039	31,352.72	50,787.00		82,139.72		5,737,408.00	392	09/01/2039	-	-				-
393	10/01/2039	31,077.63	51,062.00		82,139.63		5,686,346.00	393	10/01/2039	-	-				-
394	11/01/2039	30,801.04	51,339.00		82,140.04		5,635,007.00	394	11/01/2039	-	-				-
395	12/01/2039	30,522.95	51,617.00		82,139.95		5,583,390.00	395	12/01/2039	-	-				-
396	01/01/2040	30,243.36	51,896.00		82,139.36		5,531,494.00	396	01/01/2040	-	-				-
397	02/01/2040	29,962.26	52,177.00		82,139.26		5,479,317.00	397	02/01/2040	-	-				-
398	03/01/2040	29,679.63	52,460.00		82,139.63		5,426,857.00	398	03/01/2040	-	-				-
399	04/01/2040	29,395.48	52,744.00		82,139.48		5,374,113.00	399	04/01/2040	-	-				-
400	05/01/2040	29,109.78	53,030.00		82,139.78		5,321,083.00	400	05/01/2040	-	-				-
401	06/01/2040	28,822.53	53,317.00		82,139.53		5,267,766.00	401	06/01/2040	-	-				-
402	07/01/2040	28,533.73	53,606.00		82,139.73		5,214,160.00	402	07/01/2040	-	-				-
403	08/01/2040	28,243.37	53,896.00		82,139.37	985,675.48	5,160,264.00	403	08/01/2040	-	-				-
404	09/01/2040	27,951.43	54,188.00		82,139.43		5,106,076.00	404	09/01/2040	-	-				-
405	10/01/2040	27,657.91	54,482.00		82,139.91		5,051,594.00	405	10/01/2040	-	-				-
406	11/01/2040	27,362.80	54,777.00		82,139.80		4,996,817.00	406	11/01/2040	-	-				-
407	12/01/2040	27,066.09	55,073.00		82,139.09		4,941,744.00	407	12/01/2040	-	-				-
408	01/01/2041	26,767.78	55,372.00		82,139.78		4,886,372.00	408	01/01/2041	-	-				-
409	02/01/2041	26,467.85	55,672.00		82,139.85		4,830,700.00	409	02/01/2041	-	-				-
410	03/01/2041	26,166.29	55,973.00		82,139.29		4,774,727.00	410	03/01/2041	-	-				-
411	04/01/2041	25,863.10	56,276.00		82,139.10		4,718,451.00	411	04/01/2041	-	-				-
412	05/01/2041	25,558.28	56,581.00		82,139.28		4,661,870.00	412	05/01/2041	-	-				-
413	06/01/2041	25,251.80	56,888.00		82,139.80		4,604,982.00	413	06/01/2041	-	-				-
414	07/01/2041	24,943.65	57,196.00		82,139.65		4,547,786.00	414	07/01/2041	-	-				-
415	08/01/2041	24,633.84	57,506.00		82,139.84	985,674.82	4,490,280.00	415	08/01/2041	-	-				-
416	09/01/2041	24,322.35	57,817.00		82,139.35		4,432,463.00	416	09/01/2041	-	-				-
417	10/01/2041	24,009.17	58,130.00		82,139.17		4,374,333.00	417	10/01/2041	-	-				-
418	11/01/2041	23,694.30	58,445.00		82,139.30		4,315,888.00	418	11/01/2041	-	-				-
419	12/01/2041	23,377.73	58,762.00		82,139.73		4,257,126.00	419	12/01/2041	-	-				-
420	01/01/2042	23,059.43	59,080.00		82,139.43		4,198,046.00	420	01/01/2042	-	-				-
421	02/01/2042	22,739.42	59,400.00		82,139.42		4,138,646.00	421	02/01/2042	-	-				-
422	03/01/2042	22,417.67	59,722.00		82,139.67		4,078,924.00	422	03/01/2042	-	-				-
423	04/01/2042	22,094.17	60,045.00		82,139.17		4,018,879.00	423	04/01/2042	-	-				-
424	05/01/2042	21,768.93	60,371.00		82,139.93		3,958,508.00	424	05/01/2042	-	-				-
425	06/01/2042	21,441.92	60,698.00		82,139.92		3,897,810.00	425	06/01/2042	-	-				-
426	07/01/2042	21,113.14	61,026.00		82,139.14		3,836,784.00	426	07/01/2042	-	-				-
427	08/01/2042	20,782.58	61,357.00		82,139.58	985,673.81	3,775,427.00	427	08/01/2042	-	-				-
428	09/01/2042	20,450.23	61,689.00		82,139.23		3,713,738.00	428	09/01/2042	-	-				-
429	10/01/2042	20,116.08	62,024.00		82,140.08		3,651,714.00	429	10/01/2042	-	-				-
430	11/01/2042	19,780.12	62,359.00		82,139.12		3,589,355.00	430	11/01/2042	-	-				-
431	12/01/2042	19,442.34	62,697.00		82,139.34		3,526,658.00	431	12/01/2042	-	-				-

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion and Possible Action on Resolution No. 14-004 for the First Supplemental Trust Indenture and Forbearance and Modification Agreement relating to the Multifamily Housing Revenue Bonds, Series 2005 for Mission Del Rio

RECOMMENDED ACTION

WHEREAS, the Department issued Series 2005 tax-exempt bonds in the aggregate principal amount of \$11,490,000 to the Mission Del Rio Homes development in San Antonio, Texas to construct 240 units of affordable multifamily rental housing;

WHEREAS, only 180 units were constructed and the original general partner and developer are no longer attributed with the development;

WHEREAS, the equity investor and current Owner is requesting the Department's approval for modifications to the existing financing structure, including the mandatory sinking fund and redemption provisions, stabilization requirements, and final maturity under the original bond covenants;

WHEREAS, such changes are necessary to improve the financial strength of the development and reduce ongoing operating deficits;

WHEREAS, additional state volume cap will not be used but the modifications necessitate a reissuance of bonds under state law; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the approval of the reissuance of Multifamily Mortgage Revenue Bonds Series 2005 for the Mission Del Rio Homes;

NOW, therefore, it is hereby

RESOLVED, that the Resolution No. 14-004 relating to the First Supplemental Trust Indenture and Forbearance and Modification Agreement for the Mission Del Rio Homes is hereby approved as presented to this meeting and

FURTHER RESOLVED, that staff is authorized, empowered and directed for and on behalf of the Department to execute and deliver such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

The bonds for Mission Del Rio Homes were originally issued through the Department in February 2005. The tax-exempt bond amount was \$11,490,000 and the original financing structure included privately placed bonds with Charter Municipal Mortgage Acceptance Company and as such were unrated with no credit enhancement. The interest rate on the bonds is 6.50% per annum.

The property is located along the San Antonio River, about 1.5 miles south of downtown and the original development plan called for the construction of 240 units on 13 acres. After the transaction closed in February 2005, the San Antonio River Authority (SARA) claimed jurisdiction on areas along the banks of the San Antonio River and had plans to use most of the south parcel to restore the river. Such plans were unknown to the original Owner at the time of closing. The authority over this parcel of land was disputed between the City of San Antonio and SARA which resulted in a delay in the commencement of construction and involved over a year of litigation. The delays and ultimate condemnation of a portion of the site created changes in site configuration, building and unit count and additional site work. Such additional costs were the result of new requirements at the time from the City of San Antonio that involved street and drainage improvements. As a result of the cost increases and additional site requirements no additional equity funds remained after completing the existing 180 units and the investor limited partner (Centerline Capital Group) contributed approximately \$3.5M to complete construction of the development.

The reduction in 60 units resulted in the elimination of 12-one bedroom units, 27-two bedroom units and 21-three bedroom units. The property ultimately placed in service in 2008 and went through cost certification in 2011. Prior to the Department's release of the IRS Form 8609's in September 28, 2011 a material amendment was processed that required the Owner to hold a public hearing with respect to the changes that occurred from the original development plan. Staff worked with the Owner in resolving those issues in an effort to preserve the tax credits for the investor. Moreover, the Department's interest in the current proposed modifications of existing bond covenants is stabilization of the property to avoid foreclosure and preserve the tax credit units that were built. The proposed principal reduction will reduce the property's operating deficit to a more manageable level and will alleviate Centerline's obligation to continuously fund such large deficits, which constitutes \$4.2M to date (excluding the \$3.5M to complete construction previously mentioned). The liability on the part of Natixis Financial Products (the Tax Credit Fund Guarantor) will be reduced as well.

SUMMARY OF THE MODIFICATIONS

The applicant is requesting the Department's approval to modify some aspects of the financing structure under the original bond covenants. The sections below outline the specific changes to these provisions.

Redemption

The original bonds were subject to mandatory redemption at the bondholder's direction in the amounts needed in order to achieve stabilization, which is defined as 90% occupancy and a 1.15 debt coverage ratio for three months by July 31, 2008. The inability of the property to reach stabilization is the result of the construction overruns described above as well as lease-up delays. The principal balance of the bonds is being reduced by \$1,823,091 thereby decreasing the required hard debt service and reducing the property's operating deficit to a more manageable level. The definition of stabilization is being amended to reflect that stabilization shall be deemed to have occurred on April 16, 2016.

As a result of the condemnation by SARA, the partnership received \$212,000 in proceeds; such amount is on deposit with the trustee and will be applied to the outstanding bond balance, in addition to the \$1.8M redemption.

Maturity and Sinking Fund Redemption

The original maturity date of February 1, 2045 will be shortened to February 1, 2038. The principal reduction of \$1,823,091 will result in a reset of the amortization to 480 months on the remainder of the loan. Due to the acceleration, the weighted average maturity will not increase and as such will not require a public hearing pursuant to federal tax law.

Other Financial Modifications

The restructure of this development is part of a similarly financed 17-property portfolio, securitized by Freddie Mac, seeking modifications to the original bond covenants. In addition to the above mentioned modifications, this transaction also involves an additional \$12M support escrow, advanced by Natixis, that will be available should there be an inability for a property to fulfill its debt obligations. This additional cash flow support escrow is available to 12 (3 of which are in Texas and includes Mission Del Rio) of the 17 properties. Specifically, \$30,000 per month has been designated as additional cash flow support, with another \$6,000 per month support payment pledged by Centerline. Based on current projections for Mission Del Rio, it is not anticipated that the maximum amount of funds available (a total of \$36k) would need to be accessed, but assuming a 7.5% vacancy rate, it is anticipated that approximately \$9,100/month in additional cash flow support will be needed in order in order to achieve a 1.15 debt coverage ratio.

Among the proposed changes to the Trust Indenture, the Bond Regulatory and Land Use Restriction Agreement (LURA) and Housing Tax Credit LURA will be amended to reflect the condemnation of the approximately 2 acres, releasing such land from the deed restrictions, and the total number of units will be modified as well.

OTHER INFORMATION

Organizational Structure and Compliance: The Borrower is Chicory Court II, LP and the General Partner is HCS Mission Del Rio GP, LLC which is owned by Housing and Community Services, Inc. On September 27, 2011 the Department approved an ownership transfer request to replace the original General Partner, Chicory GP II, Inc. with the aforementioned entity.

Census Demographics: The site is located at 731 Riverside, San Antonio, Bexar County. Demographics for the census tract (1508.00) include AMFI of \$16,618; the total population is 3,165; the percent of the population that is minority is 91.53%; the number of owner occupied units is 226; the number of renter occupied units is 751; and the number of vacant units is 0. (Census Information from FFIEC Geocoding for 2013).

RESOLUTION NO. 14-004

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE AND FORBEARANCE AND MODIFICATION AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (MISSION DEL RIO HOMES) SERIES 2005; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the “Issuer”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the “Act”), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as defined in the Act and determined by the Governing Board of the Issuer (the “Board”) from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multi-family residential rental project loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Act further authorizes the Department to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department under such terms, conditions and details as shall be determined by the Board; and

WHEREAS, the Issuer previously issued its Multifamily Housing Mortgage Revenue Bonds (Mission Del Rio Homes) Series 2005 in the original principal amount of \$11,490,000 (the “2005 Bonds”) pursuant to the terms and provisions of that certain Trust Indenture dated as of February 1, 2005 (the “Indenture”), between the Issuer and Wells Fargo Bank, National Association, as trustee (the “Trustee”); and

WHEREAS, the proceeds of the 2005 Bonds were loaned to Chicory Court II, L.P., a limited partnership organized and existing under the laws of the State of Texas (the “Borrower”) for the purpose of financing a portion of the costs of a multifamily housing development known as Mission Del Rio Homes (the “Project”), pursuant to that certain Loan Agreement dated as of February 1, 2005 (the “Loan Agreement”) among the Issuer, the Borrower and the Trustee; and

WHEREAS, the Borrower and Centerline Mortgage Capital Inc. (the “Servicer”) (on behalf of the holder of the 2005 Bonds) have requested that the Issuer enter into a supplemental trust indenture and forbearance and modification agreement (the “Supplement”) to make certain modifications to the terms of the 2005 Bonds and conforming changes to the Indenture; and

WHEREAS, the modifications to be implemented by the Supplement are expected to result in a reissuance under State law of the 2005 Bonds that remain outstanding after the redemption described above (the reissued 2005 Bonds are hereinafter referred to as the “Bonds”); and

WHEREAS, the Issuer's execution of the Supplement shall be subject to receipt of the consents, opinions, approvals or notices required by the Indenture; and

WHEREAS, the Issuer now desires to take certain actions with respect to the Supplement;

WHEREAS, a portion of the Project originally subject to the Regulatory and Land Use Restriction Agreement dated as of February 1, 2005, (the "Regulatory Agreement") between the Issuer, the Trustee and the Borrower was condemned after issuance of the 2005 Bonds and the Issuer desires to approve an amendment to the Regulatory Agreement containing the updated property description; and

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 Approval, Execution and Delivery of Supplement. The Supplement, in substantially the form presented at this meeting, is hereby approved and adopted by the Issuer, and the Authorized Representatives are each hereby authorized and empowered to execute and deliver the Supplement on behalf of the Issuer, with such changes as may be approved by the authorized representative executing the same, such approval to be evidenced by such Authorized Representative's execution thereof.

Section 1.2 Approval of Terms of Bonds. The Bonds shall (a) bear interest at a rate of 6.5% payable from the date of reissuance until paid on the maturity date or earlier redemption or acceleration thereof (subject to adjustment as provided in the Indenture; provided, however, that the default interest rate on the Bonds shall not exceed the maximum rate permitted by applicable law); (b) be reissued in the principal amount of (i) \$8,974,461.72 if reissued on October 1, 2013, (ii) \$8,970,391.49 if reissued on November 1, 2013 or (iii) \$8,966,299.21 if reissued on December 1, 2013, and (c) have a final maturity date of February 1, 2038.

Section 1.3 Execution and Delivery of Amendment to Regulatory Agreement. The Authorized Representatives are each hereby authorized and empowered to execute and deliver the amendment to the Regulatory Agreement on behalf of the Issuer.

Section 1.4 Execution and Delivery of Other Documents. The Authorized Representatives shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments and other documents, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this resolution, as well as the terms and provisions of the Supplement, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument or other document.

Section 1.5 Consents and Approvals. The Issuer's execution of the Supplement is expressly subject to receipt of the consents, opinions, approvals or notices required by the Indenture.

Section 1.6 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 of the Department, the Director of Bond Finance or the Director of Multifamily Finance of the Department, and the Secretary or any 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 1.7 Certification of Records. The Secretary and Assistant Secretary to the Board hereby are authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 1.8 Submission to Texas Bond Review Board. The Board hereby authorizes and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 1.9 Submission to Texas Attorney General. The Board hereby authorizes and approves the submission by the Department’s Bond Counsel to the Attorney General of the State, for his approval, of a transcript of legal proceedings relating to the Bonds.

Section 1.10 Other Findings. The Board has determined that the proposed reissuance of the 2005 Bonds is in the best interest of the Department and will provide a potential savings in debt payable by the Department. The manner in which the 2005 Bonds are being reissued does not make it practicable to make the determination required by Section 1207.008, Texas Government Code.

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 12th day of September, 2013.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

SUPPLEMENTAL TRUST INDENTURE
AND FORBEARANCE AND MODIFICATION AGREEMENT

\$11,490,000

Texas Department of Housing and Community Affairs
Multifamily Housing Mortgage Revenue Bonds
(Mission Del Rio Homes) Series 2005

This SUPPLEMENTAL TRUST INDENTURE AND FORBEARANCE AND MODIFICATION AGREEMENT, dated as of [November] 1, 2013 (this “**Supplement**”), among the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (together with its successors and assigns, the “**Issuer**”), Chicory Court II, L.P., a limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas (together with its successors and assigns, the “**Borrower**”) and Wells Fargo Bank, National Association, a national banking association duly organized, validly existing and authorized to accept the duties and obligations set out by virtue of the laws of the United States of America, as trustee (together with any successor trustee and their respective successors and assigns, the “**Trustee**”) under a Trust Indenture, dated as of February 1, 2005 (as amended, modified or supplemented from time to time, the “**Indenture**”), from the Issuer to the Trustee (capitalized terms used herein and not otherwise defined having the meaning assigned to them in the Indenture),

WITNESSETH:

WHEREAS, pursuant to the Indenture, the Issuer has previously issued its Multifamily Housing Mortgage Revenue Bonds (Mission Del Rio Homes) Series 2005 in the original aggregate principal amount of \$11,490,000 (the “**Bonds**”), to finance a portion of the costs of the acquisition, construction and equipping of a 180-unit residential rental development known as “Mission Del Rio Homes” and located in San Antonio, Texas (the “**Project**”); and

WHEREAS, pursuant to a Loan Agreement, dated as of February 1, 2005, among the Issuer, the Trustee and the Borrower, the Issuer loaned the proceeds of the Bonds to the Borrower to finance a portion of the cost of the Project; and

WHEREAS, among other things, the Borrower was obligated pursuant to Section 6.2 of the Loan Agreement to make a prepayment in the amount specified by the Majority Owner to effectuate a partial redemption of Bonds pursuant to Section 4.01(b) of the Indenture in the event the Project did not achieve “Stabilization” on or before the date which is twenty-four (24) months following Completion (i.e., July 31, 2008); and

WHEREAS, prior to the date hereof, such payment has not been made as required; and

WHEREAS, the Borrower and the Servicer have asked the Issuer and the Trustee to enter into this Supplement (i) to modify the redemption provisions, to provide for a redemption payment concurrently with the execution and delivery hereof, (ii) to modify the mandatory sinking fund redemption and other redemption provisions, and (iii) to make certain other modifications to the terms of the Bonds as more fully described herein with the consent of the

Owners of not less than two-thirds in aggregate principal amount of the Bonds then Outstanding; and

WHEREAS, Federal Home Loan Mortgage Corporation (“Freddie Mac”) is the registered owner of 100% of the Outstanding Bonds and as the single Owner of all Bonds Outstanding is the Majority Owner, as such term is defined in the Indenture; and

WHEREAS, Sections 9.02, 9.03, 9.04, 9.06 and 9.07 of the Indenture provide that the Indenture and the Loan Agreement can be amended for such purposes by a supplemental trust indenture accompanied by the consent of the Majority Owner and the Borrower and upon delivery of an opinion of Bond Counsel.

NOW, THEREFORE, in consideration of the foregoing and subject to the requirements of Sections 9.02, 9.03, 9.04, 9.06 and 9.07 of the Indenture, the Issuer, the Trustee, the Servicer and the Borrower, with the consent of the Majority Owner, hereby agree that the Indenture and the Loan Agreement be amended, modified and supplemented as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions.

(a) The definition of “Stabilization” in the Loan Agreement is hereby amended to add the following sentence at the end of such definition:

“Notwithstanding the foregoing, provided the Work-Out Support Provider is not in default with respect to its payment obligations secured by the Work-Out Account Control Agreement due to a Bankruptcy, “Stabilization” shall be deemed to have occurred on April 16, 2016.”

(b) The following new defined terms are hereby added to the Indenture as follows:

“**Actual CCG Additional Support Payment**” means any monthly cash flow support made by Centerline Capital Group LLC (“CCG”) to fund a Cash Flow Shortfall (which may be in addition to each monthly Holdings Support Payment).

“**Approved Capital Expenditures**” means the cost incurred in connection with any capital improvements or replacements, not to exceed the amounts shown as “capital expenses” on the Approved Budget for such period, as such budget may be amended from time to time, or otherwise as approved by Natixis Financial Products LLC.

“**Assumed CCG Additional Support Payment**” means the assumed monthly cash flow support amount from CCG, in the amount of \$6,000.

“Bankruptcy” means Work-Out Support Provider’s making an assignment for the benefit of creditors, becoming a party to any liquidation or dissolution action or proceeding with respect to Work-Out Support Provider or any bankruptcy, reorganization, insolvency or other proceeding for the relief of financially distressed debtors with respect to Work-Out Support Provider, or the appointment of a receiver, liquidator, custodian or trustee for Work-Out Support Provider or a substantial part of Work-Out Support Provider’s assets.

“Cash Flow Shortfalls” means, for a specified period, the difference, if negative, of (A) Operating Revenues, minus (B) the sum of (i) Operating Expenses, (ii) required principal payments and required interest payments on the Bonds and any other permitted hard subordinate debt (for the avoidance of doubt, this clause (ii) excludes principal and interest payments that are payable from Excess Cash Flow or otherwise considered “soft” or “contingent” or “payable from cash flow only”) and (iii) Approved Capital Expenditures (to the extent not paid from the Replacement Reserve Fund).

“Excess Cash Flow” means, for a specified period, the difference, if positive, of (A) Operating Revenues, minus (B) the sum of (i) Operating Expenses, (ii) required principal payments and required interest payments on the Bonds and any other permitted hard subordinate debt (for the avoidance of doubt, this clause (ii) excludes principal and interest payments that are payable from Excess Cash Flow or otherwise considered “soft” or “contingent” or “payable from cash flow only”) and (iii) costs incurred in connection with any capital expenditures (to the extent not paid from the Replacement Reserve Fund).

“Forborne Remedial Actions” shall mean, for purposes of Section 3.01 of this Supplement, the exercise of any of the following rights and remedies: (1) accelerating the principal amount of the Bonds; (2) declaring the unpaid indebtedness of the Borrower under the documents securing the related Bonds to be due and payable; (3) foreclosing, exercising the power of sale or taking any other property-related remedies, advertising to foreclose, or taking any other actions to foreclose upon or exercise the power of sale or other property-related remedies under the mortgage, deed of trust or deed to secure debt encumbering the Project; (4) directing a partial mandatory redemption of the Bonds, pursuant to Section 4.01 of this Indenture, or (5) any other right or remedy that if exercised could reasonably be expected to result in the loss by the Borrower of any low income housing tax credits.

“Holdings Support Payment” means each monthly cash flow support payment to be made by the Work-Out Support Provider to fund a Cash Flow Shortfall pursuant to the Work-Out Account Control Agreement.

“Operating Expenses” means, without duplication, with respect to any period for which such calculation shall be made, all reasonable and necessary expenses incurred by the Borrower in the ordinary course of operating, owning, managing, leasing and maintaining the Project which are directly associated with the Project

for the applicable period, including: (a) general and administrative costs incurred by the Borrower that are directly attributable to owning and operating the Project; (b) repairs and maintenance expenses; (c) labor costs; (d) real estate taxes or insurance premiums actually paid by the Borrower that are not paid from the Tax and Insurance Fund and any amounts deposited by the Borrower into the Tax and Insurance Fund; (e) other taxes actually paid by the Borrower (except for taxes and other amounts specified in (d) immediately above and taxes based on income of the Borrower); (f) utility expenses; (g) supply costs; (h) advertising expenses; (i) property management fees actually paid for the applicable period; (j) reasonable leasing commissions paid in connection with tenant leases; (k) fees paid to the Issuer, the Trustee, and the lender in respect of any other permitted hard subordinate debt; (l) tax credit and regulatory compliance fees to the extent not included in (k) above; (m) annual Borrower audit fees paid to independent accountants; (n) any costs of inspection performed by structural, environmental, or other engineers; (o) amounts required to be deposited by the Borrower into the Replacement Reserve Fund; and (p) legal fees incurred by the Borrower directly attributable to the ownership of the Project, including work related to tax abatement applications and Bondholder, Servicer, Trustee or Issuer inquiries, consents and requests to the extent required under this Indenture or the Loan Documents. For the avoidance of doubt, legal fees shall not include any expenditures attributable to legal expenses unrelated to operation of the Project.

Notwithstanding the foregoing or anything to the contrary contained herein, the term "Operating Expenses" shall not include: (i) the amount of any debt service in respect of the Bonds or any principal, interest or other amounts paid under any other notes, mortgages or loans relating to the Project; (ii) any non-cash charges such as depreciation and amortization; (iii) Approved Capital Expenditures or any other costs incurred in connection with capital improvements or replacements; (iv) any taxes, insurance or other items paid from sums held in the Tax and Insurance Fund or any other Fund or Account established under the terms of this Indenture; (v) any expenses, commissions, charges or other amounts paid to an affiliate of the Borrower without the prior written consent of Natixis Financial Products LLC, except for the management fee described in clause (i) above; (vi) any expenses or costs paid directly or indirectly through the use of any insurance or condemnation proceeds, other than insurance proceeds or condemnation awards specifically paid to reimburse the Borrower for loss of business or rental income; (vii) the costs of any items paid for or reimbursed to the Borrower out of funds in the Replacement Reserve Fund; (viii) any expenses related to or incurred in connection with an event which could result in the Borrower's receiving capital proceeds; (ix) any refunds of security deposits made to tenants of the Project; (x) any general or administrative expenditures of the Borrower not directly attributable to the Project; (xi) distributions or other payments by the Borrower to its partners pursuant to the Partnership Agreement (as such term is defined in the Indenture); (xii) the amount of any principal and interest paid in respect of any Voluntary Loans, Operating Loans, Replacement Reserve Loans or Deferred Development Fee (each as defined in the Partnership Agreement); and (xiii) expenses incurred in connection with a Sale or Refinancing Transaction.

Notwithstanding anything to the contrary contained herein, the term “Operating Expenses” shall not include any of the foregoing items to the extent paid directly or reimbursed by a tenant of the Borrower or any other third party.

“**Operating Revenues**” means, without duplication, for the applicable period for which such calculation shall be made, the sum of all gross rental receipts and all other income, proceeds, receipts and revenues generated by and from the use and operation of the Project in respect of all or any part thereof, including: (a) base rental income, including all increases in rent based upon increases in the consumer price index (or other inflation factor); (b) pass-through charges; (c) late charges; (d) vending machine income; (e) laundry income; (f) percentage rents; (g) parking income and receipts; (h) non-refundable pet deposits or fees; (i) any forfeited or non-refundable security deposits, prepaid rent, rental and charges for space occupancy; (j) storage income; (k) insurance proceeds or condemnation awards paid to reimburse the Borrower for loss of business or rental income; (l) any insurance proceeds or condemnation awards in excess of the portion thereof used to restore, repair or replace the Project or to retire the Bonds if required under this Indenture or the Loan Documents; (m) any property tax refunds received by the Project whether applicable to the period before or after the date hereof; (n) any legal fees recovered from plaintiffs or defendants, as the case may be, to lawsuits the Borrower is either pursuing or defending or proceeds from judgments awarded in the Borrower’s favor which are not reimbursable to a third party; (o) interest earned, to the extent the Borrower is entitled to such interest, on any accounts into which any of the foregoing revenues are deposited, including accounts held by the Trustee; and (p) amounts released from the Tax and Insurance Fund due to “overfunding” of such Fund in previous periods.

Notwithstanding the foregoing or anything to the contrary contained herein, the term “Operating Revenues” shall be exclusive of (i) any proceeds of the Bonds or any other permitted debt, (ii) any capital proceeds used to restore, repair or replace the Project or to retire the Bonds if required under this Indenture or the Loan Documents, (iii) any refundable security deposits, unearned portion of any prepaid rent, and any other refundable items (provided, however, that, at such time as security deposits or other refundable items have been forfeited or earned, such items shall become part of Operating Revenues), and all interest earned on any accounts into which any of the foregoing revenues are deposited to the extent such interest is refundable, (iv) proceeds from a Sale or Refinancing Transaction, and (v) any Voluntary Loans or Capital Contributions (as defined in the Partnership Agreement).

“**Sale or Refinancing Transaction**” means any of the following items or transactions not in the ordinary course of business: a sale, transfer, exchange or other disposition of all or substantially all of the assets of the Borrower, a condemnation of or casualty at the Project or any part thereof (other than an event which produces business interruption insurance proceeds or other similar payments), a claim against a title insurance company, the refinancing of the Note or other indebtedness of the Borrower and any similar item or transaction.

“Work-Out Account Control Agreement” shall mean the Pledge and Deposit Account Control Agreement dated and effective as of April 16, 2013, among the Work-Out Support Provider, the Majority Owner and certain other parties thereto, as the same may be amended, modified or supplemented from time to time.

“Work-Out Support Provider” shall mean Centerline Financial Holdings LLC, a Delaware limited liability company, together with its successors and assigns.

(c) The definition of **“Maturity Date”** in the Indenture is hereby amended to read as follows:

“Maturity Date” means February 1, 2038.

(d) All other capitalized terms used herein unless otherwise defined shall have the same meaning as used in Article I of the Indenture or Article I of the Loan Agreement.

ARTICLE II

THE AMENDMENTS

Section 2.01 Amendments to Section 4.01 of the Indenture.

(a) Section 4.01(b) of the Indenture is hereby amended to add the following to the end of such Section:

“Notwithstanding the foregoing, the requirements of this Section 4.01(b) are hereby suspended until April 16, 2016, unless the Work-Out Support Provider shall be in default with respect to its payment obligations secured by the Work-Out Account Control Agreement due to a Bankruptcy, in which event the requirements of this Section 4.01(b) shall be reinstated. Provided the Work-Out Support Provider is not then in default with respect to such payment obligations due to a Bankruptcy, from and after April 16, 2016, this Section 4.01(b) shall be deleted in its entirety, all references in the Bonds, the Indenture and the Loan Documents to Section 4.01(b) of the Indenture shall be of no further force or effect whatsoever and the Majority Owner shall no longer have the right to direct any mandatory redemption of the Bonds as a result of the failure of the Project to achieve “Stabilization” under the original terms of the Loan Documents.”

(b) A new subparagraph (g) is hereby added to Section 4.01 of the Indenture which subparagraph (g) shall provide in full as follows:

“(g) in part in an amount equal to \$1,823,091 on or about the date of execution and delivery of the Supplement, without any further notice or direction by the Majority Owner, the Issuer, the Borrower or any other person.”

Section 2.02 Amendment to Section 4.02 of Indenture. Section 4.02 of the Indenture is hereby amended and restated in its entirety to provide in full as follows:

“Section 4.02 Redemption Price of Bonds Redeemed Pursuant to Mandatory Redemption. The Bonds being redeemed on or about the date of execution and delivery of the Supplement pursuant to Section 4.01(g) of this Indenture shall be redeemed at a redemption price equal to the principal amount of Bonds being redeemed, together with accrued interest to the date of redemption. All other Bonds being redeemed before maturity in accordance with Section 4.01 of this Indenture shall be redeemed at a redemption price equal to the principal amount of the Bonds being redeemed, together with accrued interest to the date of redemption. Failure to pay any interest forborne under Section 3.01 of this Supplement upon any optional redemption or upon a mandatory redemption in whole pursuant to Section 4.01 hereof shall constitute a default in the payment of the redemption price of the Bonds.”

Section 2.03 Amendment to Section 8.11 of Indenture. Section 8.11 of the Indenture is hereby amended and restated in its entirety to provide in full as follows:

“The Majority Owner may, by written notice to the Trustee, the Issuer and the Borrower, appoint a third party Servicer to service the Loan and remove any Servicer so appointed. The selection or removal of any Servicer shall be in the sole discretion of the Majority Owner. The Majority Owner may also choose to act in the capacity of Servicer of the Loan. The Servicer shall have the right to receive copies of all reports and notices provided for by the Loan Documents.”

Section 2.04 Amendment to Exhibit A of the Indenture; Replacement for Form of Bond. The form of Bond attached to the Indenture as Exhibit A is hereby replaced with the form of Bond attached as Exhibit A to this Supplement. Promptly following the execution and delivery of this Supplement, the Trustee shall deliver to the Majority Owner, or upon its order, an executed and authenticated replacement Bond certificate in the form set forth in Exhibit A to this Supplement.

Section 2.05 Amendment to Exhibit B of the Indenture. The schedule of mandatory sinking fund redemption amounts set forth on Exhibit B of the Indenture is hereby replaced with the schedule attached as Exhibit B to this Supplement.

ARTICLE III

FORBEARANCE

Section 3.01 Forbearance. The Servicer and the Trustee hereby agree to forbear from the exercise of any of the Forborne Remedial Actions in respect of a failure of the Borrower to pay amounts needed to pay in full any installment of principal and interest when and as the same shall become due and payable, in the following instance: (x) such unpaid installment amount is less than or equal to the difference between the Assumed CCG Additional Support Payment and the Actual CCG Additional Support Payment, and (y) the Holdings Support Payment has been made in full by the Work-Out Support Provider or an equivalent amount has been otherwise provided by the Work-Out Support Provider, its affiliates or a third party (or a combination thereof). Such forbearance shall terminate upon the earlier of (i) any Interest Payment Date with

respect to which an installment of principal and interest is not paid in full other than as described in the previous sentence, or (ii) December 31, 2022 (i.e., the last day of the low income housing tax credit compliance period applicable to the Project), whereupon the full amount of previously unpaid principal and interest shall become due and payable.

Section 3.02 Notice of Forbearance. Not less than five (5) days before any Interest Payment Date before December 31, 2022 for which the forbearance set forth in Section 3.01 hereof shall be applicable, the Servicer shall provide the Trustee and the Majority Owner with notice specifying (i) that the forbearance set forth in Section 3.01 hereof shall be applicable for such Interest Payment Date, and (ii) the amount of any such interest and principal to be forborne with respect to such Interest Payment Date. The Trustee shall keep records of the total amount of forborne interest and principal accrued but unpaid from time to time, and shall provide notification of such amounts to the Majority Owner, the Issuer, the Servicer and the Borrower upon request.

ARTICLE IV

CONDITIONS; REPRESENTATIONS AND COVENANTS

Section 4.01 Conditions to Effectiveness.

It shall be a condition to the effectiveness of this Supplement that the following shall be satisfied:

(a) \$1,823,091 shall have been deposited with the Trustee for application to the partial redemption of the Bonds as described in Section 2.01(b) of this Supplement;

(b) all of the conditions set forth in the Indenture and the Loan Agreement to the amendment or modification thereof shall have been met or waived in writing, which waiver is evidenced by the parties' execution of this Supplement;

(c) there shall have been delivered an unqualified opinion of Bond Counsel, addressed to the Issuer, the Trustee, the Servicer and the Majority Owner substantially to the effect that (i) interest on the Bonds is excludable from the gross income of the owners of the Bonds for federal income tax purposes, and (ii) this Supplement has been duly authorized, executed and delivered by the Issuer and is enforceable against the Issuer in accordance with its terms, subject to customary exclusions; and

(d) the Work-Out Account Control Agreement shall have been executed and delivered by the parties thereto, and all amounts required thereby shall have been deposited thereunder.

Section 4.02 Representations and Covenants of Borrower. By its execution and delivery hereof, the Borrower hereby:

(a) Represents that it is the owner of the Project and the borrower of the loan made from the proceeds of the Bonds;

(b) Acknowledges and understands that the Project has failed to achieve Stabilization on or before July 31, 2008, and requests that the Issuer and the Trustee amend the Indenture to suspend the requirement for a mandatory redemption under Section 4.01(b) of the Indenture until April 16, 2016 (provided that the Work-Out Support Provider is not in default with respect to its payment obligations secured by the Work-Out Account Control Agreement due to a Bankruptcy during such period), and thereafter eliminate such requirement for a mandatory redemption under Section 4.01(b) of the Indenture;

(c) Consents to the amendments of the Indenture and the Loan Agreement contained in this Supplement;

(d) Irrevocably waives, without recourse, all irregularities in the timing, content and delivery of all notices that are required by the Indenture or the Loan Agreement with respect to the amendment of the Indenture and the Loan Agreement referred to above;

(e) Agrees to be bound by the terms of the Indenture, as amended by this Supplement, including, without limitation, agreeing to make the payments to the Trustee required to pay the redemption price of Bonds subject to mandatory redemption in the principal amount of \$1,823,091 on the date of execution and delivery hereof; and

(f) Agrees that, prior to _____ 1, 2014, it shall not cause, permit or permit the General Partner to cause or permit, (a) a change in ownership of the Project or (b) the transfer of any equity interest in the Borrower, the admission of any new equity investors in the Borrower or the withdrawal of any existing equity investors in the Borrower, without, in each case, delivery to the Trustee of an opinion of Bond Counsel to the effect that such change, transfer, admission or withdrawal will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation; and

(g) Certifies that the federal tax-related representations of the Borrower in the Loan Agreement, in the Regulatory Agreement, and in the Tax Certificate of the Borrower dated February 4, 2005 (the "Borrower's Tax Certificate") remain true and correct in all material respects as of the date hereof and that the Borrower is not in material default under or breach of any covenant contained in the Borrower's Tax Certificate or the Regulatory Agreement or any of the federal tax-related covenants of the Borrower contained in the Loan Agreement.

Section 4.03 Stabilization. The parties hereto acknowledge and agree that, upon the effectiveness of this Supplement, the requirement that the Project achieve Stabilization shall be suspended for all purposes under the Indenture and the Loan Documents until April 16, 2016, unless the Work-Out Support Provider fails to meet its payment obligations secured by the Work-Out Account Control Agreement as a result of a Bankruptcy during such period. Provided the Work-Out Support Provider is not in default with respect to such payment obligations due to a Bankruptcy, from and after April 16, 2016, Stabilization shall be deemed to have occurred for all purposes under the Indenture and the Loan Documents.

Section 4.04 Waiver of Certain Amounts; Acknowledgement of Redemption; Bonds Outstanding. In consideration for and subject to compliance by the Borrower with the terms and conditions of this Supplement, there is hereby waived, without recourse, the payment of all

amounts in respect of the Bonds as are set forth on Schedule 1 to this Supplement which shall have become due and payable prior to the effective date of this Supplement. The parties to this Supplement and the Majority Owner acknowledge that on or before the date of this Supplement, a Condemnation Award in the amount of \$212,000 was used to redeem the Bonds in accordance with Sections 4.01(c) and 6.04(c) of the Indenture. Upon the effectiveness of this Supplement, the principal amount of Bonds outstanding under the Indenture shall be \$_____.

ARTICLE V

FURTHER SUPPLEMENTS

Section 5.01 Further Supplements. This Supplement may be supplemented or amended in the manner and subject to the conditions set forth in Article IX of the Indenture for amendments to the Indenture.

ARTICLE VI

MISCELLANEOUS

Section 6.01 Supplement as Part of Indenture and Loan Agreement. This Supplement shall be construed in connection with and as a part of the Indenture and the Loan Agreement to the extent of the provisions herein that are amendatory thereof or supplemental thereto. The Form of Bond attached as Exhibit A to the Indenture shall be replaced with the Form of Bond attached as Exhibit A to this Supplement. The Initial Bond shall be numbered I-1.

Section 6.02 Severability. If any provision of this Supplement shall be held or deemed to be, or shall, in fact, be, illegal, inoperative or unenforceable, the same shall not affect any other provision herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever.

Section 6.03 Counterparts; Electronic Signatures. This Supplement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law, signatures transmitted by facsimile or other electronic means shall constitute original signatures for all purposes hereunder.

Section 6.04 Rules of Interpretation. Unless expressly indicated otherwise, references to Sections or Articles are to be construed as references to Sections or Articles of this instrument as originally executed. Use of the words “herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Supplement as a whole, and not solely to the particular portion in which any such word is used.

Section 6.05 Captions. The captions and headings in this Supplement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Supplement.

Section 6.06 Governing Law. This Supplement shall be governed by the internal laws of the State of Texas, without regard to conflict of laws principles.

Section 6.07 Successors and Assigns. This Supplement shall inure to the benefit of, and shall be binding upon, the Issuer and its successors and assigns, the Borrower and its successors and assigns, and the Trustee, any successor trustee and their respective successors and assigns. In addition, this Supplement shall be binding upon the current Owners of the Bonds and all future Owners from time to time of the Bonds and their respective successors and assigns.

Section 6.08 Tax Matters. The Issuer certifies that the federal tax-related representations of the Issuer contained in the Indenture, in the Regulatory Agreement and in the Tax Certificate remain true and correct in all material respects as of the date hereof and that the Issuer is not in material default under or breach of any covenants contained in the Tax Certificate and the Regulatory Agreement or any of the federal tax-related covenants of the Issuer contained in the Indenture.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have caused this Supplemental Trust Indenture and Forbearance and Modification Agreement to be executed and delivered by their respective duly authorized representatives, all as of the date first above written.

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: _____
Title: _____

(SEAL)

ATTEST:

Secretary

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, as trustee**

By: _____
Name: _____
Title: _____

CHICORY COURT II, L.P., a Texas limited
partnership

By: HCS MISSION DEL RIO GP, LLC, a Texas
limited liability company, its general partner

By: HOUSING AND COMMUNITY
SERVICES, INC., a Texas non-
profit corporation, its sole member

By: _____
Name: _____
Title: _____

MAJORITY OWNER CONSENT

\$11,490,000

Texas Department of Housing and Community Affairs
Multifamily Housing Mortgage Revenue Bonds
(Mission Del Rio Homes) Series 2005

THE UNDERSIGNED HEREBY:

1. Represents that it is the registered owner of 100% in aggregate principal amount of the above-referenced bonds (the “Bonds”) and, as such, is the Majority Owner of the Bonds under the Indenture;
2. Hereby consents to the amendments of the Indenture and the Loan Agreement contained in the Supplemental Trust Indenture and Forbearance and Modification Agreement to which this Majority Owner Consent is attached (including, but not limited to, the waiver of certain amounts payable with respect to the Bonds as provided in Section 4.04 thereof); and
3. Irrevocably waives, without recourse, all irregularities in the timing, content and delivery of all notices that are required by the Indenture or the Loan Agreement with respect to the amendment of the Indenture and the Loan Agreement referred to above and the partial redemption of the Bonds to be effected concurrently with the execution of the above-referenced Supplemental Trust Indenture and Forbearance and Modification Agreement pursuant to Section 2.01 thereof.

Terms used in this Majority Owner Consent with initial capital letters, but not defined herein, shall have the same meanings given such terms in the Supplemental Trust Indenture and Forbearance and Modification Agreement to which this Majority Owner Consent is attached.

IN WITNESS WHEREOF, the undersigned has caused this Majority Owner Consent to be executed by its duly authorized representative as of the ____ day of _____, 2013.

FEDERAL HOME LOAN MORTGAGE CORPORATION

By: _____
Name: _____
Title: _____

Acknowledged and Agreed solely for the purposes of Section 4.03

CENTERLINE MORTGAGE CAPITAL INC.,
as Servicer

By: _____
Name: Michael P. Larsen
Title: Chief Financial Officer

EXHIBIT A

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF TEXAS

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY HOUSING MORTGAGE REVENUE BOND
(MISSION DEL RIO HOMES)
SERIES 2005

THE STATE OF TEXAS IS NOT OBLIGATED TO PAY THE PRINCIPAL OR INTEREST ON THIS BOND. THE FAITH, CREDIT OR TAXING POWER OF THE STATE OF TEXAS IS NOT PLEDGED, GIVEN OR LOANED TO PAYMENT OF THIS BOND'S PRINCIPAL OR INTEREST.

THIS BOND IS A RESTRICTED SECURITY AND MAY BE TRANSFERRED ONLY AS PROVIDED HEREIN AND IN THE HEREIN DESCRIBED INDENTURE.

Number: _____ \$ _____

<u>Maturity Date:</u>	<u>Dated Date:</u>	<u>Interest Rate:</u>
February 1, 2038	[November 1], 2013	As described herein

REGISTERED OWNER: Federal Home Loan Mortgage Corporation

PRINCIPAL AMOUNT: _____

FOR VALUE RECEIVED, TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the "Issuer"), a public and official agency of the State of Texas (the "State"), hereby acknowledges itself indebted and for value received promises to pay to the registered owner hereof stated above, or registered assigns, at the maturity date stated above, but only from the sources and as hereinafter provided, upon presentation and surrender of this Bond at the operations office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota or its successor as trustee (the "Trustee"), under the Indenture (described below), the principal amount stated above, and to pay interest on said principal amount at the interest rate set forth above, from and including the date of issuance hereof until the principal amount shall have been paid in accordance with the terms of this Bond and the Indenture, as and when set forth below, but only from the sources and as hereinafter provided, by wire transfer to an account in the United States if there be one Owner of all of the Bonds or otherwise by check

or draft mailed to the record Owners of Bonds as the same appear upon the books of registry to be maintained by the Trustee, as registrar.

This Bond is one of a series of bonds (the "Bonds") issued pursuant to, and is subject to, the Trust Indenture dated as of February 1, 2005 between the Issuer and the Trustee as supplemented by that certain Supplemental Trust Indenture and Forbearance and Modification Agreement (the "Supplement") dated as of [November 1], 2013, (and as further amended and supplemented from time to time, the "Indenture"), the bond resolution of the Issuer duly approved and adopted by the Issuer (the "Resolution"), and Chapter 2306, Texas Government Code, as amended (the "Act"). Reference is made to the Indenture, the Resolution and the Act for a full statement of their respective terms. Capitalized terms used herein and not otherwise defined herein have the respective meanings accorded such terms in the Indenture, which are hereby incorporated herein by reference. The Bonds issued under the Indenture are expressly limited to \$[] in aggregate principal amount of the Bonds and are all of like tenor, except as to numbers and denominations, and are issued for the purposes of providing construction and permanent financing for qualified multifamily rental housing units in the State and of paying certain expenses incidental thereto. Pursuant to a Loan Agreement dated as of February 1, 2005, and a Promissory Note (the "Note") dated February 1, 2005, Chicory Court II, L.P., a Texas limited partnership (the "Borrower"), has agreed to make payments to the Issuer in amounts equal to amounts of principal of and premium, if any, and interest on the Bonds.

THE BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF AND ARE SECURED BY AN ASSIGNMENT OF THE MORTGAGE AND OTHER ASSETS DESCRIBED HEREIN. NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF SUCH BONDS. THE STATE OF TEXAS IS NOT LIABLE ON SUCH BONDS AND SUCH BONDS ARE NOT A DEBT OF THE STATE OF TEXAS. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED BY THE ACT FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE BONDS ARE ISSUED UNDER CHAPTER 2306, TEXAS GOVERNMENT CODE, AS AMENDED. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE OFFICER, DIRECTOR, MEMBER, EMPLOYEE OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION OR BY

THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

The State shall not be liable for the Bonds, and the Bonds shall not constitute a debt of the State. The Act does not provide any procedure for the State to make appropriations for deposit into any reserve funds established under the Indenture.

Interest on the Bonds. The Bonds (including this Bond) shall bear interest on the outstanding principal amount thereof from the date of issuance at a rate of five percent (5.00%) per annum to and including July 31, 2006 or upon earlier redemption or acceleration, in each case, computed on the basis of a 360-day year comprised of twelve 30-day months. After July 31, 2006, the Bonds (including this Bond) shall bear interest on the outstanding principal amount thereof from the date of issuance at a rate of six and one-half percent (6.50%) per annum until paid on the Maturity Date or upon earlier redemption or acceleration, in each case, computed on the basis of a 360-day year comprised of twelve 30-day months. The interest payable on the Bonds as provided above shall be payable on each Interest Payment Date.

Registration and Transfer. This Bond is transferable by the registered owner hereof in person or by his attorney duly authorized in writing at the office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds, of any Authorized Denomination or Authorized Denominations, of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Bonds are issuable as fully registered Bonds in Authorized Denominations as provided in the Indenture. The Issuer, the Trustee, and any other person may treat the person in whose name this Bond is registered on the books of registry as the Owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, and no person shall be affected by notice to the contrary.

This Bond may be transferred in whole or in part by the Owner, only (i) to any subsidiary of the Owner or any entity under common management or control with the Owner, any affiliate of the Owner, any entity arising out of any merger or consolidation of the Owner, or a trustee in bankruptcy of the Owner, (ii) to any Accredited Investor (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act of 1933) or any Qualified Institutional Buyer (as defined in Rule 144A promulgated under the Securities Act of 1933), (iii) to any bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any Accredited Investor or Qualified Institutional Buyer or on its own behalf), or (iv) to any trust or custodial arrangement with respect to which the ultimate beneficial owner or owners of which are each an Accredited Investor or Qualified Institutional Buyer.

THE TRUSTEE SHALL NOT REGISTER ANY TRANSFER OR EXCHANGE OF ANY BONDS UNLESS SUCH HOLDER'S PROSPECTIVE TRANSFEREE DELIVERS TO

THE TRUSTEE AN INVESTOR'S LETTER SUBSTANTIALLY IN THE APPROPRIATE FORM SET FORTH IN EXHIBIT D TO THE INDENTURE.

Mandatory Redemption. The Bonds shall be subject to mandatory redemption, and shall be redeemed, prior to maturity as follows:

(a) (i) in whole or in part on the first Interest Payment Date for which notice can be given in accordance with the Indenture after the Completion Date to the extent funds remain on deposit on such date in the Loan Account of the Construction Fund, as provided in Section 6.03 of the Indenture, and (ii) on the first Interest Payment Date for which notice can be given in accordance with the Indenture after receipt by the Trustee from the Majority Owner of direction to redeem Bonds from amounts on deposit in the Earnout Account of the Construction Fund, as contemplated by Section 6.02(b)(iii) of the Indenture, and Section 5.23 of the Loan Agreement; or

(b) in part on the first Interest Payment Date for which notice can be given in accordance with the Indenture, in the amount and allocated for payment of the Bonds as specified by the Majority Owner, if the Project has not achieved Stabilization (as evidenced by a certificate of the Servicer to the Majority Owner, Trustee and Issuer) within twenty-four (24) months after the earlier of (A) the date the Project achieves Completion or (B) the Completion Date. Notwithstanding the foregoing, the requirements of Section 4.01(b) of the Indenture shall be suspended until April 16, 2016, unless the Work-Out Support Provider shall be in default with respect to its payment obligations secured by the Work-Out Account Control Agreement due to a Bankruptcy, in which event the requirements of Section 4.01(b) of the Indenture shall be reinstated. Provided the Work-Out Support Provider is not then in default with respect to such payment obligations due to a Bankruptcy, from and after April 16, 2016, Section 4.01(b) of the Indenture shall be deleted in its entirety, all references in the Bonds, the Indenture and the Loan Documents to Section 4.01(b) of the Indenture shall be of no further force or effect whatsoever and the Majority Owner shall no longer have the right to direct any mandatory redemption of the Bonds as a result of the failure of the Project to achieve "Stabilization" under the original terms of the Loan Documents.

(c) in whole or in part on the first Interest Payment Date for which adequate notice can be given in accordance with the Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project are deposited in the Revenue Fund and are not to be used to repair or restore the Project; or

(d) upon a Determination of Taxability if the Owner of a Bond presents his Bond for redemption, on any date selected by such Owner, specified in a notice in writing delivered to the Trustee, the Borrower and the Issuer at least thirty (30) days prior to such date; or

(e) in whole on any specified Interest Payment Date on or after February 1, 2022, if the Owners of all of the Bonds elect redemption by giving not less than 180 days' prior written notice thereof to the Issuer, the Trustee and the Borrower, which notice shall specify the Interest Payment Date on which the Bonds are to be redeemed; or

(f) in part on the Interest Payment Dates and in the amounts set forth on Exhibit B of the Indenture subject to adjustment as provided in Section 4.07(b) of the Indenture; or

(g) in part in an amount equal to \$1,823,091 on or about the date of execution and delivery of the Supplement, without any further notice or direction by the Majority Owner, the Issuer, the Borrower or any other person.

Redemption Price of Bonds Redeemed Pursuant to Mandatory Redemption. The Bonds being redeemed before maturity as described above shall be redeemed at a redemption price equal to the principal amount of the Bonds being redeemed, together with accrued interest to the date of redemption.

Optional Redemption. The Bonds shall be subject to redemption prior to maturity in whole but not in part on any Interest Payment Date on or after February 1, 2022, from the proceeds of an optional prepayment of the Loan by the Borrower, at a redemption price equal to the principal amount thereof, plus accrued interest thereon to the date fixed for redemption.

Purchase in Lieu of Redemption. At the election of the Borrower or the Investor Limited Partner upon a redemption in whole of the Bonds, if the Borrower obtains a Favorable Opinion of Bond Counsel, by written notice to the Trustee and the Majority Owner given not less than five (5) Business Days in advance of the proposed redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and shall be payable on the date of redemption thereof. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower or the Investor Limited Partner.

Notice of Redemption.

(a) Notice of redemption shall be given by the Trustee by telephone, telegram or other electronic means, promptly confirmed in writing, not less than ten (10) Business Days prior to the date fixed for redemption; provided, however, that no notice of redemption shall be required for a redemption pursuant to Section 4.01(d), (e) or (f) of the Indenture.

(b) Notice of redemption shall be given to the Owners of all Bonds to be redeemed, by telephone, telex, telecopier or other electronic means, promptly confirmed in writing, at their addresses appearing on the books of registry. Receipt of such notice of redemption shall not be a condition precedent to such redemption, and failure so to notify any of such registered Owners shall not affect the validity of the proceedings for the redemption of the Bonds.

(c) Notice of redemption having been given as provided in subsection (a) or (b) of Section of the Indenture and all conditions precedent, if any, specified in such notice having been met to the satisfaction of the Majority Owner, as evidenced in writing by the Majority Owner to the Trustee, the Bonds or portions thereof so to be redeemed shall become due and payable on the date fixed for redemption at the redemption price specified

therein plus any accrued interest to the redemption date, and upon presentation and surrender thereof at the place specified in such notice, such Bonds or portions thereof shall be paid at the redemption price, plus any accrued interest to the redemption date. On and after the redemption date (unless funds for the payment of the redemption price and accrued interest of the Bonds called for redemption shall not have been provided to the Trustee), (i) such Bonds shall cease to bear interest and (ii) such Bonds shall no longer be considered as Outstanding under the Indenture.

Selection of Bonds to be Redeemed.

(a) Except as otherwise expressly set forth herein, if less than all of the Bonds are to be redeemed, the particular Bonds or portions of Bonds to be redeemed shall be selected by the Trustee randomly.

(b) In making such selection randomly, the Trustee may treat each Bond to be redeemed as representing that number of Bonds of the lowest Authorized Denomination as is obtained by dividing the principal amount of such Bond by such Authorized Denomination.

Partial Redemption of Registered Bonds.

(a) In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the Principal Office of the Trustee of such Bond by the Owner thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee) the Trustee shall authenticate and deliver to or upon the order of such Owner, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Owner, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, that such surrender of Bonds shall not be required for payment of the redemption price pursuant to subsection (f) under the heading "Mandatory Redemption" above. For all purposes of the Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with the Indenture. Notwithstanding the foregoing, surrender of the Bonds shall not be a condition to payment of redemption price pursuant to subsection (f) under the heading "Mandatory Redemption" above.

(b) In the event of a partial redemption of Bonds other than pursuant to subsection (f) under the heading "Mandatory Redemption" above, the amount of each payment required under the mandatory sinking fund schedule set forth on Exhibit B to the Indenture on or after the date of such redemption shall be adjusted to provide for level debt service payment of such Bonds over their remaining term from and after the first Interest Payment Date following such redemption. The Majority Owner shall provide the Trustee with a revised Exhibit B to the Indenture reflecting such adjusted schedule.

Enforcement. Only the Majority Owner shall have the right to enforce the provisions of this Bond or the Indenture or to institute any action to enforce the covenants herein or therein, or to take any action with respect to any Event of Default under the Indenture, or to

institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. If an Event of Default occurs and is continuing, the principal of all Bonds then outstanding may be declared due and payable by the Majority Owner upon the conditions and in the manner and with the effect provided in the Indenture. As provided in the Indenture, and to the extent permitted by law, interest and a penalty rate of interest shall be payable on unpaid amounts due hereon.

Discharge. The Indenture prescribes the manner in which it may be discharged and after which the Bonds shall be deemed to be paid and no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of registration and exchange of Bonds and of such payment.

Modifications. Modifications or alterations of the Indenture, or of any supplements thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond shall not be valid or obligatory for any purpose until it shall have been registered by the Comptroller of Public Accounts of the State of Texas or authenticated by a duly authorized officer of the Trustee, as Authenticating Agent.

It is hereby certified and recited that all conditions, acts and things required by the statutes of the State or by the Act or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed and that the issue of the Bonds, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by said statutes.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed as of the Dated Date stated above.

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Chair

(SEAL)

ATTEST:

By: _____
Secretary

[To be inserted on Initial Bond submitted to Attorney General]

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _____
THE STATE OF TEXAS §

I HEREBY CERTIFY that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

(SEAL)

Comptroller of Public Accounts of
the State of Texas

[To be inserted on Bonds other than the Initial Bond]

FORM OF CERTIFICATE OF AUTHENTICATION

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Indenture and is one of the Texas Department of Housing and Community Affairs Multifamily Housing Mortgage Revenue Bonds (Mission Del Rio Homes') Series 2005.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee and
Authenticating Agent

By: _____
Authorized Signatory

Date of Authentication: _____

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite Name and Address, including Zip Code, and Federal Taxpayer Identification or Social Security Number of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints Attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature: _____

Signature guaranteed by:

NOTICE: Signature must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

EXHIBIT B

ADJUSTED SINKING FUND REDEMPTION SCHEDULE

SCHEDULE 1

WAIVED ARREARAGES

Unpaid Principal Waived at Reissuance: \$[_____]

Unpaid Interest Waived at Reissuance: \$[_____]

Reissued Bond Amount: \$[_____]



DEVELOPMENT IDENTIFICATION

TDHCA Application #: 13605 Program(s): Private Activity Bonds

Mission Del Rio Homes

Address/Location: 731 Riverside

City: San Antonio County: Bexar Zip: 78223

Population: Family Program Set-Aside: General Area: Urban

Activity: New Construction Building Type: Garden (Up to 3-story) Region: 9

Analysis Purpose: Bond Restructure

PRIOR REPORT(S)	PROGRAM	FILE #	PURPOSE
Initial Underwriting	4% Housing Tax Credit	04488	Initial Underwriting
Cost Certification	4% Housing Tax Credit	04488	8609s Issued 2011

RECOMMENDATION

Approve the requested modifications to the bond documents including a re-amortization of the post-restructure principal amount over 40 years and acceleration of the maturity date to February 1, 2038 (originally February 1, 2045). The restructure includes a redemption of \$1.8M in bonds. No change to the current 6.5% fixed interest rate.

DEAL SUMMARY

Mission Del Rio was originally approved as a 240-unit multifamily project designated for low income residents at or below 60% AMI. TDHCA tax-exempt bonds (\$11,490,000) were issued in 2005 and were privately placed with Charter Municipal Mortgage Acceptance Company. Tax credits purchased by Centerline Capital Group generated \$6.7M of equity. Original total project cost was budgeted at \$19.4M.

Prior to construction start, the Owner encountered entitlement delays and the San Antonio River Authority ("SARA") initiated condemnation of a portion of the site along the San Antonio River. These actions delayed construction start, reduced the number of buildable units (180 units placed in service in 2008), changed the overall site plan and caused increased costs due to additional requirements imposed by the City of San Antonio. Additionally, market construction costs increased significantly during 2006 through early 2008 contributing to a \$2.4M increase in hard costs (total costs increased \$4.6M including higher soft costs and financing costs).

Centerline Capital Group funded \$7.7M above the original equity commitment to pay the development/construction cost increases (\$3.5M), carrying costs during construction, net operating losses post construction and interest carry on the bonds (\$4.2M). As a result of the reduced number of units and the declining economic conditions beginning in 2008, the property has not yet stabilized pursuant to the original terms of the debt.

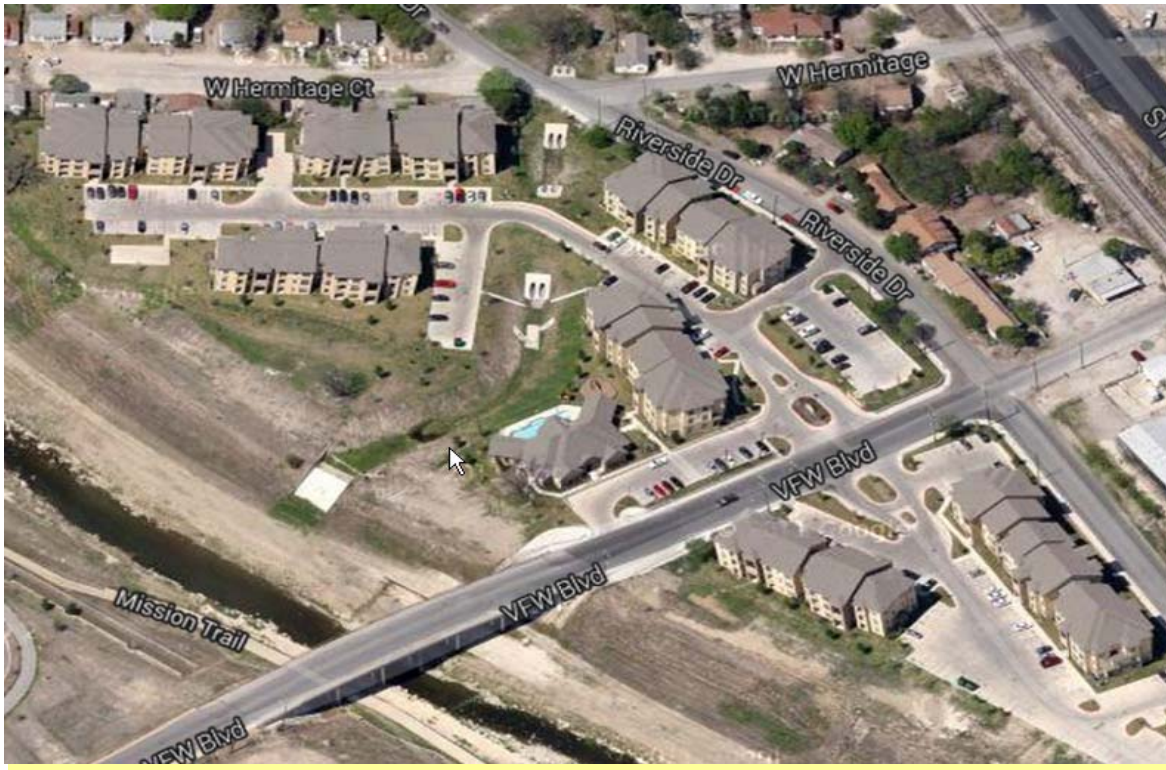
The property is a pooled asset with other multifamily bond transactions and the restructure is part of an overall global restructure of the pool. Funding for the restructure comes from the release of additional equity funding by Centerline and cash collateral held by the equity fund yield guarantor (Natixis). In addition to the principal reduction on some of the other bond deals in the pool, the restructure establishes a \$12M "support" escrow to fund future operating losses on 12 properties (one of which is Mission del Rio). Up to \$30K/month of the escrow is reserved for the subject. An additional \$6K/month is pledged by Centerline providing a total of \$36K/month available to pay operating and debt service shortfalls.

As proposed, the transaction redeems \$1.8M of bonds and re-amortizes the remaining bond principal over a 40 year period (approximately \$456K of principal has already amortized). The annual debt burden on the property will decrease by \$84K.

Although property operations continue to improve, the pro forma continues to show operating losses that will require on-going funding from the support escrow.

DEVELOPMENT SUMMARY

AERIAL



OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (TDHCA's Profoma Post Modification)

NOI + Support:	\$744,137	Avg. Rent:	\$755	Expense Ratio:	58.3%
Debt Service:	\$647,076	B/E Rent:	\$722	Controllable Expenses:	\$3,288
Net Cash Flow:	\$97,061	Occupancy:	92.50%	Property Taxes/Unit:	\$447
Aggregate DCR:	1.15:1	B/E Occupancy:	86.67%	Program Rent Year:	2013

Post-modification, NOI and feasibility indicators above reflect an additional \$105K in annual support funding to achieve 1.15:1 times DCR pursuant to REA rules (up to \$432K/annually pledged). Pro forma NOI of \$638K (without support funding) produces below breakeven rents, occupancy and a .99:1 times DCR. Actual support funding contributed will be in an amount to operate at breakeven.

Underwritten expense load assumes savings of \$65K/yr (\$43K in payroll, and \$22K in various other line items) over 2012 actuals. As shown in the 2013 annualized YTD numbers, these reductions should continue to be achievable based the current high occupancy and rent levels.

Current rent roll shows 96% physical occupancy with rents at or close to maximum program rents. Limited income growth will only come from increases in AMI. Pro forma potential gross rents higher than historical due to recent decline in utility allowances.

Controllable expenses of \$3,288/unit (\$5,000/unit total) due in part to higher than normal G&A, which includes \$25K for advertizing and \$25K for legal expenses associated with property tax litigation.

Property taxes underwritten assuming 50% tax abatement as indicated by the Applicant. Should the exemption not be realized additional cash flow support (\$7K/month) would be necessary.

Flood insurance required as multiple buildings are located within the floodplain.

Property is 3rd-party managed at a market 3.75% fee.

Expenses include comparatively high supportive service costs (\$35K/annually) which could be lowered by using more volunteer services.

Applicant provided two pro forma stress scenarios with vacancy assumptions at 10% and 15%. In each case, the amount of outside funding from the support escrow account remains below the amount set-aside (\$36K/month). Given the current 96% physical occupancy, the REA pro forma uses the standard 7.5%.

TRANSACTION SUMMARY

Issued Original Bond Principal	\$11,490,000
Restructure/Redemption Funds (*)	(\$1,823,091)
Amortization Since Issuance	(\$456,482)
Refunded Balance	\$9,210,427

Underwriter: Toby Williams

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

UNIT MIX/RENT SCHEDULE
Mission Del Rio, San Antonio, 4% Housing Tax Credit #13605

LOCATION DATA	
CITY:	San Antonio
COUNTY:	Bexar
PROGRAM REGION:	9
PIS Date:	On or After 1/18/2013
IREM REGION:	San Antonio

UNIT DISTRIBUTION					
# Beds	# Units	% Total	Income	# Units	% Total
Eff			30%		
1	48	26.7%	40%		
2	73	40.6%	50%		
3	59	32.8%	60%	180	100.0%
4			MR		
TOTAL	180	100.0%	TOTAL	180	100.0%

Applicable Programs
4% Housing Tax Credits
Tax-Exempt Bonds

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjustment	130%
Applicable Fraction	100.00%
APP % Acquisition	
APP % Construction	9.00%
Average Unit Size	975 sf

UNIT MIX / MONTHLY RENT SCHEDULE																			
HTC		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC60%	\$690	0	1	1	820	\$690	\$63	\$627	\$0	\$0.76	\$627	\$0	\$627	\$627		\$0		0.00	
TC60%	\$690	7	1	1	820	\$690	\$64	\$626	\$0	\$0.76	\$626	\$4,382	\$4,382	\$626	\$0.76	\$0		0.00	
TC60%	\$690	5	1	1	820	\$690	\$59	\$631	\$0	\$0.77	\$631	\$3,155	\$3,155	\$631	\$0.77	\$0		0.00	
TC60%	\$690	3	1	1	750	\$690	\$63	\$627	\$0	\$0.84	\$627	\$1,881	\$1,881	\$627	\$0.84	\$0		0.00	
TC60%	\$690	9	1	1	750	\$690	\$64	\$626	\$0	\$0.83	\$626	\$5,634	\$5,634	\$626	\$0.83	\$0		0.00	
TC60%	\$690	24	1	1	750	\$690	\$59	\$631	\$0	\$0.84	\$631	\$15,144	\$15,144	\$631	\$0.84	\$0		0.00	
TC60%	\$828	1	2	2	1,082	\$828	\$83	\$745	\$0	\$0.69	\$745	\$745	\$745	\$745	\$0.69	\$0		0.00	
TC60%	\$828	3	2	2	1,082	\$828	\$84	\$744	\$0	\$0.69	\$744	\$2,232	\$2,232	\$744	\$0.69	\$0		0.00	
TC60%	\$828	3	2	2	1,082	\$828	\$71	\$757	\$0	\$0.70	\$757	\$2,271	\$2,271	\$757	\$0.70	\$0		0.00	
TC60%	\$828	2	2	1	921	\$828	\$83	\$745	\$0	\$0.81	\$745	\$1,490	\$1,490	\$745	\$0.81	\$0		0.00	
TC60%	\$828	8	2	1	921	\$828	\$84	\$744	\$0	\$0.81	\$744	\$5,952	\$5,952	\$744	\$0.81	\$0		0.00	
TC60%	\$828	23	2	1	921	\$828	\$71	\$757	\$0	\$0.82	\$757	\$17,411	\$17,411	\$757	\$0.82	\$0		0.00	
TC60%	\$828	1	2	2	1,042	\$828	\$83	\$745	\$0	\$0.71	\$745	\$745	\$745	\$745	\$0.71	\$0		0.00	
TC60%	\$828	9	2	2	1,042	\$828	\$84	\$744	\$0	\$0.71	\$744	\$6,696	\$6,696	\$744	\$0.71	\$0		0.00	
TC60%	\$828	23	2	2	1,042	\$828	\$71	\$757	\$0	\$0.73	\$757	\$17,411	\$17,411	\$757	\$0.73	\$0		0.00	
TC60%	\$957	3	3	2	1,125	\$957	\$100	\$857	\$0	\$0.76	\$857	\$2,571	\$2,571	\$857	\$0.76	\$0		0.00	
TC60%	\$957	35	3	2	1,125	\$957	\$104	\$853	\$0	\$0.76	\$853	\$29,855	\$29,855	\$853	\$0.76	\$0		0.00	
TC60%	\$957	21	3	2	1,125	\$957	\$84	\$873	\$0	\$0.78	\$873	\$18,333	\$18,333	\$873	\$0.78	\$0		0.00	
TOTALS/AVERAGE		180			175,568				\$0	\$0.77	\$755	\$135,908	\$135,908	\$755	\$0.77	\$0	\$0	\$0.00	(\$755)

ANNUAL POTENTIAL GROSS RENT:	\$1,630,896	\$1,630,896
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STABILIZED PROFORMA

Mission Del Rio, San Antonio, 4% Housing Tax Credit #13605

	APPLICANT					TDHCA	
	Per Unit	Pro Forma at 10% Vacancy	Pro Forma at 15% Vacancy	2013 YTD Annualized	2012 Actuals (Audited)	Amount	Per Unit
POTENTIAL GROSS RENT	\$755	\$1,630,896	\$1,630,896	\$1,545,204	\$1,522,282	\$1,630,896	\$755
Other Income (Application, damages, late fees)	\$12.16	\$26,268	26,268	36,610	26,269	\$26,268	
POTENTIAL GROSS INCOME		\$1,657,164	\$1,657,164	\$1,581,814	\$1,548,551	\$1,657,164	
Vacancy & Collection Loss	10.0% PGI	(165,716)	(248,575)	(135,851)	(114,540)	(124,287)	7.5% PGI
EFFECTIVE GROSS INCOME		\$1,491,448	\$1,408,589	\$1,445,964	\$1,434,011	\$1,532,877	
General & Administrative	\$539	\$97,102	\$97,102	\$113,278	\$141,662	\$97,102	\$539
Management	\$343	\$61,825	\$58,222	\$56,429	\$61,825	\$62,883	\$349
Payroll & Payroll Tax	\$1,075	\$193,503	\$193,503	\$193,006	\$236,503	\$193,503	\$1,075
Repairs & Maintenance	\$777	\$139,847	\$139,847	\$143,453	\$145,847	\$139,847	\$777
Utilities	\$896	\$161,306	\$161,306	\$151,455	\$161,306	\$161,306	\$896
Property Insurance	\$331	\$59,527	\$59,527	\$67,527	\$59,527	\$59,527	\$331
Property Tax	\$447	\$80,496	\$80,496	\$80,496	\$80,496	\$80,496	\$447
Reserve for Replacements	\$200	\$36,000	\$36,000	\$52,088	\$36,000	\$36,000	\$200
Supportive service contract fees	\$192	\$34,560	\$34,560		\$34,560	\$34,560	\$192
TDHCA Bond Administration/Compliance Fees	\$121	\$21,756	\$21,756	\$26,256	\$21,756	\$28,956	\$161
TOTAL EXPENSES	\$4,922	\$ 885,922	\$882,319	\$ 883,988	\$ 979,482	\$ 894,180	\$4,968
NET OPERATING INCOME ("NOI")	\$3,364	\$605,526	\$526,270	\$561,976	\$454,529	\$638,697	\$3,548

Debt Service & Cashflow Analysis

	APPLICANT				TDHCA
	Pro Forma at 10% Vacancy	Pro Forma at 15% Vacancy	2013 YTD Annualized	2012 Actuals (Audited)	Amount
Current Debt Service	\$730,885	\$730,885	\$730,885	\$730,885	\$730,885
Net Cash Flow After Debt Service	(\$125,359)	(\$204,615)	(\$168,909)	(\$276,356)	(\$92,188)
DCR	0.83	0.72	0.77	0.62	0.87
Proposed Debt Service	647,076	647,076	647,076	647,076	647,076
Net Cash Flow After Debt Service	(\$41,550)	(\$120,806)	(\$85,100)	(\$192,547)	(\$8,379)
DCR	0.94	0.81	0.87	0.70	0.99
Pledged Cash Support	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000
Annual Funding Required for Breakeven (1:1 DCR)	\$41,550	\$120,806	\$85,100	\$192,547	\$8,379
Monthly	\$3,463	\$10,067	\$7,092	\$16,046	\$698
Available/Unused Cash Support	\$32,537	\$25,933	\$28,908	\$19,954	\$35,302
Annual Funding Required for 1.15:1 DCR	\$138,612	\$217,867	\$182,162	\$289,608	\$105,441
Monthly	\$11,551	\$18,156	\$15,180	\$24,134	\$8,787
Available/Unused Cash Support	\$24,449	\$17,844	\$20,820	\$11,866	\$27,213

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Multifamily Housing Mortgage Revenue Bonds
(Mission Del Rio Homes)
Restructuring of Series 2005 Bonds

September 2013

Introduction

Texas Department of Housing and Community Affairs (“TDHCA”) received an application from Chicory Court II, LP (the “Applicant”) to approve a restructuring of Multifamily Housing Mortgage Revenue Bonds (Mission Del Rio Homes) Series 2005. The bonds were originally issued on February 4, 2005 for \$11,490,000, tax-exempt.

Borrower / Owner

The Borrower is Chicory Court II, LP, a Texas limited partnership organized under the laws of the State of Texas on August 20, 2004. The General Partner is HCS Mission Del Rio GP, LLC. RCC Credit Enhanced SLP LLC and Centerline Credit Enhanced Partners LP are Special Limited Partners.

Description of the Property



Description of the Property (con't)

Per the application:

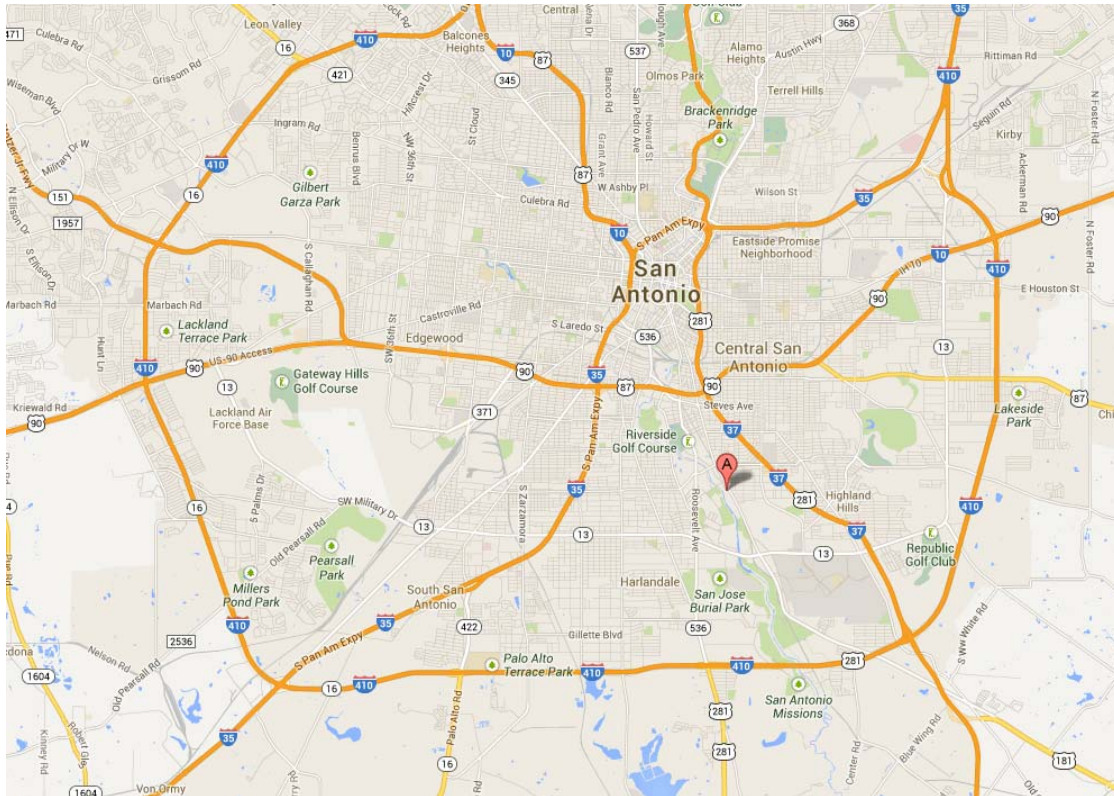
- Mission Del Rio was originally designated to be a 240 unit multifamily project designated for low income housing tenants.
- The project was placed in service in 2008 with only 180 units completed. A reduction in the size of the site configuration were a result of:
 - a. Unanticipated delays in the project completion; and
 - b. Modifications to site plans, new requirements from the city of San Antonio involving street and drainage improvements.
- The delays caused increased carry costs, which are most apparent in increases to general conditions and depletion of the construction interest carry account.
- Due to the overall cost increases and the required additional improvements by the city of San Antonio, no additional equity funds remained after completing the existing 180 units.
- Concurrently, economic conditions in 2009 made it impossible to raise additional equity.
- Further, the San Antonio River Authority had initiated land condemnation for a portion of land in which Mission Del Rio is located (for the San Antonio River Improvements Project).
- This tract of land is where the 60 units would have been located.
- A small portion was taken by the city of San Antonio for right-of-way improvements. The land takings are 0.052 acres at the intersection of the river channel and VFW Boulevard and a 2.096 acre tract constituting the entirety of the southern end of the original site.
- Centerline elected not to challenge the taking as in the long term, additional park and green space and access to the River Walk will be a benefit to the project. As a result, the number of residential buildings has decreased from nine to seven. The number of units has decreased from 240 to 180 with the elimination of 12 one-bedroom units, 27 two-bedroom units and 21 three-bedroom units.
- The net rentable area (NRA) decreased by 50,727 square feet, from 226,295 to 175,568 square feet.
- The number of parking spaces in the development decreased from the 424 proposed to 270.

Num Of Units	Num Of Bedrooms	Num Of Baths	Unit Size (Net Rentable Sq. Ft.)	Total net Rentable Sq. Ft.	Monthly Rent	Monthly Rent Total
(A)			(B)	(A) x (B)	(C)	(A) x (C)
12	1	1	820	9,840	\$588	\$9,840
36	1	1	750	27,000	\$588	\$27,000
7	2	2	1082	7,574	\$705	\$7,574
33	2	1	921	30,393	\$702	\$30,393
33	2	2	1042	34,386	\$722	\$34,386
59	3	2	1125	66,375	\$824	\$66,375
180			975	175,568	\$975	\$175,568
Total			Average	Total	Average	Total



Location of Property:

The Mission Del Rio Homes is located at 731 Riverside, San Antonio, Bexar County.



Reason For the Restructuring:

The Applicant states:

- The reason for the proposed restructuring of the aforementioned bonds is that the property has yet to be deemed Stabilized as a result of historical below break-even operations.
- Stabilization (per the Loan Agreement) is defined as three (3) months of operations at a 1.15x DSCR and 90% physical occupancy.
- The deal was originally structured with \$11,490,000 in tax-exempt bonds, with \$540,000 funded as Earnout bonds.
- The property had 24 months from Completion to Stabilization and failed to do so as a result of construction overruns and lease-up delays.
- In December 2008, Agape Reserve Partners (Agape) assumed the GP interest from the original GP, Odyssey Residential Holdings.
- In December 2011, Housing and Community Services assumed the GP interest from Agape Reserve Partners.
- As of 1Q 2013, Centerline Credit Enhanced Partners LP – Series B had advanced over \$4.2 million to the property to fund operating deficits.

Benefits to the Development:

From information provided by the Applicant:

- The projected restructuring would reduce the interest paid on the bonds from 11/01/2013 to 02/01/2038 by approximately **\$1.6 million** (\$3.0 million through the original 02/01/2045 final maturity).
- Based on a \$2,035,091 pay-down (to include the \$212k in condemnation proceeds from SARA) on November 1, 2013, annual debt service would be reduced from approximately **\$807,227** to **\$632,183** or approximately **\$175,044** (22.0%).
- This will reduce the property's operating deficit to a more manageable level and hopefully reduce future recapture risk.
- The restructuring will alleviate Centerline's obligation to continuously fund such large deficits as well as reduce Natixis' liability as guarantor of the yield on the fund for which the property is part of.
- Any future debt service shortfalls will be funded by Natixis in accordance to the Supplemental Indenture, in an amount capped at \$36,000 per month, which results in an annual potential funding of \$432,000.
- If the asset went into foreclosure and the fund yield decreased, Natixis would be responsible to compensate the Investor for the loss.
- Historically, it has been less expensive to advance funds to the property than to allow a property to foreclose.
- The restructuring would also reduce exposure and default risk to Freddie Mac as lender.
- The source of funds for the buy-down will be a combination of unfunded equity and stabilization escrows.

Financing Structure:

Mission Del Rio Homes	
SOURCES:	
Centerline Entity Contribution	\$1,823,091
Condemnation Proceeds	212,000
Revised UPB on Tax Exempt Bonds (11/01/2013)	8,970,391
Centerline Entity Contribution	125,024
Total Sources	\$11,130,506
USES:	
UPB on Tax Exempt Bonds (10/01/2013)	\$11,005,482
TDCHA - Application Fee	5,000
TDCHA - Reissuance Fee	55,024
Professional Fees	65,000
Total Uses	\$11,130,506

Summary of the financing structure:

- The Series 2005 bond issuance totaled \$11,490,000.
- The application for restructuring is based on a \$2,035,091 reduction of the bond balance on or about November 1, 2013.
- The interest rate on the bonds will remain the same at 6.50%. However, the amortization period on the bonds will be reset to 480 months beginning with the November 1, 2013 payment.
- The principal on the bonds will be reduced by an aggregate amount of \$2,035,091.
- The maturity date will be accelerated to February 1, 2038 to keep the “average maturity date” (commonly referred to as average life or weighted average maturity {WAM}) from being extended.

Average Maturity Date:

Section 147(f)(2)(D) of the Internal Revenue Code states:

“(D) Refunding bonds

*No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) **unless the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue.** For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A).”*

We have attached a spreadsheet titled “Mission Del Rio Homes” which calculates the average maturity date on the Series 2005, before and after the proposed restructuring. For our analysis we use the term “Average Life” which is the municipal bond equivalent to the IRS Code’s “Average Maturity Date”. Our analysis shows that:

- **The Average Maturity Date of the Series 2005 Bonds:**
 - **before** the proposed restructuring is **29.701 years**.
- **The Average Life of the Series 2005 Bonds from the first principal receipt date of 12/01/2013 to final maturity date of 2/1/2038:**
 - **before** the proposed restructuring is **22.076 years**.
 - **After** the proposed restructuring is **21.348 years**.

Based on the information provided by the Applicant, the proposed restructuring meets the average maturity date requirements of the IRS Code, Section 147(f)(2)(D).

Other Considerations:

- The maturity date is accelerated to 02/01/2038 (originally 02/01/2045).
- At this date the outstanding balance due will be approximately \$6.1 million.
- We asked the Applicant what the plan is to take out the \$6.1 million balance on 02/01/2038. Their response is that in 2022 the 15 year compliance period for the project will be over and at or about that time, the project would most likely be sold or refinanced. They also stated that projections based on NOI and operating performance allow the full balloon payment to be made with sales proceeds based on the value of the real estate at an 8% cap rate.
- A shortfall will still exist in the near term despite the \$2.0 million pay-down, however Natixis and Centerline will provide up to \$36,000 a month to cover any shortfalls.

CASHFLOW AND RESIDUAL ANALYSIS - PROVIDED BY THE APPLICANT			
<u>Mission Del Rio</u>			
Income Growth Rate:	3.0%		
Expense Growth Rate:	3.0%		
Final Year of Analysis:	25		
	Year 1 (Annualized) 2014	Year 9 (Break Even) 2022	Year 25 (Final) 2038
GROSS RENTAL & OTHER INCOME	\$ 1,567,950	\$ 1,986,233	\$ 3,187,320
VACANCY	\$ (148,044)	\$ (187,538)	\$ (300,943)
EFFECTIVE GROSS INCOME	\$ 1,419,907	\$ 1,798,695	\$ 2,886,378
NET OTHER INCOME	\$ 17,735	\$ 34,710	\$ 55,699
	\$ 1,437,641	\$ 1,833,405	\$ 2,942,076
TOTAL EXPENSES & REPLACEMENT RESERVES	\$ 924,737	\$ 1,171,429	\$ 1,879,800
NET OPERATING INCOME	\$ 512,904	\$ 661,975	\$ 1,062,276
ANNUAL DEBT SERVICE	\$ 632,183	\$ 632,183	\$ 632,183
EXCESS/(SHORTAGE)	\$ (119,279)	\$ 29,793	\$ 430,093
DEBT SERVICE COVERAGE RATIO	81.1%	104.7%	168.0%
VALUE OF REAL ESTATE - CAP. METHOD @ 8.00%	\$ 6,411,301	\$ 8,274,692	\$ 13,278,452
OUTSTANDING BALANCE - Centerline / Freddie Mac Bond Debt	\$ 8,871,530	\$ 8,135,110	\$ 6,023,905
EXCESS VALUE	\$ (2,460,229)	\$ 139,582	\$ 7,254,547
EXCESS VALUE RATIO (times)	0.72	1.02	2.20

Mission Del Rio Homes 3-Year Occupancy

Total Units are 180			
Date Reported	Occupied Units	Vacant Units	% Occupied
01/01/2010	170	10	94.4%
02/01/2010	168	12	93.3%
03/01/2010	166	14	92.2%
04/01/2010	172	8	95.6%
05/01/2010	161	19	89.4%
06/01/2010	160	20	88.9%
07/01/2010	164	16	91.1%
08/01/2010	160	20	88.9%
09/01/2010	163	17	90.6%
10/01/2010	165	15	91.7%
11/30/2010	169	11	93.9%
12/31/2010	163	17	90.6%
Average	165	15	91.7%

Total Units are 180			
Date Reported	Occupied Units	Vacant Units	% Occupied
01/31/2012	172	8	95.6%
02/29/2012	169	11	93.9%
03/31/2012	169	11	93.9%
04/30/2012	170	10	94.4%
05/31/2012	170	10	94.4%
06/30/2012	166	14	92.2%
07/31/2012	166	14	92.2%
08/31/2012	168	12	93.3%
09/30/2012	171	9	95.0%
10/31/2012	170	10	94.4%
11/30/2012	171	9	95.0%
12/31/2012	173	7	96.1%
Average	170	10	94.2%

01/31/2011	169	11	93.9%
02/28/2011	175	5	97.2%
03/31/2011	173	7	96.1%
04/30/2011	172	8	95.6%
05/31/2011	176	4	97.8%
06/30/2011	176	4	97.8%
07/31/2011	178	2	98.9%
08/31/2011	172	8	95.6%
09/30/2011	177	3	98.3%
10/31/2011	165	15	91.7%
11/30/2011	168	12	93.3%
12/31/2011	171	9	95.0%
Average	173	7	95.9%

01/31/2013	161	19	89.4%
02/28/2013	171	9	95.0%
03/31/2013	167	13	92.8%
04/30/2013	173	7	96.1%
05/31/2013	168	12	93.3%
Average	168	12	93.3%

Recommendation:

Based on the information we received from the Applicant and taking into consideration the assumptions that:

- The Project cannot currently meet debt service requirements without cash infusions.
- The proposed restructuring will reduce the outstanding bond balance by \$2,035,091.
- The proposed restructuring will reduce interest cost from 11/01/2013 to 02/01/2038 by approximately \$1.6 million (\$3.0 million through the original 02/01/2045 final maturity).
- The new structure will reduce annual debt service starting on 5/01/2013 by approximately \$175,044.
- The remaining cashflow shortfalls will be funded by Natixis and Centerline.
- The Applicant intends to sell or refinance the project in 2022 (end of the 15 year compliance period) which is 16 years prior to the maturity date of 02/01/2038 (per our discussions with Centerline). At maturity the Project's property value is estimated to be \$13.2 million and the outstanding balance is projected to be \$6.0 million (2.20x).
- Natixis will provide up to \$36,000 a month (12 x \$36,000 = \$432,000 annually) to cover any shortfalls.
- TDHCA is not increasing its exposure to risk.
- Bond Counsel will provide all necessary legal reviews and opinions

We recommend that TDHCA approve the transaction to restructure Multifamily Housing Mortgage Revenue Bonds (Mission Del Rio Homes) Series 2005.



Please note that we have relied upon the information provided to us and TDHCA by the Applicant as the basis for our review. Users of this report should recognize that cashflow projections are based upon hypothetical assumptions, the reasonableness of which we have not examined, with respect to revenues and expenses. This report makes no attestation to the ability of the indenture to meet its financial obligations to bond holders.

Original Amortization Schedule

Mission Del Rio Homes

Proposed Amortization Schedule

Original Amortization Schedule							Proposed Amortization Schedule						
Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
	02/04/2005					11,490,000.00		02/04/2005					11,490,000.00
1	03/01/2007	1,555,937.50	5,031.00	1,560,968.50		11,484,969.00	1	03/01/2007	1,555,937.50	5,031.00	1,560,968.50		11,484,969.00
2	04/01/2007	62,210.25	5,059.00	67,269.25		11,479,910.00	2	04/01/2007	62,210.25	5,059.00	67,269.25		11,479,910.00
3	05/01/2007	62,182.85	5,086.00	67,268.85		11,474,824.00	3	05/01/2007	62,182.85	5,086.00	67,268.85		11,474,824.00
4	06/01/2007	62,155.30	5,114.00	67,269.30		11,469,710.00	4	06/01/2007	62,155.30	5,114.00	67,269.30		11,469,710.00
5	07/01/2007	62,127.60	5,141.00	67,268.60		11,464,569.00	5	07/01/2007	62,127.60	5,141.00	67,268.60		11,464,569.00
6	08/01/2007	62,099.75	5,169.00	67,268.75		11,459,400.00	6	08/01/2007	62,099.75	5,169.00	67,268.75	1,897,313.25	11,459,400.00
7	09/01/2007	62,071.75	5,197.00	67,268.75		11,454,203.00	7	09/01/2007	62,071.75	5,197.00	67,268.75		11,454,203.00
8	10/01/2007	62,043.60	5,225.00	67,268.60		11,448,978.00	8	10/01/2007	62,043.60	5,225.00	67,268.60		11,448,978.00
9	11/01/2007	62,015.30	5,254.00	67,269.30		11,443,724.00	9	11/01/2007	62,015.30	5,254.00	67,269.30		11,443,724.00
10	12/01/2007	61,986.84	5,282.00	67,268.84		11,438,442.00	10	12/01/2007	61,986.84	5,282.00	67,268.84		11,438,442.00
11	01/01/2008	61,958.23	5,311.00	67,269.23		11,433,131.00	11	01/01/2008	61,958.23	5,311.00	67,269.23		11,433,131.00
12	02/01/2008	61,929.46	5,340.00	67,269.46		11,427,791.00	12	02/01/2008	61,929.46	5,340.00	67,269.46		11,427,791.00
13	03/01/2008	61,900.53	5,368.00	67,268.53		11,422,423.00	13	03/01/2008	61,900.53	5,368.00	67,268.53		11,422,423.00
14	04/01/2008	61,871.46	5,398.00	67,269.46		11,417,025.00	14	04/01/2008	61,871.46	5,398.00	67,269.46		11,417,025.00
15	05/01/2008	61,842.22	5,427.00	67,269.22		11,411,598.00	15	05/01/2008	61,842.22	5,427.00	67,269.22		11,411,598.00
16	06/01/2008	61,812.82	5,456.00	67,268.82		11,406,142.00	16	06/01/2008	61,812.82	5,456.00	67,268.82		11,406,142.00
17	07/01/2008	61,783.27	5,486.00	67,269.27		11,400,656.00	17	07/01/2008	61,783.27	5,486.00	67,269.27		11,400,656.00
18	08/01/2008	61,753.55	5,515.00	67,268.55	807,228.03	11,395,141.00	18	08/01/2008	61,753.55	5,515.00	67,268.55	807,228.03	11,395,141.00
19	09/01/2008	61,723.68	5,545.00	67,268.68		11,389,596.00	19	09/01/2008	61,723.68	5,545.00	67,268.68		11,389,596.00
20	10/01/2008	61,693.65	5,575.00	67,268.65		11,384,021.00	20	10/01/2008	61,693.65	5,575.00	67,268.65		11,384,021.00
21	11/01/2008	61,663.45	5,606.00	67,269.45		11,378,415.00	21	11/01/2008	61,663.45	5,606.00	67,269.45		11,378,415.00
22	12/01/2008	61,633.08	5,636.00	67,269.08		11,372,779.00	22	12/01/2008	61,633.08	5,636.00	67,269.08		11,372,779.00
23	01/01/2009	61,602.55	5,666.00	67,268.55		11,367,113.00	23	01/01/2009	61,602.55	5,666.00	67,268.55		11,367,113.00
24	02/01/2009	61,571.86	5,697.00	67,268.86		11,361,416.00	24	02/01/2009	61,571.86	5,697.00	67,268.86		11,361,416.00
25	03/01/2009	61,541.00	5,728.00	67,269.00		11,355,688.00	25	03/01/2009	61,541.00	5,728.00	67,269.00		11,355,688.00
26	04/01/2009	61,509.98	5,759.00	67,268.98		11,349,929.00	26	04/01/2009	61,509.98	5,759.00	67,268.98		11,349,929.00
27	05/01/2009	61,478.78	5,790.00	67,268.78		11,344,139.00	27	05/01/2009	61,478.78	5,790.00	67,268.78		11,344,139.00
28	06/01/2009	61,447.42	5,822.00	67,269.42		11,338,317.00	28	06/01/2009	61,447.42	5,822.00	67,269.42		11,338,317.00
29	07/01/2009	61,415.88	5,853.00	67,268.88		11,332,464.00	29	07/01/2009	61,415.88	5,853.00	67,268.88		11,332,464.00
30	08/01/2009	61,384.18	5,885.00	67,269.18	807,227.51	11,326,579.00	30	08/01/2009	61,384.18	5,885.00	67,269.18	807,227.51	11,326,579.00
31	09/01/2009	61,352.30	5,917.00	67,269.30		11,320,662.00	31	09/01/2009	61,352.30	5,917.00	67,269.30		11,320,662.00
32	10/01/2009	61,320.25	5,949.00	67,269.25		11,314,713.00	32	10/01/2009	61,320.25	5,949.00	67,269.25		11,314,713.00
33	11/01/2009	61,288.03	5,981.00	67,269.03		11,308,732.00	33	11/01/2009	61,288.03	5,981.00	67,269.03		11,308,732.00
34	12/01/2009	61,255.63	6,013.00	67,268.63		11,302,719.00	34	12/01/2009	61,255.63	6,013.00	67,268.63		11,302,719.00
35	01/01/2010	61,223.06	6,046.00	67,269.06		11,296,673.00	35	01/01/2010	61,223.06	6,046.00	67,269.06		11,296,673.00
36	02/01/2010	61,190.31	6,079.00	67,269.31		11,290,594.00	36	02/01/2010	61,190.31	6,079.00	67,269.31		11,290,594.00
37	03/01/2010	61,157.38	6,112.00	67,269.38		11,284,482.00	37	03/01/2010	61,157.38	6,112.00	67,269.38		11,284,482.00
38	04/01/2010	61,124.28	6,145.00	67,269.28		11,278,337.00	38	04/01/2010	61,124.28	6,145.00	67,269.28		11,278,337.00
39	05/01/2010	61,090.99	6,178.00	67,268.99		11,272,159.00	39	05/01/2010	61,090.99	6,178.00	67,268.99		11,272,159.00
40	06/01/2010	61,057.53	6,211.00	67,268.53		11,265,948.00	40	06/01/2010	61,057.53	6,211.00	67,268.53		11,265,948.00
41	07/01/2010	61,023.89	6,245.00	67,268.89		11,259,703.00	41	07/01/2010	61,023.89	6,245.00	67,268.89		11,259,703.00
42	08/01/2010	60,990.06	6,279.00	67,269.06	807,228.71	11,253,424.00	42	08/01/2010	60,990.06	6,279.00	67,269.06	807,228.71	11,253,424.00
43	09/01/2010	60,956.05	6,313.00	67,269.05		11,247,111.00	43	09/01/2010	60,956.05	6,313.00	67,269.05		11,247,111.00
44	10/01/2010	60,921.85	6,347.00	67,268.85		11,240,764.00	44	10/01/2010	60,921.85	6,347.00	67,268.85		11,240,764.00
45	11/01/2010	60,887.47	6,382.00	67,269.47		11,234,382.00	45	11/01/2010	60,887.47	6,382.00	67,269.47		11,234,382.00
46	12/01/2010	60,852.90	6,416.00	67,268.90		11,227,966.00	46	12/01/2010	60,852.90	6,416.00	67,268.90		11,227,966.00
47	01/01/2011	60,818.15	6,451.00	67,269.15		11,221,515.00	47	01/01/2011	60,818.15	6,451.00	67,269.15		11,221,515.00

Original Amortization Schedule

Mission Del Rio Homes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
48	02/01/2011	60,783.21	6,486.00		67,269.21		11,215,029.00	48	02/01/2011	60,783.21	6,486.00		67,269.21		11,215,029.00
49	03/01/2011	60,748.07	6,521.00		67,269.07		11,208,508.00	49	03/01/2011	60,748.07	6,521.00		67,269.07		11,208,508.00
50	04/01/2011	60,712.75	6,556.00		67,268.75		11,201,952.00	50	04/01/2011	60,712.75	6,556.00		67,268.75		11,201,952.00
51	05/01/2011	60,677.24	6,592.00		67,269.24		11,195,360.00	51	05/01/2011	60,677.24	6,592.00		67,269.24		11,195,360.00
52	06/01/2011	60,641.53	6,627.00		67,268.53		11,188,733.00	52	06/01/2011	60,641.53	6,627.00		67,268.53		11,188,733.00
53	07/01/2011	60,605.64	6,663.00		67,268.64		11,182,070.00	53	07/01/2011	60,605.64	6,663.00		67,268.64		11,182,070.00
54	08/01/2011	60,569.55	6,699.00		67,268.55	807,227.41	11,175,371.00	54	08/01/2011	60,569.55	6,699.00		67,268.55	807,227.41	11,175,371.00
55	09/01/2011	60,533.26	6,736.00		67,269.26		11,168,635.00	55	09/01/2011	60,533.26	6,736.00		67,269.26		11,168,635.00
56	10/01/2011	60,496.77	6,772.00		67,268.77		11,161,863.00	56	10/01/2011	60,496.77	6,772.00		67,268.77		11,161,863.00
57	11/01/2011	60,460.09	6,809.00		67,269.09		11,155,054.00	57	11/01/2011	60,460.09	6,809.00		67,269.09		11,155,054.00
58	12/01/2011	60,423.21	6,846.00		67,269.21		11,148,208.00	58	12/01/2011	60,423.21	6,846.00		67,269.21		11,148,208.00
59	01/01/2012	60,386.13	6,883.00		67,269.13		11,141,325.00	59	01/01/2012	60,386.13	6,883.00		67,269.13		11,141,325.00
60	02/01/2012	60,348.84	6,920.00		67,268.84		11,134,405.00	60	02/01/2012	60,348.84	6,920.00		67,268.84		11,134,405.00
61	03/01/2012	60,311.36	6,958.00		67,269.36		11,127,447.00	61	03/01/2012	60,311.36	6,958.00		67,269.36		11,127,447.00
62	04/01/2012	60,273.67	6,995.00		67,268.67		11,120,452.00	62	04/01/2012	60,273.67	6,995.00		67,268.67		11,120,452.00
63	05/01/2012	60,235.78	7,033.00		67,268.78		11,113,419.00	63	05/01/2012	60,235.78	7,033.00		67,268.78		11,113,419.00
64	06/01/2012	60,197.69	7,071.00		67,268.69		11,106,348.00	64	06/01/2012	60,197.69	7,071.00		67,268.69		11,106,348.00
65	07/01/2012	60,159.39	7,110.00		67,269.39		11,099,238.00	65	07/01/2012	60,159.39	7,110.00		67,269.39		11,099,238.00
66	08/01/2012	60,120.87	7,148.00		67,268.87	807,228.06	11,092,090.00	66	08/01/2012	60,120.87	7,148.00		67,268.87	807,228.06	11,092,090.00
67	09/01/2012	60,082.15	7,187.00		67,269.15		11,084,903.00	67	09/01/2012	60,082.15	7,187.00		67,269.15		11,084,903.00
68	10/01/2012	60,043.22	7,226.00		67,269.22		11,077,677.00	68	10/01/2012	60,043.22	7,226.00		67,269.22		11,077,677.00
69	11/01/2012	60,004.08	7,265.00		67,269.08		11,070,412.00	69	11/01/2012	60,004.08	7,265.00		67,269.08		11,070,412.00
70	12/01/2012	59,964.73	7,304.00		67,268.73		11,063,108.00	70	12/01/2012	59,964.73	7,304.00		67,268.73		11,063,108.00
71	01/01/2013	59,925.17	7,344.00		67,269.17		11,055,764.00	71	01/01/2013	59,925.17	7,344.00		67,269.17		11,055,764.00
72	02/01/2013	59,885.39	7,384.00		67,269.39		11,048,380.00	72	02/01/2013	59,885.39	7,384.00		67,269.39		11,048,380.00
73	03/01/2013	59,845.39	7,424.00		67,269.39		11,040,956.00	73	03/01/2013	59,845.39	7,424.00		67,269.39		11,040,956.00
74	04/01/2013	59,805.18	7,464.00		67,269.18		11,033,492.00	74	04/01/2013	59,805.18	7,464.00		67,269.18		11,033,492.00
75	05/01/2013	59,764.75	7,504.00		67,268.75		11,025,988.00	75	05/01/2013	59,764.75	0.00		52,681.90		11,033,492.00
76	06/01/2013	59,724.10	7,545.00		67,269.10		11,018,443.00	76	06/01/2013	59,724.10	0.00		52,681.90		11,033,492.00
77	07/01/2013	59,683.23	7,586.00		67,269.23		11,010,857.00	77	07/01/2013	59,724.10	0.00		52,681.90		11,033,492.00
78	08/01/2013	59,642.14	7,627.00		67,269.14	807,229.53	11,003,230.00	78	08/01/2013	59,764.75	0.00		52,681.90	748,880.91	11,033,492.00
79	09/01/2013	59,600.83	7,668.00		67,268.83		10,995,562.00	79	09/01/2013	59,764.75	0.00		52,681.90		11,033,492.00
80	10/01/2013	59,559.29	7,710.00		67,269.29		10,987,852.00	80	10/01/2013	59,764.75	0.00		52,681.90		11,033,492.00
81	11/01/2013	59,517.53	7,751.00		67,268.53		10,980,101.00	81	11/01/2013	59,764.75	28,008.94	2,035,091.00	52,681.90		8,970,392.06
82	12/01/2013	59,475.55	7,793.00		67,268.55		10,972,308.00	82	12/01/2013	48,589.62	4,092.28		52,681.90		8,966,299.78
83	01/01/2014	59,433.34	7,836.00		67,269.34		10,964,472.00	83	01/01/2014	48,567.46	4,114.44		52,681.90		8,962,185.34
84	02/01/2014	59,390.89	7,878.00		67,268.89		10,956,594.00	84	02/01/2014	48,545.17	4,136.73		52,681.90		8,958,048.61
85	03/01/2014	59,348.22	7,921.00		67,269.22		10,948,673.00	85	03/01/2014	48,522.76	4,159.14		52,681.90		8,953,889.47
86	04/01/2014	59,305.31	7,964.00		67,269.31		10,940,709.00	86	04/01/2014	48,500.23	4,181.67		52,681.90		8,949,707.80
87	05/01/2014	59,262.17	8,007.00		67,269.17		10,932,702.00	87	05/01/2014	48,477.58	4,204.32		52,681.90		8,945,503.48
88	06/01/2014	59,218.80	8,050.00		67,268.80		10,924,652.00	88	06/01/2014	48,454.81	4,227.09		52,681.90		8,941,276.39
89	07/01/2014	59,175.20	8,094.00		67,269.20		10,916,558.00	89	07/01/2014	48,431.91	4,249.99		52,681.90		8,937,026.40
90	08/01/2014	59,131.36	8,138.00		67,269.36	807,228.49	10,908,420.00	90	08/01/2014	48,408.89	4,273.01		52,681.90	632,182.80	8,932,753.39
91	09/01/2014	59,087.28	8,182.00		67,269.28		10,900,238.00	91	09/01/2014	48,385.75	4,296.15		52,681.90		8,928,457.24
92	10/01/2014	59,042.96	8,226.00		67,268.96		10,892,012.00	92	10/01/2014	48,362.48	4,319.42		52,681.90		8,924,137.82
93	11/01/2014	58,998.40	8,271.00		67,269.40		10,883,741.00	93	11/01/2014	48,339.08	4,342.82		52,681.90		8,919,795.00
94	12/01/2014	58,953.60	8,315.00		67,268.60		10,875,426.00	94	12/01/2014	48,315.56	4,366.34		52,681.90		8,915,428.66
95	01/01/2015	58,908.56	8,360.00		67,268.56		10,867,066.00	95	01/01/2015	48,291.91	4,389.99		52,681.90		8,911,038.67

Original Amortization Schedule

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	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
96	02/01/2015	58,863.27	8,406.00		67,269.27		10,858,660.00	96	02/01/2015	48,268.13	4,413.77		52,681.90		8,906,624.90
97	03/01/2015	58,817.74	8,451.00		67,268.74		10,850,209.00	97	03/01/2015	48,244.22	4,437.68		52,681.90		8,902,187.22
98	04/01/2015	58,771.97	8,497.00		67,268.97		10,841,712.00	98	04/01/2015	48,220.18	4,461.72		52,681.90		8,897,725.50
99	05/01/2015	58,725.94	8,543.00		67,268.94		10,833,169.00	99	05/01/2015	48,196.01	4,485.89		52,681.90		8,893,239.61
100	06/01/2015	58,679.67	8,589.00		67,268.67		10,824,580.00	100	06/01/2015	48,171.71	4,510.19		52,681.90		8,888,729.42
101	07/01/2015	58,633.14	8,636.00		67,269.14		10,815,944.00	101	07/01/2015	48,147.28	4,534.62		52,681.90		8,884,194.80
102	08/01/2015	58,586.36	8,683.00		67,269.36	807,227.89	10,807,261.00	102	08/01/2015	48,122.72	4,559.18		52,681.90	632,182.80	8,879,635.62
103	09/01/2015	58,539.33	8,730.00		67,269.33		10,798,531.00	103	09/01/2015	48,098.03	4,583.87		52,681.90		8,875,051.75
104	10/01/2015	58,492.04	8,777.00		67,269.04		10,789,754.00	104	10/01/2015	48,073.20	4,608.70		52,681.90		8,870,443.05
105	11/01/2015	58,444.50	8,824.00		67,268.50		10,780,930.00	105	11/01/2015	48,048.23	4,633.67		52,681.90		8,865,809.38
106	12/01/2015	58,396.70	8,872.00		67,268.70		10,772,058.00	106	12/01/2015	48,023.13	4,658.77		52,681.90		8,861,150.61
107	01/01/2016	58,348.65	8,920.00		67,268.65		10,763,138.00	107	01/01/2016	47,997.90	4,684.00		52,681.90		8,856,466.61
108	02/01/2016	58,300.33	8,969.00		67,269.33		10,754,169.00	108	02/01/2016	47,972.53	4,709.37		52,681.90		8,851,757.24
109	03/01/2016	58,251.75	9,017.00		67,268.75		10,745,152.00	109	03/01/2016	47,947.02	4,734.88		52,681.90		8,847,022.36
110	04/01/2016	58,202.91	9,066.00		67,268.91		10,736,086.00	110	04/01/2016	47,921.37	4,760.53		52,681.90		8,842,261.83
111	05/01/2016	58,153.80	9,115.00		67,268.80		10,726,971.00	111	05/01/2016	47,895.58	4,786.32		52,681.90		8,837,475.51
112	06/01/2016	58,104.43	9,165.00		67,269.43		10,717,806.00	112	06/01/2016	47,869.66	4,812.24		52,681.90		8,832,663.27
113	07/01/2016	58,054.78	9,214.00		67,268.78		10,708,592.00	113	07/01/2016	47,843.59	4,838.31		52,681.90		8,827,824.96
114	08/01/2016	58,004.87	9,264.00		67,268.87	807,227.09	10,699,328.00	114	08/01/2016	47,817.39	4,864.51		52,681.90	632,182.80	8,822,960.45
115	09/01/2016	57,954.69	9,314.00		67,268.69		10,690,014.00	115	09/01/2016	47,791.04	4,890.86		52,681.90		8,818,069.59
116	10/01/2016	57,904.24	9,365.00		67,269.24		10,680,649.00	116	10/01/2016	47,764.54	4,917.36		52,681.90		8,813,152.23
117	11/01/2016	57,853.52	9,415.00		67,268.52		10,671,234.00	117	11/01/2016	47,737.91	4,943.99		52,681.90		8,808,208.24
118	12/01/2016	57,802.52	9,466.00		67,268.52		10,661,768.00	118	12/01/2016	47,711.13	4,970.77		52,681.90		8,803,237.47
119	01/01/2017	57,751.24	9,518.00		67,269.24		10,652,250.00	119	01/01/2017	47,684.20	4,997.70		52,681.90		8,798,239.77
120	02/01/2017	57,699.69	9,569.00		67,268.69		10,642,681.00	120	02/01/2017	47,657.13	5,024.77		52,681.90		8,793,215.00
121	03/01/2017	57,647.86	9,621.00		67,268.86		10,633,060.00	121	03/01/2017	47,629.91	5,051.99		52,681.90		8,788,163.01
122	04/01/2017	57,595.74	9,673.00		67,268.74		10,623,387.00	122	04/01/2017	47,602.55	5,079.35		52,681.90		8,783,083.66
123	05/01/2017	57,543.35	9,726.00		67,269.35		10,613,661.00	123	05/01/2017	47,575.04	5,106.86		52,681.90		8,777,976.80
124	06/01/2017	57,490.66	9,778.00		67,268.66		10,603,883.00	124	06/01/2017	47,547.37	5,134.53		52,681.90		8,772,842.27
125	07/01/2017	57,437.70	9,831.00		67,268.70		10,594,052.00	125	07/01/2017	47,519.56	5,162.34		52,681.90		8,767,679.93
126	08/01/2017	57,384.45	9,885.00		67,269.45	807,226.66	10,584,167.00	126	08/01/2017	47,491.60	5,190.30		52,681.90	632,182.80	8,762,489.63
127	09/01/2017	57,330.90	9,938.00		67,268.90		10,574,229.00	127	09/01/2017	47,463.49	5,218.41		52,681.90		8,757,271.22
128	10/01/2017	57,277.07	9,992.00		67,269.07		10,564,237.00	128	10/01/2017	47,435.22	5,246.68		52,681.90		8,752,024.54
129	11/01/2017	57,222.95	10,046.00		67,268.95		10,554,191.00	129	11/01/2017	47,406.80	5,275.10		52,681.90		8,746,749.44
130	12/01/2017	57,168.53	10,100.00		67,268.53		10,544,091.00	130	12/01/2017	47,378.23	5,303.67		52,681.90		8,741,445.77
131	01/01/2018	57,113.83	10,155.00		67,268.83		10,533,936.00	131	01/01/2018	47,349.50	5,332.40		52,681.90		8,736,113.37
132	02/01/2018	57,058.82	10,210.00		67,268.82		10,523,726.00	132	02/01/2018	47,320.61	5,361.29		52,681.90		8,730,752.08
133	03/01/2018	57,003.52	10,265.00		67,268.52		10,513,461.00	133	03/01/2018	47,291.57	5,390.33		52,681.90		8,725,361.75
134	04/01/2018	56,947.91	10,321.00		67,268.91		10,503,140.00	134	04/01/2018	47,262.38	5,419.52		52,681.90		8,719,942.23
135	05/01/2018	56,892.01	10,377.00		67,269.01		10,492,763.00	135	05/01/2018	47,233.02	5,448.88		52,681.90		8,714,493.35
136	06/01/2018	56,835.80	10,433.00		67,268.80		10,482,330.00	136	06/01/2018	47,203.51	5,478.39		52,681.90		8,709,014.96
137	07/01/2018	56,779.29	10,490.00		67,269.29		10,471,840.00	137	07/01/2018	47,173.83	5,508.07		52,681.90		8,703,506.89
138	08/01/2018	56,722.47	10,547.00		67,269.47	807,227.10	10,461,293.00	138	08/01/2018	47,144.00	5,537.90		52,681.90	632,182.80	8,697,968.99
139	09/01/2018	56,665.34	10,604.00		67,269.34		10,450,689.00	139	09/01/2018	47,114.00	5,567.90		52,681.90		8,692,401.09
140	10/01/2018	56,607.90	10,661.00		67,268.90		10,440,028.00	140	10/01/2018	47,083.84	5,598.06		52,681.90		8,686,803.03
141	11/01/2018	56,550.15	10,719.00		67,269.15		10,429,309.00	141	11/01/2018	47,053.52	5,628.38		52,681.90		8,681,174.65
142	12/01/2018	56,492.09	10,777.00		67,269.09		10,418,532.00	142	12/01/2018	47,023.03	5,658.87		52,681.90		8,675,515.78
143	01/01/2019	56,433.72	10,835.00		67,268.72		10,407,697.00	143	01/01/2019	46,992.38	5,689.52		52,681.90		8,669,826.26

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	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
144	02/01/2019	56,375.03	10,894.00		67,269.03		10,396,803.00	144	02/01/2019	46,961.56	5,720.34		52,681.90		8,664,105.92
145	03/01/2019	56,316.02	10,953.00		67,269.02		10,385,850.00	145	03/01/2019	46,930.57	5,751.33		52,681.90		8,658,354.59
146	04/01/2019	56,256.69	11,012.00		67,268.69		10,374,838.00	146	04/01/2019	46,899.42	5,782.48		52,681.90		8,652,572.11
147	05/01/2019	56,197.04	11,072.00		67,269.04		10,363,766.00	147	05/01/2019	46,868.10	5,813.80		52,681.90		8,646,758.31
148	06/01/2019	56,137.07	11,132.00		67,269.07		10,352,634.00	148	06/01/2019	46,836.61	5,845.29		52,681.90		8,640,913.02
149	07/01/2019	56,076.77	11,192.00		67,268.77		10,341,442.00	149	07/01/2019	46,804.95	5,876.95		52,681.90		8,635,036.07
150	08/01/2019	56,016.14	11,253.00		67,269.14	807,227.96	10,330,189.00	150	08/01/2019	46,773.11	5,908.79		52,681.90	632,182.80	8,629,127.28
151	09/01/2019	55,955.19	11,314.00		67,269.19		10,318,875.00	151	09/01/2019	46,741.11	5,940.79		52,681.90		8,623,186.49
152	10/01/2019	55,893.91	11,375.00		67,268.91		10,307,500.00	152	10/01/2019	46,708.93	5,972.97		52,681.90		8,617,213.52
153	11/01/2019	55,832.29	11,437.00		67,269.29		10,296,063.00	153	11/01/2019	46,676.57	6,005.33		52,681.90		8,611,208.19
154	12/01/2019	55,770.34	11,499.00		67,269.34		10,284,564.00	154	12/01/2019	46,644.04	6,037.86		52,681.90		8,605,170.33
155	01/01/2020	55,708.06	11,561.00		67,269.06		10,273,003.00	155	01/01/2020	46,611.34	6,070.56		52,681.90		8,599,099.77
156	02/01/2020	55,645.43	11,624.00		67,269.43		10,261,379.00	156	02/01/2020	46,578.46	6,103.44		52,681.90		8,592,996.33
157	03/01/2020	55,582.47	11,687.00		67,269.47		10,249,692.00	157	03/01/2020	46,545.40	6,136.50		52,681.90		8,586,859.83
158	04/01/2020	55,519.17	11,750.00		67,269.17		10,237,942.00	158	04/01/2020	46,512.16	6,169.74		52,681.90		8,580,690.09
159	05/01/2020	55,455.52	11,813.00		67,268.52		10,226,129.00	159	05/01/2020	46,478.74	6,203.16		52,681.90		8,574,486.93
160	06/01/2020	55,391.53	11,877.00		67,268.53		10,214,252.00	160	06/01/2020	46,445.14	6,236.76		52,681.90		8,568,250.17
161	07/01/2020	55,327.20	11,942.00		67,269.20		10,202,310.00	161	07/01/2020	46,411.36	6,270.54		52,681.90		8,561,979.63
162	08/01/2020	55,262.51	12,006.00		67,268.51	807,228.62	10,190,304.00	162	08/01/2020	46,377.39	6,304.51		52,681.90	632,182.80	8,555,675.12
163	09/01/2020	55,197.48	12,072.00		67,269.48		10,178,232.00	163	09/01/2020	46,343.24	6,338.66		52,681.90		8,549,336.46
164	10/01/2020	55,132.09	12,137.00		67,269.09		10,166,095.00	164	10/01/2020	46,308.91	6,372.99		52,681.90		8,542,963.47
165	11/01/2020	55,066.35	12,203.00		67,269.35		10,153,892.00	165	11/01/2020	46,274.39	6,407.51		52,681.90		8,536,555.96
166	12/01/2020	55,000.25	12,269.00		67,269.25		10,141,623.00	166	12/01/2020	46,239.68	6,442.22		52,681.90		8,530,113.74
167	01/01/2021	54,933.79	12,335.00		67,268.79		10,129,288.00	167	01/01/2021	46,204.78	6,477.12		52,681.90		8,523,636.62
168	02/01/2021	54,866.98	12,402.00		67,268.98		10,116,886.00	168	02/01/2021	46,169.70	6,512.20		52,681.90		8,517,124.42
169	03/01/2021	54,799.80	12,469.00		67,268.80		10,104,417.00	169	03/01/2021	46,134.42	6,547.48		52,681.90		8,510,576.94
170	04/01/2021	54,732.26	12,537.00		67,269.26		10,091,880.00	170	04/01/2021	46,098.96	6,582.94		52,681.90		8,503,994.00
171	05/01/2021	54,664.35	12,605.00		67,269.35		10,079,275.00	171	05/01/2021	46,063.30	6,618.60		52,681.90		8,497,375.40
172	06/01/2021	54,596.07	12,673.00		67,269.07		10,066,602.00	172	06/01/2021	46,027.45	6,654.45		52,681.90		8,490,720.95
173	07/01/2021	54,527.43	12,742.00		67,269.43		10,053,860.00	173	07/01/2021	45,991.41	6,690.49		52,681.90		8,484,030.46
174	08/01/2021	54,458.41	12,811.00		67,269.41	807,230.26	10,041,049.00	174	08/01/2021	45,955.16	6,726.74		52,681.90	632,182.80	8,477,303.72
175	09/01/2021	54,389.02	12,880.00		67,269.02		10,028,169.00	175	09/01/2021	45,918.73	6,763.17		52,681.90		8,470,540.55
176	10/01/2021	54,319.25	12,950.00		67,269.25		10,015,219.00	176	10/01/2021	45,882.09	6,799.81		52,681.90		8,463,740.74
177	11/01/2021	54,249.10	13,020.00		67,269.10		10,002,199.00	177	11/01/2021	45,845.26	6,836.64		52,681.90		8,456,904.10
178	12/01/2021	54,178.58	13,090.00		67,268.58		9,989,109.00	178	12/01/2021	45,808.23	6,873.67		52,681.90		8,450,030.43
179	01/01/2022	54,107.67	13,161.00		67,268.67		9,975,948.00	179	01/01/2022	45,771.00	6,910.90		52,681.90		8,443,119.53
180	02/01/2022	54,036.39	13,233.00		67,269.39		9,962,715.00	180	02/01/2022	45,733.56	6,948.34		52,681.90		8,436,171.19
181	03/01/2022	53,964.71	13,304.00		67,268.71		9,949,411.00	181	03/01/2022	45,695.93	6,985.97		52,681.90		8,429,185.22
182	04/01/2022	53,892.64	13,376.00		67,268.64		9,936,035.00	182	04/01/2022	45,658.09	7,023.81		52,681.90		8,422,161.41
183	05/01/2022	53,820.19	13,449.00		67,269.19		9,922,586.00	183	05/01/2022	45,620.04	7,061.86		52,681.90		8,415,099.55
184	06/01/2022	53,747.34	13,522.00		67,269.34		9,909,064.00	184	06/01/2022	45,581.79	7,100.11		52,681.90		8,407,999.44
185	07/01/2022	53,674.10	13,595.00		67,269.10		9,895,469.00	185	07/01/2022	45,543.33	7,138.57		52,681.90		8,400,860.87
186	08/01/2022	53,600.46	13,669.00		67,269.46	807,228.45	9,881,800.00	186	08/01/2022	45,504.66	7,177.24		52,681.90	632,182.80	8,393,683.63
187	09/01/2022	53,526.42	13,743.00		67,269.42		9,868,057.00	187	09/01/2022	45,465.79	7,216.11		52,681.90		8,386,467.52
188	10/01/2022	53,451.98	13,817.00		67,268.98		9,854,240.00	188	10/01/2022	45,426.70	7,255.20		52,681.90		8,379,212.32
189	11/01/2022	53,377.13	13,892.00		67,269.13		9,840,348.00	189	11/01/2022	45,387.40	7,294.50		52,681.90		8,371,917.82
190	12/01/2022	53,301.89	13,967.00		67,268.89		9,826,381.00	190	12/01/2022	45,347.89	7,334.01		52,681.90		8,364,583.81
191	01/01/2023	53,226.23	14,043.00		67,269.23		9,812,338.00	191	01/01/2023	45,308.16	7,373.74		52,681.90		8,357,210.07

Original Amortization Schedule

Mission Del Rio Homes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
192	02/01/2023	53,150.16	14,119.00		67,269.16		9,798,219.00	192	02/01/2023	45,268.22	7,413.68		52,681.90		8,349,796.39
193	03/01/2023	53,073.69	14,195.00		67,268.69		9,784,024.00	193	03/01/2023	45,228.06	7,453.84		52,681.90		8,342,342.55
194	04/01/2023	52,996.80	14,272.00		67,268.80		9,769,752.00	194	04/01/2023	45,187.69	7,494.21		52,681.90		8,334,848.34
195	05/01/2023	52,919.49	14,349.00		67,268.49		9,755,403.00	195	05/01/2023	45,147.10	7,534.80		52,681.90		8,327,313.54
196	06/01/2023	52,841.77	14,427.00		67,268.77		9,740,976.00	196	06/01/2023	45,106.28	7,575.62		52,681.90		8,319,737.92
197	07/01/2023	52,763.62	14,505.00		67,268.62		9,726,471.00	197	07/01/2023	45,065.25	7,616.65		52,681.90		8,312,121.27
198	08/01/2023	52,685.05	14,584.00		67,269.05	807,227.23	9,711,887.00	198	08/01/2023	45,023.99	7,657.91		52,681.90	632,182.80	8,304,463.36
199	09/01/2023	52,606.05	14,663.00		67,269.05		9,697,224.00	199	09/01/2023	44,982.51	7,699.39		52,681.90		8,296,763.97
200	10/01/2023	52,526.63	14,742.00		67,268.63		9,682,482.00	200	10/01/2023	44,940.80	7,741.10		52,681.90		8,289,022.87
201	11/01/2023	52,446.78	14,822.00		67,268.78		9,667,660.00	201	11/01/2023	44,898.87	7,783.03		52,681.90		8,281,239.84
202	12/01/2023	52,366.49	14,902.00		67,268.49		9,652,758.00	202	12/01/2023	44,856.72	7,825.18		52,681.90		8,273,414.66
203	01/01/2024	52,285.77	14,983.00		67,268.77		9,637,775.00	203	01/01/2024	44,814.33	7,867.57		52,681.90		8,265,547.09
204	02/01/2024	52,204.61	15,064.00		67,268.61		9,622,711.00	204	02/01/2024	44,771.71	7,910.19		52,681.90		8,257,636.90
205	03/01/2024	52,123.02	15,146.00		67,269.02		9,607,565.00	205	03/01/2024	44,728.87	7,953.03		52,681.90		8,249,683.87
206	04/01/2024	52,040.98	15,228.00		67,268.98		9,592,337.00	206	04/01/2024	44,685.79	7,996.11		52,681.90		8,241,687.76
207	05/01/2024	51,958.49	15,310.00		67,268.49		9,577,027.00	207	05/01/2024	44,642.48	8,039.42		52,681.90		8,233,648.34
208	06/01/2024	51,875.56	15,393.00		67,268.56		9,561,634.00	208	06/01/2024	44,598.93	8,082.97		52,681.90		8,225,565.37
209	07/01/2024	51,792.18	15,477.00		67,269.18		9,546,157.00	209	07/01/2024	44,555.15	8,126.75		52,681.90		8,217,438.62
210	08/01/2024	51,708.35	15,561.00		67,269.35	807,225.91	9,530,596.00	210	08/01/2024	44,511.13	8,170.77		52,681.90	632,182.80	8,209,267.85
211	09/01/2024	51,624.06	15,645.00		67,269.06		9,514,951.00	211	09/01/2024	44,466.87	8,215.03		52,681.90		8,201,052.82
212	10/01/2024	51,539.32	15,730.00		67,269.32		9,499,221.00	212	10/01/2024	44,422.37	8,259.53		52,681.90		8,192,793.29
213	11/01/2024	51,454.11	15,815.00		67,269.11		9,483,406.00	213	11/01/2024	44,377.63	8,304.27		52,681.90		8,184,489.02
214	12/01/2024	51,368.45	15,901.00		67,269.45		9,467,505.00	214	12/01/2024	44,332.65	8,349.25		52,681.90		8,176,139.77
215	01/01/2025	51,282.32	15,987.00		67,269.32		9,451,518.00	215	01/01/2025	44,287.42	8,394.48		52,681.90		8,167,745.29
216	02/01/2025	51,195.72	16,073.00		67,268.72		9,435,445.00	216	02/01/2025	44,241.95	8,439.95		52,681.90		8,159,305.34
217	03/01/2025	51,108.66	16,160.00		67,268.66		9,419,285.00	217	03/01/2025	44,196.24	8,485.66		52,681.90		8,150,819.68
218	04/01/2025	51,021.13	16,248.00		67,269.13		9,403,037.00	218	04/01/2025	44,150.27	8,531.63		52,681.90		8,142,288.05
219	05/01/2025	50,933.12	16,336.00		67,269.12		9,386,701.00	219	05/01/2025	44,104.06	8,577.84		52,681.90		8,133,710.21
220	06/01/2025	50,844.63	16,424.00		67,268.63		9,370,277.00	220	06/01/2025	44,057.60	8,624.30		52,681.90		8,125,085.91
221	07/01/2025	50,755.67	16,513.00		67,268.67		9,353,764.00	221	07/01/2025	44,010.88	8,671.02		52,681.90		8,116,414.89
222	08/01/2025	50,666.22	16,603.00		67,269.22	807,228.41	9,337,161.00	222	08/01/2025	43,963.91	8,717.99		52,681.90	632,182.80	8,107,696.90
223	09/01/2025	50,576.29	16,693.00		67,269.29		9,320,468.00	223	09/01/2025	43,916.69	8,765.21		52,681.90		8,098,931.69
224	10/01/2025	50,485.87	16,783.00		67,268.87		9,303,685.00	224	10/01/2025	43,869.21	8,812.69		52,681.90		8,090,119.00
225	11/01/2025	50,394.96	16,874.00		67,268.96		9,286,811.00	225	11/01/2025	43,821.48	8,860.42		52,681.90		8,081,258.58
226	12/01/2025	50,303.56	16,965.00		67,268.56		9,269,846.00	226	12/01/2025	43,773.48	8,908.42		52,681.90		8,072,350.16
227	01/01/2026	50,211.67	17,057.00		67,268.67		9,252,789.00	227	01/01/2026	43,725.23	8,956.67		52,681.90		8,063,393.49
228	02/01/2026	50,119.27	17,150.00		67,269.27		9,235,639.00	228	02/01/2026	43,676.71	9,005.19		52,681.90		8,054,388.30
229	03/01/2026	50,026.38	17,243.00		67,269.38		9,218,396.00	229	03/01/2026	43,627.94	9,053.96		52,681.90		8,045,334.34
230	04/01/2026	49,932.98	17,336.00		67,268.98		9,201,060.00	230	04/01/2026	43,578.89	9,103.01		52,681.90		8,036,231.33
231	05/01/2026	49,839.08	17,430.00		67,269.08		9,183,630.00	231	05/01/2026	43,529.59	9,152.31		52,681.90		8,027,079.02
232	06/01/2026	49,744.66	17,524.00		67,268.66		9,166,106.00	232	06/01/2026	43,480.01	9,201.89		52,681.90		8,017,877.13
233	07/01/2026	49,649.74	17,619.00		67,268.74		9,148,487.00	233	07/01/2026	43,430.17	9,251.73		52,681.90		8,008,625.40
234	08/01/2026	49,554.30	17,715.00		67,269.30	807,227.76	9,130,772.00	234	08/01/2026	43,380.05	9,301.85		52,681.90	632,182.80	7,999,323.55
235	09/01/2026	49,458.35	17,811.00		67,269.35		9,112,961.00	235	09/01/2026	43,329.67	9,352.23		52,681.90		7,989,971.32
236	10/01/2026	49,361.87	17,907.00		67,268.87		9,095,054.00	236	10/01/2026	43,279.01	9,402.89		52,681.90		7,980,568.43
237	11/01/2026	49,264.88	18,004.00		67,268.88		9,077,050.00	237	11/01/2026	43,228.08	9,453.82		52,681.90		7,971,114.61
238	12/01/2026	49,167.35	18,102.00		67,269.35		9,058,948.00	238	12/01/2026	43,176.87	9,505.03		52,681.90		7,961,609.58
239	01/01/2027	49,069.30	18,200.00		67,269.30		9,040,748.00	239	01/01/2027	43,125.39	9,556.51		52,681.90		7,952,053.07

Original Amortization Schedule

Mission Del Rio Homes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
240	02/01/2027	48,970.72	18,298.00		67,268.72		9,022,450.00	240	02/01/2027	43,073.62	9,608.28		52,681.90		7,942,444.79
241	03/01/2027	48,871.60	18,397.00		67,268.60		9,004,053.00	241	03/01/2027	43,021.58	9,660.32		52,681.90		7,932,784.47
242	04/01/2027	48,771.95	18,497.00		67,268.95		8,985,556.00	242	04/01/2027	42,969.25	9,712.65		52,681.90		7,923,071.82
243	05/01/2027	48,671.76	18,597.00		67,268.76		8,966,959.00	243	05/01/2027	42,916.64	9,765.26		52,681.90		7,913,306.56
244	06/01/2027	48,571.03	18,698.00		67,269.03		8,948,261.00	244	06/01/2027	42,863.74	9,818.16		52,681.90		7,903,488.40
245	07/01/2027	48,469.75	18,799.00		67,268.75		8,929,462.00	245	07/01/2027	42,810.56	9,871.34		52,681.90		7,893,617.06
246	08/01/2027	48,367.92	18,901.00		67,268.92	807,227.48	8,910,561.00	246	08/01/2027	42,757.09	9,924.81		52,681.90	632,182.80	7,883,692.25
247	09/01/2027	48,265.54	19,003.00		67,268.54		8,891,558.00	247	09/01/2027	42,703.33	9,978.57		52,681.90		7,873,713.68
248	10/01/2027	48,162.61	19,106.00		67,268.61		8,872,452.00	248	10/01/2027	42,649.28	10,032.62		52,681.90		7,863,681.06
249	11/01/2027	48,059.12	19,210.00		67,269.12		8,853,242.00	249	11/01/2027	42,594.94	10,086.96		52,681.90		7,853,594.10
250	12/01/2027	47,955.06	19,314.00		67,269.06		8,833,928.00	250	12/01/2027	42,540.30	10,141.60		52,681.90		7,843,452.50
251	01/01/2028	47,850.44	19,419.00		67,269.44		8,814,509.00	251	01/01/2028	42,485.37	10,196.53		52,681.90		7,833,255.97
252	02/01/2028	47,745.26	19,524.00		67,269.26		8,794,985.00	252	02/01/2028	42,430.14	10,251.76		52,681.90		7,823,004.21
253	03/01/2028	47,639.50	19,629.00		67,268.50		8,775,356.00	253	03/01/2028	42,374.61	10,307.29		52,681.90		7,812,696.92
254	04/01/2028	47,533.18	19,736.00		67,269.18		8,755,620.00	254	04/01/2028	42,318.77	10,363.13		52,681.90		7,802,333.79
255	05/01/2028	47,426.28	19,843.00		67,269.28		8,735,777.00	255	05/01/2028	42,262.64	10,419.26		52,681.90		7,791,914.53
256	06/01/2028	47,318.79	19,950.00		67,268.79		8,715,827.00	256	06/01/2028	42,206.20	10,475.70		52,681.90		7,781,438.83
257	07/01/2028	47,210.73	20,058.00		67,268.73		8,695,769.00	257	07/01/2028	42,149.46	10,532.44		52,681.90		7,770,906.39
258	08/01/2028	47,102.08	20,167.00		67,269.08	807,227.59	8,675,602.00	258	08/01/2028	42,092.41	10,589.49		52,681.90	632,182.80	7,760,316.90
259	09/01/2028	46,992.84	20,276.00		67,268.84		8,655,326.00	259	09/01/2028	42,035.05	10,646.85		52,681.90		7,749,670.05
260	10/01/2028	46,883.02	20,386.00		67,269.02		8,634,940.00	260	10/01/2028	41,977.38	10,704.52		52,681.90		7,738,965.53
261	11/01/2028	46,772.59	20,496.00		67,268.59		8,614,444.00	261	11/01/2028	41,919.40	10,762.50		52,681.90		7,728,203.03
262	12/01/2028	46,661.57	20,607.00		67,268.57		8,593,837.00	262	12/01/2028	41,861.10	10,820.80		52,681.90		7,717,382.23
263	01/01/2029	46,549.95	20,719.00		67,268.95		8,573,118.00	263	01/01/2029	41,802.49	10,879.41		52,681.90		7,706,502.82
264	02/01/2029	46,437.72	20,831.00		67,268.72		8,552,287.00	264	02/01/2029	41,743.56	10,938.34		52,681.90		7,695,564.48
265	03/01/2029	46,324.89	20,944.00		67,268.89		8,531,343.00	265	03/01/2029	41,684.31	10,997.59		52,681.90		7,684,566.89
266	04/01/2029	46,211.44	21,058.00		67,269.44		8,510,285.00	266	04/01/2029	41,624.74	11,057.16		52,681.90		7,673,509.73
267	05/01/2029	46,097.38	21,172.00		67,269.38		8,489,113.00	267	05/01/2029	41,564.84	11,117.06		52,681.90		7,662,392.67
268	06/01/2029	45,982.70	21,286.00		67,268.70		8,467,827.00	268	06/01/2029	41,504.63	11,177.27		52,681.90		7,651,215.40
269	07/01/2029	45,867.40	21,402.00		67,269.40		8,446,425.00	269	07/01/2029	41,444.08	11,237.82		52,681.90		7,639,977.58
270	08/01/2029	45,751.47	21,518.00		67,269.47	807,227.97	8,424,907.00	270	08/01/2029	41,383.21	11,298.69		52,681.90	632,182.80	7,628,678.89
271	09/01/2029	45,634.91	21,634.00		67,268.91		8,403,273.00	271	09/01/2029	41,322.01	11,359.89		52,681.90		7,617,319.00
272	10/01/2029	45,517.73	21,751.00		67,268.73		8,381,522.00	272	10/01/2029	41,260.48	11,421.42		52,681.90		7,605,897.58
273	11/01/2029	45,399.91	21,869.00		67,268.91		8,359,653.00	273	11/01/2029	41,198.61	11,483.29		52,681.90		7,594,414.29
274	12/01/2029	45,281.45	21,988.00		67,269.45		8,337,665.00	274	12/01/2029	41,136.41	11,545.49		52,681.90		7,582,868.80
275	01/01/2030	45,162.35	22,107.00		67,269.35		8,315,558.00	275	01/01/2030	41,073.87	11,608.03		52,681.90		7,571,260.77
276	02/01/2030	45,042.61	22,226.00		67,268.61		8,293,332.00	276	02/01/2030	41,011.00	11,670.90		52,681.90		7,559,589.87
277	03/01/2030	44,922.22	22,347.00		67,269.22		8,270,985.00	277	03/01/2030	40,947.78	11,734.12		52,681.90		7,547,855.75
278	04/01/2030	44,801.17	22,468.00		67,269.17		8,248,517.00	278	04/01/2030	40,884.22	11,797.68		52,681.90		7,536,058.07
279	05/01/2030	44,679.47	22,590.00		67,269.47		8,225,927.00	279	05/01/2030	40,820.31	11,861.59		52,681.90		7,524,196.48
280	06/01/2030	44,557.10	22,712.00		67,269.10		8,203,215.00	280	06/01/2030	40,756.06	11,925.84		52,681.90		7,512,270.64
281	07/01/2030	44,434.08	22,835.00		67,269.08		8,180,380.00	281	07/01/2030	40,691.47	11,990.43		52,681.90		7,500,280.21
282	08/01/2030	44,310.39	22,959.00		67,269.39	807,229.39	8,157,421.00	282	08/01/2030	40,626.52	12,055.38		52,681.90	632,182.80	7,488,224.83
283	09/01/2030	44,186.03	23,083.00		67,269.03		8,134,338.00	283	09/01/2030	40,561.22	12,120.68		52,681.90		7,476,104.15
284	10/01/2030	44,061.00	23,208.00		67,269.00		8,111,130.00	284	10/01/2030	40,495.56	12,186.34		52,681.90		7,463,917.81
285	11/01/2030	43,935.29	23,334.00		67,269.29		8,087,796.00	285	11/01/2030	40,429.55	12,252.35		52,681.90		7,451,665.46
286	12/01/2030	43,808.90	23,460.00		67,268.90		8,064,336.00	286	12/01/2030	40,363.19	12,318.71		52,681.90		7,439,346.75
287	01/01/2031	43,681.82	23,587.00		67,268.82		8,040,749.00	287	01/01/2031	40,296.46	12,385.44		52,681.90		7,426,961.31

Original Amortization Schedule

Mission Del Rio Homes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
288	02/01/2031	43,554.06	23,715.00		67,269.06		8,017,034.00	288	02/01/2031	40,229.37	12,452.53		52,681.90		7,414,508.78
289	03/01/2031	43,425.60	23,843.00		67,268.60		7,993,191.00	289	03/01/2031	40,161.92	12,519.98		52,681.90		7,401,988.80
290	04/01/2031	43,296.45	23,973.00		67,269.45		7,969,218.00	290	04/01/2031	40,094.11	12,587.79		52,681.90		7,389,401.01
291	05/01/2031	43,166.60	24,102.00		67,268.60		7,945,116.00	291	05/01/2031	40,025.92	12,655.98		52,681.90		7,376,745.03
292	06/01/2031	43,036.05	24,233.00		67,269.05		7,920,883.00	292	06/01/2031	39,957.37	12,724.53		52,681.90		7,364,020.50
293	07/01/2031	42,904.78	24,364.00		67,268.78		7,896,519.00	293	07/01/2031	39,888.44	12,793.46		52,681.90		7,351,227.04
294	08/01/2031	42,772.81	24,496.00		67,268.81	807,227.39	7,872,023.00	294	08/01/2031	39,819.15	12,862.75		52,681.90	632,182.80	7,338,364.29
295	09/01/2031	42,640.12	24,629.00		67,269.12		7,847,394.00	295	09/01/2031	39,749.47	12,932.43		52,681.90		7,325,431.86
296	10/01/2031	42,506.72	24,762.00		67,268.72		7,822,632.00	296	10/01/2031	39,679.42	13,002.48		52,681.90		7,312,429.38
297	11/01/2031	42,372.59	24,896.00		67,268.59		7,797,736.00	297	11/01/2031	39,608.99	13,072.91		52,681.90		7,299,356.47
298	12/01/2031	42,237.74	25,031.00		67,268.74		7,772,705.00	298	12/01/2031	39,538.18	13,143.72		52,681.90		7,286,212.75
299	01/01/2032	42,102.15	25,167.00		67,269.15		7,747,538.00	299	01/01/2032	39,466.99	13,214.91		52,681.90		7,272,997.84
300	02/01/2032	41,965.83	25,303.00		67,268.83		7,722,235.00	300	02/01/2032	39,395.40	13,286.50		52,681.90		7,259,711.34
301	03/01/2032	41,828.77	25,440.00		67,268.77		7,696,795.00	301	03/01/2032	39,323.44	13,358.46		52,681.90		7,246,352.88
302	04/01/2032	41,690.97	25,578.00		67,268.97		7,671,217.00	302	04/01/2032	39,251.08	13,430.82		52,681.90		7,232,922.06
303	05/01/2032	41,552.43	25,717.00		67,269.43		7,645,500.00	303	05/01/2032	39,178.33	13,503.57		52,681.90		7,219,418.49
304	06/01/2032	41,413.13	25,856.00		67,269.13		7,619,644.00	304	06/01/2032	39,105.18	13,576.72		52,681.90		7,205,841.77
305	07/01/2032	41,273.07	25,996.00		67,269.07		7,593,648.00	305	07/01/2032	39,031.64	13,650.26		52,681.90		7,192,191.51
306	08/01/2032	41,132.26	26,137.00		67,269.26	807,227.78	7,567,511.00	306	08/01/2032	38,957.70	13,724.20		52,681.90	632,182.80	7,178,467.31
307	09/01/2032	40,990.68	26,278.00		67,268.68		7,541,233.00	307	09/01/2032	38,883.36	13,798.54		52,681.90		7,164,668.77
308	10/01/2032	40,848.35	26,421.00		67,269.35		7,514,812.00	308	10/01/2032	38,808.62	13,873.28		52,681.90		7,150,795.49
309	11/01/2032	40,705.23	26,564.00		67,269.23		7,488,248.00	309	11/01/2032	38,733.48	13,948.42		52,681.90		7,136,847.07
310	12/01/2032	40,561.34	26,708.00		67,269.34		7,461,540.00	310	12/01/2032	38,657.92	14,023.98		52,681.90		7,122,823.09
311	01/01/2033	40,416.68	26,852.00		67,268.68		7,434,688.00	311	01/01/2033	38,581.96	14,099.94		52,681.90		7,108,723.15
312	02/01/2033	40,271.23	26,998.00		67,269.23		7,407,690.00	312	02/01/2033	38,505.58	14,176.32		52,681.90		7,094,546.83
313	03/01/2033	40,124.99	27,144.00		67,268.99		7,380,546.00	313	03/01/2033	38,428.80	14,253.10		52,681.90		7,080,293.73
314	04/01/2033	39,977.96	27,291.00		67,268.96		7,353,255.00	314	04/01/2033	38,351.59	14,330.31		52,681.90		7,065,963.42
315	05/01/2033	39,830.13	27,439.00		67,269.13		7,325,816.00	315	05/01/2033	38,273.97	14,407.93		52,681.90		7,051,555.49
316	06/01/2033	39,681.50	27,587.00		67,268.50		7,298,229.00	316	06/01/2033	38,195.93	14,485.97		52,681.90		7,037,069.52
317	07/01/2033	39,532.07	27,737.00		67,269.07		7,270,492.00	317	07/01/2033	38,117.46	14,564.44		52,681.90		7,022,505.08
318	08/01/2033	39,381.83	27,887.00		67,268.83	807,227.99	7,242,605.00	318	08/01/2033	38,038.57	14,643.33		52,681.90	632,182.80	7,007,861.75
319	09/01/2033	39,230.78	28,038.00		67,268.78		7,214,567.00	319	09/01/2033	37,959.25	14,722.65		52,681.90		6,993,139.10
320	10/01/2033	39,078.90	28,190.00		67,268.90		7,186,377.00	320	10/01/2033	37,879.50	14,802.40		52,681.90		6,978,336.70
321	11/01/2033	38,926.21	28,343.00		67,269.21		7,158,034.00	321	11/01/2033	37,799.32	14,882.58		52,681.90		6,963,454.12
322	12/01/2033	38,772.68	28,496.00		67,268.68		7,129,538.00	322	12/01/2033	37,718.71	14,963.19		52,681.90		6,948,490.93
323	01/01/2034	38,618.33	28,651.00		67,269.33		7,100,887.00	323	01/01/2034	37,637.66	15,044.24		52,681.90		6,933,446.69
324	02/01/2034	38,463.14	28,806.00		67,269.14		7,072,081.00	324	02/01/2034	37,556.17	15,125.73		52,681.90		6,918,320.96
325	03/01/2034	38,307.11	28,962.00		67,269.11		7,043,119.00	325	03/01/2034	37,474.24	15,207.66		52,681.90		6,903,113.30
326	04/01/2034	38,150.23	29,119.00		67,269.23		7,014,000.00	326	04/01/2034	37,391.86	15,290.04		52,681.90		6,887,823.26
327	05/01/2034	37,992.50	29,276.00		67,268.50		6,984,724.00	327	05/01/2034	37,309.04	15,372.86		52,681.90		6,872,450.40
328	06/01/2034	37,833.92	29,435.00		67,268.92		6,955,289.00	328	06/01/2034	37,225.77	15,456.13		52,681.90		6,856,994.27
329	07/01/2034	37,674.48	29,594.00		67,268.48		6,925,695.00	329	07/01/2034	37,142.05	15,539.85		52,681.90		6,841,454.42
330	08/01/2034	37,514.18	29,755.00		67,269.18	807,227.46	6,895,940.00	330	08/01/2034	37,057.88	15,624.02		52,681.90	632,182.80	6,825,830.40
331	09/01/2034	37,353.01	29,916.00		67,269.01		6,866,024.00	331	09/01/2034	36,973.25	15,708.65		52,681.90		6,810,121.75
332	10/01/2034	37,190.96	30,078.00		67,268.96		6,835,946.00	332	10/01/2034	36,888.16	15,793.74		52,681.90		6,794,328.01
333	11/01/2034	37,028.04	30,241.00		67,269.04		6,805,705.00	333	11/01/2034	36,802.61	15,879.29		52,681.90		6,778,448.72
334	12/01/2034	36,864.24	30,405.00		67,269.24		6,775,300.00	334	12/01/2034	36,716.60	15,965.30		52,681.90		6,762,483.42
335	01/01/2035	36,699.54	30,569.00		67,268.54		6,744,731.00	335	01/01/2035	36,630.12	16,051.78		52,681.90		6,746,431.64

Original Amortization Schedule

Mission Del Rio Homes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
336	02/01/2035	36,533.96	30,735.00		67,268.96		6,713,996.00	336	02/01/2035	36,543.17	16,138.73		52,681.90		6,730,292.91
337	03/01/2035	36,367.48	30,901.00		67,268.48		6,683,095.00	337	03/01/2035	36,455.75	16,226.15		52,681.90		6,714,066.76
338	04/01/2035	36,200.10	31,069.00		67,269.10		6,652,026.00	338	04/01/2035	36,367.86	16,314.04		52,681.90		6,697,752.72
339	05/01/2035	36,031.81	31,237.00		67,268.81		6,620,789.00	339	05/01/2035	36,279.49	16,402.41		52,681.90		6,681,350.31
340	06/01/2035	35,862.61	31,406.00		67,268.61		6,589,383.00	340	06/01/2035	36,190.65	16,491.25		52,681.90		6,664,859.06
341	07/01/2035	35,692.49	31,576.00		67,268.49		6,557,807.00	341	07/01/2035	36,101.32	16,580.58		52,681.90		6,648,278.48
342	08/01/2035	35,521.45	31,748.00		67,269.45	807,226.69	6,526,059.00	342	08/01/2035	36,011.51	16,670.39		52,681.90	632,182.80	6,631,608.09
343	09/01/2035	35,349.49	31,919.00		67,268.49		6,494,140.00	343	09/01/2035	35,921.21	16,760.69		52,681.90		6,614,847.40
344	10/01/2035	35,176.59	32,092.00		67,268.59		6,462,048.00	344	10/01/2035	35,830.42	16,851.48		52,681.90		6,597,995.92
345	11/01/2035	35,002.76	32,266.00		67,268.76		6,429,782.00	345	11/01/2035	35,739.14	16,942.76		52,681.90		6,581,053.16
346	12/01/2035	34,827.99	32,441.00		67,268.99		6,397,341.00	346	12/01/2035	35,647.37	17,034.53		52,681.90		6,564,018.63
347	01/01/2036	34,652.26	32,617.00		67,269.26		6,364,724.00	347	01/01/2036	35,555.10	17,126.80		52,681.90		6,546,891.83
348	02/01/2036	34,475.59	32,793.00		67,268.59		6,331,931.00	348	02/01/2036	35,462.33	17,219.57		52,681.90		6,529,672.26
349	03/01/2036	34,297.96	32,971.00		67,268.96		6,298,960.00	349	03/01/2036	35,369.06	17,312.84		52,681.90		6,512,359.42
350	04/01/2036	34,119.37	33,150.00		67,269.37		6,265,810.00	350	04/01/2036	35,275.28	17,406.62		52,681.90		6,494,952.80
351	05/01/2036	33,939.80	33,329.00		67,268.80		6,232,481.00	351	05/01/2036	35,180.99	17,500.91		52,681.90		6,477,451.89
352	06/01/2036	33,759.27	33,510.00		67,269.27		6,198,971.00	352	06/01/2036	35,086.20	17,595.70		52,681.90		6,459,856.19
353	07/01/2036	33,577.76	33,691.00		67,268.76		6,165,280.00	353	07/01/2036	34,990.89	17,691.01		52,681.90		6,442,165.18
354	08/01/2036	33,395.27	33,874.00		67,269.27	807,227.11	6,131,406.00	354	08/01/2036	34,895.06	17,786.84		52,681.90	632,182.80	6,424,378.34
355	09/01/2036	33,211.78	34,057.00		67,268.78		6,097,349.00	355	09/01/2036	34,798.72	17,883.18		52,681.90		6,406,495.16
356	10/01/2036	33,027.31	34,242.00		67,269.31		6,063,107.00	356	10/01/2036	34,701.85	17,980.05		52,681.90		6,388,515.11
357	11/01/2036	32,841.83	34,427.00		67,268.83		6,028,680.00	357	11/01/2036	34,604.46	18,077.44		52,681.90		6,370,437.67
358	12/01/2036	32,655.35	34,614.00		67,269.35		5,994,066.00	358	12/01/2036	34,506.54	18,175.36		52,681.90		6,352,262.31
359	01/01/2037	32,467.86	34,801.00		67,268.86		5,959,265.00	359	01/01/2037	34,408.09	18,273.81		52,681.90		6,333,988.50
360	02/01/2037	32,279.35	34,990.00		67,269.35		5,924,275.00	360	02/01/2037	34,309.10	18,372.80		52,681.90		6,315,615.70
361	03/01/2037	32,089.82	35,179.00		67,268.82		5,889,096.00	361	03/01/2037	34,209.59	18,472.31		52,681.90		6,297,143.39
362	04/01/2037	31,899.27	35,370.00		67,269.27		5,853,726.00	362	04/01/2037	34,109.53	18,572.37		52,681.90		6,278,571.02
363	05/01/2037	31,707.68	35,561.00		67,268.68		5,818,165.00	363	05/01/2037	34,008.93	18,672.97		52,681.90		6,259,898.05
364	06/01/2037	31,515.06	35,754.00		67,269.06		5,782,411.00	364	06/01/2037	33,907.78	18,774.12		52,681.90		6,241,123.93
365	07/01/2037	31,321.39	35,948.00		67,269.39		5,746,463.00	365	07/01/2037	33,806.09	18,875.81		52,681.90		6,222,248.12
366	08/01/2037	31,126.67	36,142.00		67,268.67	807,228.37	5,710,321.00	366	08/01/2037	33,703.84	18,978.06		52,681.90	632,182.80	6,203,270.06
367	09/01/2037	30,930.91	36,338.00		67,268.91		5,673,983.00	367	09/01/2037	33,601.05	19,080.85		52,681.90		6,184,189.21
368	10/01/2037	30,734.07	36,535.00		67,269.07		5,637,448.00	368	10/01/2037	33,497.69	19,184.21		52,681.90		6,165,005.00
369	11/01/2037	30,536.18	36,733.00		67,269.18		5,600,715.00	369	11/01/2037	33,393.78	19,288.12		52,681.90		6,145,716.88
370	12/01/2037	30,337.21	36,932.00		67,269.21		5,563,783.00	370	12/01/2037	33,289.30	19,392.60		52,681.90		6,126,324.28
371	01/01/2038	30,137.16	37,132.00		67,269.16		5,526,651.00	371	01/01/2038	33,184.26	19,497.64		52,681.90		6,106,826.64
372	02/01/2038	29,936.03	37,333.00		67,269.03		5,489,318.00	372	02/01/2038	33,078.64	6,106,826.64		52,681.90		
373	03/01/2038	29,733.81	37,535.00		67,268.81		5,451,783.00	373	03/01/2038	-	-		-		
374	04/01/2038	29,530.49	37,738.00		67,268.49		5,414,045.00	374	04/01/2038	-	-		-		
375	05/01/2038	29,326.08	37,943.00		67,269.08		5,376,102.00	375	05/01/2038	-	-		-		
376	06/01/2038	29,120.55	38,148.00		67,268.55		5,337,954.00	376	06/01/2038	-	-		-		
377	07/01/2038	28,913.92	38,355.00		67,268.92		5,299,599.00	377	07/01/2038	-	-		-		
378	08/01/2038	28,706.16	38,563.00		67,269.16	807,227.57	5,261,036.00	378	08/01/2038	-	-		-		
379	09/01/2038	28,497.28	38,772.00		67,269.28		5,222,264.00	379	09/01/2038	-	-		-		
380	10/01/2038	28,287.26	38,982.00		67,269.26		5,183,282.00	380	10/01/2038	-	-		-		
381	11/01/2038	28,076.11	39,193.00		67,269.11		5,144,089.00	381	11/01/2038	-	-		-		
382	12/01/2038	27,863.82	39,405.00		67,268.82		5,104,684.00	382	12/01/2038	-	-		-		
383	01/01/2039	27,650.37	39,619.00		67,269.37		5,065,065.00	383	01/01/2039	-	-		-		

Original Amortization Schedule

Mission Del Rio Homes

Proposed Amortization Schedule

	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance		Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
384	02/01/2039	27,435.77	39,833.00		67,268.77		5,025,232.00	384	02/01/2039	-	-		-		-
385	03/01/2039	27,220.01	40,049.00		67,269.01		4,985,183.00	385	03/01/2039	-	-		-		-
386	04/01/2039	27,003.07	40,266.00		67,269.07		4,944,917.00	386	04/01/2039	-	-		-		-
387	05/01/2039	26,784.97	40,484.00		67,268.97		4,904,433.00	387	05/01/2039	-	-		-		-
388	06/01/2039	26,565.68	40,703.00		67,268.68		4,863,730.00	388	06/01/2039	-	-		-		-
389	07/01/2039	26,345.20	40,924.00		67,269.20		4,822,806.00	389	07/01/2039	-	-		-		-
390	08/01/2039	26,123.53	41,145.00		67,268.53	807,228.07	4,781,661.00	390	08/01/2039	-	-		-		-
391	09/01/2039	25,900.66	41,368.00		67,268.66		4,740,293.00	391	09/01/2039	-	-		-		-
392	10/01/2039	25,676.59	41,592.00		67,268.59		4,698,701.00	392	10/01/2039	-	-		-		-
393	11/01/2039	25,451.30	41,818.00		67,269.30		4,656,883.00	393	11/01/2039	-	-		-		-
394	12/01/2039	25,224.78	42,044.00		67,268.78		4,614,839.00	394	12/01/2039	-	-		-		-
395	01/01/2040	24,997.04	42,272.00		67,269.04		4,572,567.00	395	01/01/2040	-	-		-		-
396	02/01/2040	24,768.07	42,501.00		67,269.07		4,530,066.00	396	02/01/2040	-	-		-		-
397	03/01/2040	24,537.86	42,731.00		67,268.86		4,487,335.00	397	03/01/2040	-	-		-		-
398	04/01/2040	24,306.40	42,963.00		67,269.40		4,444,372.00	398	04/01/2040	-	-		-		-
399	05/01/2040	24,073.68	43,195.00		67,268.68		4,401,177.00	399	05/01/2040	-	-		-		-
400	06/01/2040	23,839.71	43,429.00		67,268.71		4,357,748.00	400	06/01/2040	-	-		-		-
401	07/01/2040	23,604.47	43,664.00		67,268.47		4,314,084.00	401	07/01/2040	-	-		-		-
402	08/01/2040	23,367.96	43,901.00		67,268.96	807,226.52	4,270,183.00	402	08/01/2040	-	-		-		-
403	09/01/2040	23,130.16	44,139.00		67,269.16		4,226,044.00	403	09/01/2040	-	-		-		-
404	10/01/2040	22,891.07	44,378.00		67,269.07		4,181,666.00	404	10/01/2040	-	-		-		-
405	11/01/2040	22,650.69	44,618.00		67,268.69		4,137,048.00	405	11/01/2040	-	-		-		-
406	12/01/2040	22,409.01	44,860.00		67,269.01		4,092,188.00	406	12/01/2040	-	-		-		-
407	01/01/2041	22,166.02	45,103.00		67,269.02		4,047,085.00	407	01/01/2041	-	-		-		-
408	02/01/2041	21,921.71	45,347.00		67,268.71		4,001,738.00	408	02/01/2041	-	-		-		-
409	03/01/2041	21,676.08	45,593.00		67,269.08		3,956,145.00	409	03/01/2041	-	-		-		-
410	04/01/2041	21,429.12	45,840.00		67,269.12		3,910,305.00	410	04/01/2041	-	-		-		-
411	05/01/2041	21,180.82	46,088.00		67,268.82		3,864,217.00	411	05/01/2041	-	-		-		-
412	06/01/2041	20,931.18	46,338.00		67,269.18		3,817,879.00	412	06/01/2041	-	-		-		-
413	07/01/2041	20,680.18	46,589.00		67,269.18		3,771,290.00	413	07/01/2041	-	-		-		-
414	08/01/2041	20,427.82	46,841.00		67,268.82	807,227.86	3,724,449.00	414	08/01/2041	-	-		-		-
415	09/01/2041	20,174.10	47,095.00		67,269.10		3,677,354.00	415	09/01/2041	-	-		-		-
416	10/01/2041	19,919.00	47,350.00		67,269.00		3,630,004.00	416	10/01/2041	-	-		-		-
417	11/01/2041	19,662.52	47,606.00		67,268.52		3,582,398.00	417	11/01/2041	-	-		-		-
418	12/01/2041	19,404.66	47,864.00		67,268.66		3,534,534.00	418	12/01/2041	-	-		-		-
419	01/01/2042	19,145.39	48,124.00		67,269.39		3,486,410.00	419	01/01/2042	-	-		-		-
420	02/01/2042	18,884.72	48,384.00		67,268.72		3,438,026.00	420	02/01/2042	-	-		-		-
421	03/01/2042	18,622.64	48,646.00		67,268.64		3,389,380.00	421	03/01/2042	-	-		-		-
422	04/01/2042	18,359.14	48,910.00		67,269.14		3,340,470.00	422	04/01/2042	-	-		-		-
423	05/01/2042	18,094.21	49,175.00		67,269.21		3,291,295.00	423	05/01/2042	-	-		-		-
424	06/01/2042	17,827.85	49,441.00		67,268.85		3,241,854.00	424	06/01/2042	-	-		-		-
425	07/01/2042	17,560.04	49,709.00		67,269.04		3,192,145.00	425	07/01/2042	-	-		-		-
426	08/01/2042	17,290.79	49,978.00		67,268.79	807,227.06	3,142,167.00	426	08/01/2042	-	-		-		-
427	09/01/2042	17,020.07	50,249.00		67,269.07		3,091,918.00	427	09/01/2042	-	-		-		-
428	10/01/2042	16,747.89	50,521.00		67,268.89		3,041,397.00	428	10/01/2042	-	-		-		-
429	11/01/2042	16,474.23	50,795.00		67,269.23		2,990,602.00	429	11/01/2042	-	-		-		-
430	12/01/2042	16,199.09	51,070.00		67,269.09		2,939,532.00	430	12/01/2042	-	-		-		-
431	01/01/2043	15,922.47	51,347.00		67,269.47		2,888,185.00	431	01/01/2043	-	-		-		-

Original Amortization Schedule

Mission Del Rio Homes

Proposed Amortization Schedule

Original Amortization Schedule							Proposed Amortization Schedule						
Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance	Payment Date	Interest At 6.50%	Principal Payment	Add'l Prin Payment	Payment	Annual Payment	Balance
432	02/01/2043	15,644.34		51,625.00		2,836,560.00	432	02/01/2043	-		-		-
433	03/01/2043	15,364.70		51,904.00		2,784,656.00	433	03/01/2043	-		-		-
434	04/01/2043	15,083.55		52,185.00		2,732,471.00	434	04/01/2043	-		-		-
435	05/01/2043	14,800.88		52,468.00		2,680,003.00	435	05/01/2043	-		-		-
436	06/01/2043	14,516.68		52,752.00		2,627,251.00	436	06/01/2043	-		-		-
437	07/01/2043	14,230.94		53,038.00		2,574,213.00	437	07/01/2043	-		-		-
438	08/01/2043	13,943.65		53,325.00		2,520,888.00	438	08/01/2043	-		-		-
439	09/01/2043	13,654.81		53,614.00	807,227.49	2,467,274.00	439	09/01/2043	-		-		-
440	10/01/2043	13,364.40		53,905.00		2,413,369.00	440	10/01/2043	-		-		-
441	11/01/2043	13,072.42		54,197.00		2,359,172.00	441	11/01/2043	-		-		-
442	12/01/2043	12,778.85		54,490.00		2,304,682.00	442	12/01/2043	-		-		-
443	01/01/2044	12,483.69		54,785.00		2,249,897.00	443	01/01/2044	-		-		-
444	02/01/2044	12,186.94		55,082.00		2,194,815.00	444	02/01/2044	-		-		-
445	03/01/2044	11,888.58		55,380.00		2,139,435.00	445	03/01/2044	-		-		-
446	04/01/2044	11,588.61		55,680.00		2,083,755.00	446	04/01/2044	-		-		-
447	05/01/2044	11,287.01		55,982.00		2,027,773.00	447	05/01/2044	-		-		-
448	06/01/2044	10,983.77		56,285.00		1,971,488.00	448	06/01/2044	-		-		-
449	07/01/2044	10,678.89		56,590.00		1,914,898.00	449	07/01/2044	-		-		-
450	08/01/2044	10,372.36		56,897.00	807,227.33	1,858,001.00	450	08/01/2044	-		-		-
451	09/01/2044	10,064.17		57,205.00		1,800,796.00	451	09/01/2044	-		-		-
452	10/01/2044	9,754.31		57,515.00		1,743,281.00	452	10/01/2044	-		-		-
453	11/01/2044	9,442.77		57,826.00		1,685,455.00	453	11/01/2044	-		-		-
454	12/01/2044	9,129.55		58,139.00		1,627,316.00	454	12/01/2044	-		-		-
455	01/01/2045	8,814.63		58,454.00		1,568,862.00	455	01/01/2045	-		-		-
456	02/01/2045	8,498.00		1,568,862.00	1,577,360.00	1,913,704.43	456	02/01/2045	-		-		-
		22,188,445.88		11,490,000.00	33,678,445.88	31,781,132.63			18,880,715.75		9,454,909.00	2,035,091.00	11,490,000.00
Avg Life Since 02/04/2005=				29.701	years		Avg Life Since 02/04/2005=				25.272	years	
Avg Life Since 12/01/2013=				22.076	years		Avg Life Since 11/01/2013=				21.348	years	
							Total Interest Savings from 12/01/2013 to 02/01/2038=						
							\$1,637,228						

Applicant Evaluation

Project ID # **13605**

Name **Mission Del Rio**

City: **San Antonio**

HTC 9% HTC 4% HOME BOND HTF NSP ESG Other

No Previous Participation in Texas Members of the development team have been disbarred by HUD

Compliance

Total # of MF awards monitored:	24	Projects in Material Noncompliance Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Projects grouped by score	0-9:	17
Total # of MF awards not yet monitored or pending review:	4	Unresolved Audit Findings Identified w/ Contract(s) <input type="checkbox"/>		10-19:	4
SF Contract Experience <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Total # of MF Projects in Material Noncompliance: <u>0</u>		20-29:	3
Total # of SF Contracts:	0			Total monitored with a score 0-29:	24

Completed by: James Roper Reviewer: Patricia Murphy
 Date: 6/12/2013 Date: 6/22/2013

Comments (if applicable):

Single Audit

Single audit review not applicable Late single audit certification form (see comments)
 Single audit requirements current Past due single audit or unresolved single audit issue (see comments)

Reviewer: Rosy Falcon Date: 6/14/2013

Comments (if applicable):

Loan Servicing

No delinquencies found Delinquencies found (see comments)

Reviewer: Sandra Molina Date: 6/14/2013

Comments (if applicable):

Financial Services

No delinquencies found Delinquencies found (See Comments)

Reviewer: Monica Guerra Date: 6/17/2013

Comments (if applicable):

Community Affairs

No identified issues Identified Issues (see comments)

Reviewer: Cathy Collingsworth Date: 6/14/2013

Comments (if applicable):

5h

**To Be Posted
three days
prior to the meeting**

6a

BOARD ACTION REQUEST
COMPLIANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, §§10.601 – 10.625, concerning Compliance Monitoring, and proposed new Subchapter F, §§10.601 – 10.626, concerning Compliance Monitoring

RECOMMENDED ACTION

WHEREAS, the Compliance Rules were adopted on December 27, 2012, and the Department began monitoring pursuant to the new provisions;

WHEREAS, at the April 11, 2013, Board Meeting, staff brought to the Board proposed Compliance Rules revised to ensure they support overall objectives of administering compliant programs and activities with appropriate protections against inappropriate outcomes;

WHEREAS, after significant public comment, the Board instructed staff to hold in abeyance any findings related to the fair housing disclosure notice form, and in conducting previous participation reviews disregard the finding failure to maintain or provide annual eligibility certification until these rules are adopted in final form and to hold a roundtable and bring back a comprehensive rule reflecting attention to this input;

WHEREAS, the staff conducted such roundtable on April 22, 2013, which resulted in the formation of work groups focused on the Uniform Physical Condition Standards. Participants were industry professional including owners, management companies, onsite staff and consultants and they made recommendations to the Department; and

WHEREAS, it has been determined that the proposed rules should now be published for formal public comment.

NOW, therefore, it is hereby

RESOLVED, that currently pending noncompliance matters related to the Fair Housing Disclosure Notice form and past findings related to the Annual Eligibility form, shall continue to be temporarily held in abeyance, to be handled in a manner consistent with the outcome of this proposed rulemaking, and thus provide for fair and consistent treatment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered and directed, for and on behalf of the Department, to approve the repeal of 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter F, §§10.601 – 10.625, concerning Compliance Monitoring, and proposed new Subchapter F, §§10.601 – 10.626, concerning Compliance Monitoring for

publication in the *Texas Register* for review and public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The attached Compliance Monitoring rules are a substantial rewrite of the old rule and incorporate industry feedback, the recent legislative changes to Texas Government Code §2306.6719, and the changes to the HOME Rule released by the U.S. Department of Housing and Urban Development in July of 2013. A staff draft of these rules was made available on the Department's website on August 2, 2013. A conference call to explain the proposed changes was held on August 12, 2013, and a roundtable discussion was held on August 26, 2013.

Major changes include: the creation of a Compliance Committee to review issues (§10.605), the elimination of the requirement to use the Department's Annual Eligibility Certification form, changes to requirements regarding the fair housing disclosure notice, and procedures for correction of that issue (§10.612), the requirement for HOME developments funded after August of 2013 to use the HUD utility schedule model for their utility allowance (§10.614), and a procedure for owners to request an adjustment to their UPCS report (§10.621). In addition, the sections of the rule that referred to "Material Noncompliance" have been eliminated.

The rule presented today has some minor formatting changes to the staff draft that was posted on the Department's website on August 2, 2013. In addition, the sections below are slightly different than the staff draft that has been on the website:

The staff draft of §10.602(e) stated:

(e) Events of noncompliance will not be reported to the IRS, referred for enforcement action, considered cause for debarment, or reported in an applicant's compliance history or previous participation review, until after the end of the corrective action period established in the notice described in this section.

The rule presented for the Board's consideration states:

(e) Unless otherwise required by law, events of noncompliance will not be reported to the IRS, referred for enforcement action, considered cause for debarment, or reported in an applicant's compliance history or previous participation review, until after the end of the corrective action period established in the notice described in this section.

The staff draft of §10.605(a) stated:

(a) The Compliance Committee is a committee appointed by the Executive Director and composed of members of senior management, including representatives from Asset Management, Community Affairs, HOME, the Multifamily Finance Division, Public and Policy Affairs, Program Services and Real Estate Analysis. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Legal

Services will not be a member of the committee but will be available to provide guidance to Department staff.

The rule presented for the Board's consideration states:

(a) The Compliance Committee is a committee of three to five persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Division will not be appointed to the committee but will be available to provide guidance to Department staff.

The staff draft of §10.605(d)(4) stated:

(4) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement with a Department rule may be appealed to the Board

The rule presented for the Board's consideration states:

(4) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed directly to the Board.

The event of noncompliance: Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973 has been added to Figure: §10.624(a)

The staff draft of the rule stated included:

§10.626.Applicability

Unless otherwise noted, this subchapter applies to all Developments administered by the Department

This has been deleted since Applicability is covered in §10.601

Staff recommends approval of these rules for publication in the *Texas Register* for public comment.

Attachment 1: Preamble and proposed repeal of 10 TAC Chapter 10, Subchapter F.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Subchapter F, §§10.601-10.625 concerning Compliance Monitoring. The purpose of this proposed repeal is to allow the adoption of new rules which will reorganize and clarify existing requirements and changes in law in the Texas Administrative Code. The proposed new Chapter 10, concerning 2013 Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, there will be no change in the public benefit anticipated as a result of the repeal. There will be no economic impact to any individuals required to comply with the repealed sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 28, 2013 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 28, 2013.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

- §10.601. Purpose and Overview.
- §10.602. Construction Monitoring.
- §10.603. Reporting Requirements.
- §10.604. Recordkeeping Requirements.
- §10.605. Notices to the Department.
- §10.606. Determination, Documentation and Certification of Annual Income.
- §10.607. Utility Allowances.
- §10.608. Lease Requirements.

- §10.609. Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments.
- §10.610. Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments.
- §10.611. Household Unit Transfer Requirements for All Programs.
- §10.612. Requirements Pertaining to Households with Rental Assistance.
- §10.613. Onsite Monitoring.
- §10.614. Monitoring for Social Services.
- §10.615. Monitoring for Non-Profit Participation or HUB Participation.
- §10.616. Property Condition Standards.
- §10.617. Notice to Owners.
- §10.618. Special Rules Regarding Rents and Rent Limit Violations.
- §10.619. Notices to the Internal Revenue Service (HTC Properties).
- §10.620. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.
- §10.621. Material Noncompliance Methodology.
- §10.622. Alternative Dispute Resolution.
- §10.623. Liability.
- §10.624. Applicability.
- §10.625. Temporary Suspension of Other Sections of this Subchapter.

Attachment 2. Preamble and proposed new 10 TAC Chapter 10, Subchapter F §§10.601 through 10.626 concerning Compliance Monitoring.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter F, §§10.601 - 10.626 concerning Compliance Monitoring. The purpose of this proposed new Subchapter is to provide guidance on complying with multifamily Department programs. The purpose of the proposed new sections is to set forth procedure for monitoring for compliance with the Department’s rental housing programs, to set deadlines for annual reporting and corrective action due dates, to codify record keeping requirements, to set forth required and prohibited tenant selection criteria and lease language, to codify requirements for establishing a compliant utility allowance, and to set forth affirmative marketing requirements and social service requirements.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved compliance with affordable housing program administered by the Department. There will not be any increased economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 28, 2013, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3140. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. October 28, 2013.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect no other code, article, or statute.

§10.601. Compliance Monitoring Objectives and Applicability.

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

(A) The U. S. Department of Housing and Urban Development (HUD),

(B) The U. S. Department of the Treasury (Treasury),

(C) The Internal Revenue Service (the “IRS”); and

(D) Applicable state laws and rules.

(2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;

(3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;

(4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;

(5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;

(6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department’s affordable rental programs; and,

(7) To provide a transparent system whereby all interested parties, including tenants, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1)-(7) of this subsection:

(1) The Housing Tax Credit Program (HTC);

(2) The HOME Investment Partnerships Program (HOME);

- (3) The Tax Exempt Bond Program (Bond);
- (4) The Housing Trust Fund Program (HTF);
- (5) The Tax Credit Assistance Program (TCAP);
- (6) The Tax Credit Exchange Program (Exchange); and
- (7) The Neighborhood Stabilization Program (NSP).

(c) There are two key aspects of ongoing monitoring activity, the physical condition of the developments and whether they are being operated in documented compliance with program requirements.

(d) The results of the Department's monitoring activities will be timely and properly documented.

(e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws.

§10.602. Notice to Owners and Corrective Action Periods.

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or if the Department discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, this subchapter, or other program rules and regulations, including §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a thirty (30) day corrective action period for failure to file the AOCR and a ninety (90) day corrective action period for other violations. During the corrective action period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the event of noncompliance has been corrected. Documentation of correction must be received during the corrective action period for an event to be considered corrected during the corrective action period. The Department may extend the corrective action period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law, events of noncompliance will not be reported to the IRS, referred for enforcement action, considered cause for debarment, or reported in an applicant's compliance history or previous participation review, until after the end of the corrective action period established in the notice described in this section.

§10.603. Notices to the Internal Revenue Service (HTC Developments during the Compliance Period).

(a) Even when an event of noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than forty-five (45) days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six (6) years beyond the Department's filing of the respective IRS Form 8823. (c) The Department will send the Owner of record copies of any IRS Forms 8823 submitted to the IRS. Copies of Forms 8823 may be submitted to the syndicator provided that the Department has the correct contact information.

§10.604. Options for Review.

(a) If, during the corrective action period, an Owner supplies evidence of continual compliance, the issue of noncompliance will be dropped and no further action will be taken, *i.e.*, for HTC properties, Form 8823 will not be filed with the IRS.

(b) If, following the submission of corrective action documentation, Compliance staff continues to find the Owner in noncompliance, the Owner may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to the inclusion or exclusion of tenant income, assets or appropriate household size, the National Center for Housing Management (NCHM) can be contacted. In order to obtain guidance from NCHM, the requestor must have an active Certified Occupancy Specialist designation. If no representative of the owner has this designation, Department staff may make the request on the owner's behalf.

(2) If the compliance matter is related to the Housing Tax Credit program, owners may contact the IRS Program Analyst for guidance or request that Department staff contact the IRS for general guidance without identifying the taxpayer. The issue will be handled in accordance with the guidance received from the IRS.

(3) If the compliance matter is related to the HOME or NSP program, owners may contact the U.S. Department of Housing and Urban Development Texas Field Office for guidance. The issue will be handled in accordance with guidance received from HUD.

(4) Owners may request review by the Department's Compliance Committee, as set out in §10.605 of this section.

(5) Owners may request Alternative Dispute Resolution (ADR). An Owner may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution and Negotiated Rulemaking). Note that even if the Department and Owner are engaged in ADR, the Department must meet Treasury Regulation §1.42-5 and file Form 8823 within forty-five (45) days after the end of the corrective action period. Therefore, it is possible that the Owner and Department may still be engaged in ADR when a Form 8823 is filed. Should this happen, the form, including all Owner-supplied documentation, will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. Although the violation will be reported to the IRS within the required timeframes, it will not be considered part of an applicant's compliance history nor subject to administrative penalties pending the ADR process.

§10.605. Compliance Committee.

(a) The Compliance Committee is a committee of three to five persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Division will not be appointed to the committee but will be available to provide guidance to Department staff.

(b) Informal discussion with Compliance Monitoring staff. If the responsible person has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance Monitoring staff, including, as needed, the Chief of Compliance.

(c) Informal discussion with the Compliance Committee. A responsible person may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance Monitoring staff did not resolve the issue.

(d) Compliance Committee Process and Timeline:

(1) At any time, the responsible person may call or request an informal conference with the Compliance Monitoring staff and/or the Chief of Compliance.

(2) If a call or an informal conference with the Compliance Monitoring staff does not result in a resolution of the issue, the responsible person may, within thirty (30) days of the call or informal conference with Compliance Monitoring staff, request a meeting with the Compliance Committee.

(3) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the responsible person. A responsible person should not offer evidence, documentation, or information to the Committee that was not presented to Compliance Monitoring staff during the informal staff conference. If additional information is offered, the Committee may disallow the information or refer the matter back to Compliance Monitoring staff to allow review of the additional information prior to any consideration by the Committee.

(4) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed directly to the Board.

§10.606. Contract and Construction Monitoring.

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final Construction during the Affordability Period, the Department will periodically monitor the Development to assure that that the Owner maintains compliance with applicable accessibility laws and amenities as required in the Development's Land Use Restriction Agreement.

(b) Owners are required to submit evidence of final construction within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws, and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(c) The Department will conduct a final inspection after receipt of notification of final construction. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility laws. In addition, a Uniform Physical Condition Standards inspection may be completed.

(d) IRS forms 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

§10.607.Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (d) of this section. [Example 607(1) A Development was allocated Housing Tax Credits in July 2011. The first report is due April 30, 2013, even if the Development has not yet commenced leasing activities.]

(c) The AOCR is comprised of five parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. HTC Developments during their Compliance Period will also be required to provide the contact information of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement;

(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide and certify the data requested in the Owner's Financial Certification; and

(5) Part E "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year

for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) Parts A, B, C, D and E of the Annual Owner's Compliance Report must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(e) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

(f) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(g) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(h) Exchange developments must submit Form 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed thirty (30) days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

§10.608. Record Keeping Requirements.

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.607 of this chapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low-Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations and executed contracts or Land Use Restriction Agreements. In general, retention schedules include but are not limited to the provision of subsections (c) - (f) of this section.

(c) HTC records must be retained for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for NSP and HOME rental Developments must comply with the provisions of 24 CFR §92.508(c), which generally requires retention of rental housing records for five (5) years after the Affordability Period terminates.

(e) Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three (3) years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including, but not limited to, the Application and Development costs and documentation, must be retained for at least five (5) years after the Affordability Period terminates.

(f) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

(g) All required records must be made available on site when an onsite monitoring occurs.

§10.609. Notices to the Department.

If any of the events described in paragraphs (1) – (5) of this section occur, written notice must be provided to the Department within the respective timeframes:

(1) Written notice must be provided at least thirty (30) days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership;

(2) Notification must be provided within thirty (30) days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10 percent of the Units are occupied and the date on which 50 percent of the Units are occupied, and notice must occur within ninety (90) days of such dates;

(4) Within thirty (30) days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure; and

(5) Within ten (10) days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses and/or phone numbers) for the Ownership entity,

management company, and/or Development the Department's Compliance Monitoring and Tracking System must be updated.

§10.610.Tenant Selection Criteria.

(a) Owners must maintain written tenant selection criteria. The criteria cannot:

(1) Exclude an individual or family from admission to the Development solely because the individual or family participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f), or other federal rental assistance program;

(2) Use a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the Owner of the Development. However, if a family's share of the rent is \$50 or less, Owners may require a minimum annual income of \$2,500; and

(3) In accordance with the Violence Against Women Reauthorization Act of 2013, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(b) The criteria must:

(1) State that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly (rental, credit, and/or criminal history), including employment policies, and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules;

(3) Be reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease; and

(4) For all elderly Developments, must specify age requirements and demonstrate a commitment to operate the Development as Housing for Older Persons. Units in a Development as Housing for Older Persons may not lease units to households not meeting the criteria of qualified elderly except as expressly permitted by written guidance from HUD.

(c) Owners of HOME Developments must also:

(1) Provide any rejected applicant written notification of the grounds for rejection within thirty (30) days; and

(2) Maintain a written waiting list and select tenants from the waiting list in chronological order, insofar as is practicable.

§10.611.Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3 as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing Form 8823, the IRS guidance will be controlling. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. Certification and documentation of household income is an Owner responsibility, even if the Owner is using a manager's services to handle tenant intake and leasing. Accordingly, Owner's should ensure that they hire competent and properly trained managers and that they exercise appropriate oversight of any manager's activities.

(b) For the initial certification of a household residing in a HOME unit at a Development committed HOME funds after August 23, 2013, owners must examine at least 2 months of source documents evidencing annual income (e.g. wage statement, interest statement, unemployment compensation).

§10.612. Tenant File Requirements.

(a) At the time of program designation as a low-income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted.

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents.

(3) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this chapter (relating to Lease Requirements).

(4) The Department's Fair Housing Disclosure Notice form. This notice must be presented to the household at the time of application for occupancy and must be executed no more than one-hundred-twenty (120) days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a low-income unit on a Development administered by the Department including households transferring within the same Development. If the household is not provided this notice prior to move in or transfer, the Department will consider the event corrected if the Fair Housing Disclosure Notice is provided to the household no more than one-hundred-twenty (120) days and no less than thirty 30 days prior to the date that the household is legally obligated to provide written notice of their intention to terminate or renew their current lease.

(b) Annually thereafter:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the affordability period for all Bond developments and HOME Developments committed funds after August 23, 2013, Owners must collect and maintain current student status data for each low-income household. This information can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME Developments committed funds after August 23, 2013, an individual does not qualify as a low-income or very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of properties described in subparagraphs (A)- (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see paragraphs a(1) -(2) of this subsection):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of form 8609 and accompanying statements, if any) that have not completed the 15 year Compliance Period;

(B) All Bond developments with less than 100 percent of the units set aside for households with an income less than 50 percent or 60 percent of area median income;

(C) HTF Developments with Market Rate units. However, HTF Developments with other Department administered programs will comply with the requirements of the other program. [Example 612(1): If a Development is mixed income HTF and 100 percent low-income HTC, all households must be certified at move in. Then, once a calendar year, the Owner must collect the data required by and in accordance with the paragraphs (b)(1) and (2) of this subsection.]

(D) HOME Developments. Refer to paragraph (c) of this subsection.

(c) Ongoing tenant file requirements for HOME Developments:

(1) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the years of the affordability determined in *Example 612(2) as follows:*

(A) Year 1: May 15, 2001 - May 14, 2002;

(B) Year 2: May 15, 2002 - May 14, 2003;

(C) Year 3: May 15, 2003 - May 14, 2004;

(D) Year 4: May 15, 2004 - May 14, 2005;

(E) Year 5: May 15, 2005 - May 14, 2006;

(F) Year 6: May 15, 2006 - May 14, 2007;

(G) Year 7: May 15 2007 - May 14, 2008;

(H) Year 8: May 15, 2008 - May 14, 2009;

(I) Year 9: May 15 2009 - May 14, 2010;

(J) Year 10: May 15 2010 - May 14, 2011;

(K) Year 11: May 15 2011 - May 14, 2012; and

(L) Year 12: May 15 2012 - May 14, 2013.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2006, to May 14, 2007, and between May 15, 2012, and May 14, 2013.

(3) In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds, *Example 612(3)*: a household moved into a HOME unit on June 10, 2010, the household's self certification must be completed by June 10, 2011, and the household must be recertified with source documentation effective June 10, 2012. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self certification that their annual income exceeds the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

§10.613. Lease Requirements.

(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.

(b) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting low-income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. 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 non-renewal of leases for other than good cause are prohibited (24 CFR §92.253). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253.

(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and Bond Developments must use a lease or lease addendum that requires households to report changes in student status.

(e) 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.

(f) For HOME and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that, all households at HOME and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355 and §570.487(c))

(g) All Owners shall comply with the lease requirements found in Section 601 of the Violence Against Women Reauthorization Act of 2013 (“VAWA 2013”). In general, owners may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim or threatened victim or as good cause for terminating tenancy. However, in accordance with VAWA 2013, owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

(h) Leasing of HOME units by organizations that, in turn, rent those units to individuals is not permissible for HOME developments committed funding after August 23, 2013.

(i) Housing Tax Credit units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the unit remains vacant for over 30 days. The unit will be found out of compliance under the finding “Violation of the Unit Vacancy Rule.”

§10.614.Utility Allowances.

(a) The Department will monitor to determine if Developments comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP, and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company and the amount of the bill is based on an allocation method or "Ratio Utility Billing System" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP, and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, Owners may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than the allowable limit. For HOME, Bond, HTF, and NSP buildings, Owners may account for utilities paid directly to the Owner or to a third party billing company in their utility

allowance. Where residents are responsible for some or all of the utilities--other than telephone, cable, and internet--Development Owners must use a utility allowance that complies with both this section and the applicable program regulations.

(b) An Owner may not change utility allowance methods or start charging residents for a utility without prior written approval from the Department. [*Example 614(1)*: A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required.] Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. The Department will respond by approving or denying within ninety (90) days of the date on which the party making the request has completed the questionnaire and provided all required supporting documentation and responded to any Department requests for clarification or additional information.

(c) Rural Housing Services (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(d) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings.

(e) HOME units at HOME developments committed funds after August 23, 2013 must use the HUD Utility Schedule Model. The utility allowance will be calculated by the Department on an annual basis and provided to the Owner with a deadline for implementation.

(f) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in paragraphs (1) - (5) of this subsection:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(A) If the PHA publishes different schedules based on building type, the Owner is responsible for implementing the correct schedule based on the Development's building type(s). [*Example 614(2)*: The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consist of twenty buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each building type.]

(B) In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five (5) years.

(C) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility.

(D) If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

(E) In general, if the property is located in an area that does not have a municipal, county, or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the property is located in an area without a clear municipal or county housing authority the Department may permit the use of another housing authority's utility allowance schedule on a case by case basis. Prior approval from the Department is required and the owner must obtain approval on an annual basis.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: <http://www.powertochoose.org/> to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(3) The HUD Utility Schedule Model. A utility estimate can be calculated by using the "HUD Utility Schedule Model" that can be found at <http://www.huduser.org/portal/resources/utlmodel.html> (or successor Uniform Resource Locator). Each item on the schedule must be displayed out to two decimal places. The total allowance must be rounded up to the next whole dollar amount. The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a Compact Disc or flash drive, within the timeline described in subsection (g) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(4) An Energy Consumption Model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location. Use of the Energy Consumption Model is limited to the building's consumption data for the twelve (12) month period ending no earlier than sixty (60) days prior to the beginning of the ninety (90) day period and utility rates used must be no older than the rates in place sixty (60) days prior to the beginning of the ninety (90) day period. In the case of a newly constructed or renovated building with less than twelve (12) months of consumption data, the qualified professional may use consumption data for the twelve (12) month period from units of similar size and construction in the geographic area in which the building containing the units is located. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate; and

(5) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(f) For a Development Owner to use the Actual Use Method they must:

(1) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. [Example 614(3): A Development has 20 three bedroom/one bath Units, and 80 three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided];

(2) Scan the information in subparagraphs (A) - (E) of this paragraph onto a CD and submit it to the Department no later than the beginning of the ninety (90) day period after which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. [Example 614(4): The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009, through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010, for the information to be valid];

(A) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the actual kilowatt usage for each month of the

twelve (12) month period for each Unit for which data was obtained, and the rates in place at the time of the submission;

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data;

(C) All documentation obtained from the utility provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(D) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(E) Documentation of the current utility allowance used by the Development.

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subparagraphs (A) - (E) of this paragraph;

(A) If data is obtained for more than 20 percent of all units or there are more than 5 of a Unit Type, all data will be used to calculate the allowance;

(B) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged;

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(D) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(E) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection;

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent; and

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(g) Effective dates. If the Owner uses the methodologies as described in subsection (c), (d), or (e)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least ninety (90) days after the change. For methodologies as described in subsection (e)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance.

(h) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due ninety (90) days after the change.

(3) HOME Developments committed funds after August 23, 2013. On an annual basis, the Department will calculate the utility allowance using the HUD Utility Schedule Model.

(4) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the update is submitted to the Department, the Owner must post the utility allowance estimate in a common area of the leasing office at the Development. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved utility allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request. If approved, changes to the allowance can be implemented ninety (90) days after the request was submitted to the Department and provided to the residents.

(5) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(i) Combining Methodologies. With the exception of HUD regulated buildings, HOME units at HOME Developments committed funds after August 23, 2013 and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(j) Increases in Utility Allowances for Developments with HOME or NSP funds. Unless otherwise instructed by HUD, the Department will permit owners to implement changes in utility allowance in the same manner as Housing Tax Credit (HTC) Developments.

(k) The Owner shall maintain and make available for inspection by the tenant, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(l) If Owners want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial utility allowance for the Development, no more than 180 days and no less than ninety (90) days prior to the commencement of leasing activities, the Owner must submit utility allowance documentation for Department approval. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing in accordance with subsection (b) of this section.

(n) The Department reserves the right to outsource to a third party the review and approval of all or any utility allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

§10.615.Managing Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments.

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limit or 40 percent of the Units restricted at the 60 percent income and rent limits). The minimum set-aside elected sets the maximum income and rent limits for the low-income units on the Development. Many Developments have additional income and rent requirements (i.e., 30 percent, 40 percent and 50 percent) that are lower than the minimum set-aside requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA. The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met.

(b) For 100 percent HTC Developments (developments with all units restricted to income eligible persons at restricted rents) that are not required to perform annual recertification, regardless of the requirements stated in the Development's LURA, the additional rent and occupancy restrictions will be monitored as follows:

(1) Households initially certified at the 30 percent income and rent limits. Households will maintain the designation they had at initial move-in. The Unit will continue to meet the 30 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 30 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 30 percent limit;

(2) Households initially certified at the 40 percent income and rent limits. Households will maintain the designation they had at initial move in. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 40 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 40 percent limit; and

(3) Households initially certified at the 50 percent income and rent limits. Households will maintain the designation they had at initial move in. The Unit will continue to meet the 50 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 50 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 50 percent limit.

(c) Mixed Income HTC Developments with Market Units will be monitored as described in paragraphs (1) and (2) of this subsection:

(1) The HTC program requires Mixed Income projects with Market Units to comply with the Available Unit Rule. When a household's income at recertification exceeds 140 percent of the applicable current income limit elected by the minimum set-aside, the owner must comply with the Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance. For HTC projects that are required to perform annual recertifications, the additional rent and occupancy restrictions will be monitored as follows;

(A) Households initially certified at the 30, 40, or 50 percent income and rent limits will maintain the designation they had at initial move in unless the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation from the initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit;

(B) The household will not be required to vacate the Unit for other than good cause. When the household vacates the Unit, the next available Unit on the Development must be leased in a manner so as to meet the Development's additional rent and occupancy restrictions; and

(C) If the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside, the household must be redesignated as over income and the Next Available Unit Rule must be followed. [Example 615(1): A household was initially certified at the 40 percent income limit at move in. The household's income increases at recertification above the 40 percent income limit to the 50 percent income limit. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limit. When the household vacates the Unit, the Next Available Unit on the Development is leased to a household with an income and rent less than the 40 percent limits.]

(2) This subsection does not require HTC Developments to lease more Units under the additional occupancy restrictions than established in their LURA. [Example 615(2): If a Development is required to lease 10 units at the 40 percent income and rent levels and has satisfied the requirement, the owner is not required to offer the 40 percent rent to other households, even if their income is less than the 40 percent income limit.]

(d) Units at 80 percent area median income and rent on HTC developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10 percent of the development's Market Rate units to households at 80 percent income and rents. This section provides guidance for implementation. If the LURA requires 10 percent of the Market Rate units be leased to households at 80 percent income and rent limits, the owner must certify the 80 percent households at the time of move in only. Recertifications will not be required. Student rules do not apply to units occupied by 80 percent households. Noncompliance with the requirement to lease to 80 percent households is not reportable to the IRS on Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

§10.616. Household Unit Transfer Requirements for All Programs.

(a) The requirements and restrictions regarding household transfers for HTC, Exchange, and TCAP Developments are based on whether the project is 100 percent low-income or mixed income and if the owner elected to treat buildings in the project as part of a multiple building project. To determine if a Development is a multiple building project, refer to the election on IRS form 8609 line 8(b) and accompanying statements (if any). If forms 8609 have not yet been issued by the Department and filed by the owner, each building is its own project.

(1) 100 percent low-income multiple building projects: Households may transfer to any unit in a 100 percent low-income multiple building project and retain their program designation. The household does not need to be and should not be certified at the time of transfer. The move in date remains the date the household was first designated under the program.

(2) Each building is its own project (100 percent low-income and mixed income projects): To retain its low-income status, at the time of transfer, a household must be certified and have a current annual income less than the income limit established by the minimum set aside the owner selected.

(3) Mixed income multiple building projects: Low-income households retain their program designation when they transfer to any unit in the multiple building project if at the last annual certification their income was less than 140 percent of area median income level set by the minimum set aside.

(b) Household transfers for Bond, HTF, HOME, and NSP. For Bond, HTF, HOME, and NSP Developments, households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved onto the Development. If the Development is layered with Housing Tax Credits, you are required to use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(c) Household Transfers in the Same Building for all Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The unit designations will swap status. Example 616(1): Building 1 has 4 low-income Units. Units 1 through 3 are occupied by low-income households and Unit 4 is a vacant low-income unit. The household in Unit 2 moves to Unit 4 and the Unit designations swap status. Unit 2 is now a vacant low-income unit.

§10.617.Affirmative Marketing Requirements.

(a) Owners of Developments with 5 or more total units must use an Affirmative Fair Housing Marketing Plan to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians, or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, veterans, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. Owners are encouraged to use HUD Form 935.2A, and may use any version of this Form as applicable.

(b) The Affirmative Marketing Plan must identify:

(1) Which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach; and

(2) Organizations and groups in the area that serve persons with disabilities; and

(3) Certain HTC Developments must include methods for informing veterans about the availability of units.

(c) When identifying racial/ethnic minority groups the Development will market to, factors such as the characteristics of the housing's market area should be considered. [Example 617(1): An Owner obtains

census data showing that 6.5 percent of the city's total population are Asian Americans. However, the Owner's demographic data for the Development shows that zero Asian American households are represented. The Owner chooses to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach.]

(d) The Affirmative Marketing Plan must identify specific media and community contacts that reach those groups designated as least likely to apply. At minimum, contact must be made annually but more frequent contact is encouraged. Community outreach contacts may include neighborhood, minority, veteran's organizations, or women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s). [Example 617(2): An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for adults with developmental disabilities. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired.]

(e) The Owner must assess the success of Affirmative Marketing efforts by annually reviewing the Development's demographics in relation to the housing area. The plan must be updated every five (5) years to fully capture demographic changes in the housing's market area.

(f) Owners must maintain records of marketing efforts which will be reviewed by the Department during onsite monitoring visits. [Example 617(3): The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies, or a waiting list to the groups identified in the Owner's plan. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts on an annual basis will result in a finding of noncompliance.]

(g) If a Development does not have any vacant units, Affirmative Marketing is still required and Owners must maintain a waiting list. If a Development does not have any vacancies and the waiting list is closed, Affirmative Marketing is not required until a new vacancy occurs or the waitlist is opened.

§10.618.Onsite Monitoring.

(a) The Department may perform an onsite monitoring review of any low-income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low-income Development. The Department will conduct:

- (1) The first review of HTC, Exchange, and TCAP Developments by the end of the second calendar year following the year the last building in the Development is placed in service;
 - (2) The first review of all Developments, other than those described in subsection (b)(1) of this section, as leasing commences;
 - (3) Subsequent reviews at least once every three (3) years during the Affordability Period;
 - (4) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;
 - (5) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least forty-eight (48) hours notice will be provided); and
 - (6) Reviews, meetings, and other appropriate activity in response to complaints or investigations.
- (c) The Department will perform onsite file reviews and monitor:
- (1) Low-income resident files in each Development, and review the Income Certifications;
 - (2) The documentation the Development Owner has received to support the certifications; and
 - (3) The rent records, and
 - (4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.
- (d) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low- Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.
- (e) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

§10.619.Monitoring for Social Services.

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite visits beginning with the second onsite review, and must be submitted to the Department upon request. [Example 619(1): The Owner's LURA requires provision of onsite daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services.] [Example 619(2): The Owner's LURA requires a monetary amount to be expended on a monthly basis for supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended as evidence that this requirement is being met.]

(b) A substantive modification of the scope of tenant services requires Board approval. Such requests must comply with procedures in §10.405 of this chapter (relating to Amendments). It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

(c) If the Development's LURA requires a monthly expenditure for the provision of services, the Department will monitor to confirm compliance. Includable costs to support the expenditure include those costs directly related to providing the service(s). Such costs can include, but are not limited to, the cost of contracting the services with a qualified provider, cost of notification of such services (for example, a monthly newsletter), other costs that can be documented and would only be incurred as a result of the service. An Owner cannot include any costs related to the normal expense of maintaining or operating a Development, utility bills of any kind, in-kind contributions or services, cleaning or contracted janitorial services, office supplies, cost of copier or fax, costs incurred for maintenance of machinery, or volunteer hours. This list is not inclusive, but any other costs identified by the Owner shall be reviewed for consistency with this subsection.

§10.620. Monitoring for Non-Profit Participation or HUB Participation.

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm whether this requirement is being met throughout the development phase and ongoing operations of the Development. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB so participating is in good standing with the Texas Comptroller of Public Accounts, Texas Secretary of State and/or IRS as applicable and that it is actually materially participating in a manner that meets the requirements of the IRS. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If an Owner wishes to change the participating non-profit or HUB, prior written approval from the Department is necessary. The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement. In addition, the IRS will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(c) The Department does not enforce partnership agreements or other agreements between third parties or determine fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction or other agreed resolution among the parties.

§10.621.Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes.

(b) HTC Development Owners are required by Treasury Regulation §1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time during the compliance period to the IRS on Form 8823. Accordingly, the Department will submit Form 8823 for any UPCS violation.

(d) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards. Acceptable documentation includes: copies of work orders (listing the deficiency, action taken or repairs made to correct the deficiency, date of corrective action, and signature of the person responsible for the correction), invoices (from vendors, etc.), or other proof of correction. Photographs are not required but may be submitted if labeled and only in support of a work order or invoice. The Department will determine if submitted materials satisfactorily document correction of noncompliance.

(e) Selection of Units for inspection:

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than thirty (30) days.

(2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and may be inspected. No deficiencies will be cited for inspectable items that require utility service, if utilities are turned off and the inspectable item is present and appears to be in working order.

(f) The Department will consider a request for review of a UPCS score using a process similar to the process established by the U. S. Department of Housing and Urban Development Real Estate Assessment Center. The request must be submitted in writing within forty-five (45) calendar days of receiving the initial UPCS inspection report and score.

(g) Examples of items that can be adjusted include but are not limited to:

(1) Building Data Errors -- The inspection includes the wrong building, or a building that is not owned by the Development.

(2) Unit Count Errors -- The total number of units considered in scoring is incorrect as reported at the time of the inspection.

(3) Non-Existent Deficiency Errors -- The inspection cites a deficiency that did not exist at the time of the inspection.

(4) Local Conditions and Exceptions -- Circumstances include inconsistencies between local code requirements and the UPCS inspection protocol, such as conditions permitted by local variance or license (*e.g.*, child guards allowed on sleeping room windows by local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.

(5) Ownership Issues -- Items that were captured and scored during the inspection that are not owned and/or not the responsibility of the Development. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining properties or the city/county/state and resident-owned appliances that are not maintained by the Owner.

(6) Modernization Work In Progress -- Developments undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for an adjustment. All elements of the unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to the Department's physical inspection protocol without adjustment. Any request for a Database adjustment for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

(h) Examples of items that cannot be adjusted include but are not limited to:

(1) Disagreements over the severity of a defect, such as deficiencies rated Level 3 that the Owner believes should be rated Level 1 or 2;

(2) Deficiencies that were repaired or corrected during or after the inspection;

(3) Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, fair housing accessibility).

§10.622.Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside. [Example 622 (1) A 100 unit development is required to lease 10 units to households at the 30 percent income and rent limits. The utility allowance is miscalculated resulting in overcharged rents. Fifteen households have an income under 30 percent. The owner must refund 10 of these households.]

(c) Rent Violations of the maximum allowable limit due to application fees under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. [Example 622(2): A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department.]

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected units back in compliance on January 1st of the year after they were overcharged the application fee.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC development after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments:

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income;

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent; and

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and HTF Developments). IRS Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the Owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited and reported to the IRS on Form 8823 as appropriate. Owners must ensure that additional rent and occupancy restrictions are maintained even if units are leased to employees.

§10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (13) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department request;

(2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low-Income Units. No less than five but no more than thirty-five of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this chapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units must be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis; and

(13) Owners must continue to collect and report data in accordance §10.612(b)(1) of this subchapter (relating to Tenant File Requirements).

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (6) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low-Income occupancy requirements will be monitored Development wide, not building by building;

(3) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(4) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(5) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance §10.608(b)(1) of this subchapter.

(6) The Department will not monitor whether rent is being charged for an employee occupied unit.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year Fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.624.Events of Noncompliance.

(a) Figure: 10 TAC §10.624(a) lists events for which a multifamily rental development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure: §10.624(a)

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements described in §10.617 of this chapter	All Programs	No
Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division	All programs	No
Property has gone through a foreclosure	All programs	Yes
Property is never expected to comply due to failure to report or allow monitoring	All programs	yes
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC and Bonds	Yes

Noncompliance Event	Program(s)	If HTC, on Form 8823?
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non-profit issue, No if HUB issue
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC	Yes
Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No
Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc.
Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.405 of this chapter	All programs	No
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes
Casualty Loss	All programs	Yes
Failure to provide pre-onsite documentation	All programs	No

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Failure to provide amenity as required by LURA	HTC	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, Exchange and HOME Developments committed funds after August 23, 2013	No
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No
Failure to provide fair housing disclosure notice	All programs	No
Noncompliance with tenant selection requirements described in §10.610 of this subchapter	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household	All programs	Yes
Program unit occupied by nonqualified full-time students	HTC during the Compliance Period, Bond and HOME developments committed funds after August 23, 2013	Yes
Low-Income units used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP and Exchange	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes
Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)	HTC, TCAP Exchange and Bond	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME and NSP	Yes

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME	NA
Violation of the Integrated Housing Rule	All programs	No
Failure to resolve final construction deficiencies within corrective action period	All programs	No
Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973	HOME, NSP and HTC properties awarded after 2001	No

§10.625.Liability.

Compliance with the program requirements, including compliance with §42 of the Code, is the sole responsibility of the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the Code, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, Bond program requirements, and any other laws, regulations, requirements, or other programs monitored by the Department.

§10.626. Temporary Suspensions of Sections of this Subchapter.

(a) Subject to the limitations stated in this section, temporary suspensions of sections of this subchapter may be granted by the Executive Director if there are extenuating circumstances which make it not possible or an undue administrative burden to comply with a requirement of this subchapter as long as substantial compliance is still in effect. For example, the Executive Director could suspend the requirement to report online or use Department approved forms, or alter the sample size for calculating a utility allowance using the actual use method.

(b) Under no circumstances can the Executive Director, the Compliance Committee, the Administrative Penalty Committee or the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD or any other federal agency when required by federal law.

(c) Under no circumstances can the Executive Director, the Compliance Committee, the Administrative Penalty Committee or the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of Form 8823, or any sections of 26 U.S.C. §42.

6b

BOARD ACTION REQUEST
COMPLIANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, concerning §1.5, concerning Previous Participation Reviews, and proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.5 concerning Previous Participation Reviews, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, recent legislative changes to Texas Government Code §2306.6719 require changes to the Department's previous participation rules.

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered and directed, for and on behalf of the Department, to approve the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures §1.5, concerning Previous Participation Reviews, and proposed new 10 TAC Chapter 1 Administration, Subchapter A, General Policies and Procedures §1.5, concerning Previous Participation Reviews for publication in the *Texas Register* for review and public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

Texas Government Code §2306.057 states:

- Sec. 2306.057. COMPLIANCE ASSESSMENT REQUIRED FOR PROJECT APPROVAL BY BOARD.*
- (a) Before the board approves any project application submitted under this chapter, the department, through the division with responsibility for compliance matters, shall: (1) assess:*
- (A) the compliance history in this state of the applicant and any affiliate of the applicant with respect to all applicable requirements; and (B) the compliance issues associated with the proposed project; and*
- (2) provide to the board a written report regarding the results of the assessments described by Subdivision (1).*
- (b) The written report described by Subsection (a)(2) must be included in the appropriate project file for board and department review.*
- (c) The board shall fully document and disclose any instances in which the board approves a project application despite any noncompliance associated with the project, applicant, or affiliate.*

(d) In assessing the compliance of the project, applicant, or affiliate, the board shall consider any relevant compliance information in the department's database created under Section 2306.081, including compliance information provided to the department by the Texas State Affordable Housing Corporation.

To implement this requirement, the Department created the Material Noncompliance methodology to differentiate events of noncompliance by their severity and assigned higher points to certain events of noncompliance and fewer points to less significant events of noncompliance. If a property's total points exceeded a set threshold, the property was considered to be in Material Noncompliance. Owners of property in Material Noncompliance, in general, were not able to participate in TDHCA programs without special Board approval. It was through this system that the Board approved project applications despite "any" noncompliance.

The Material Noncompliance methodology has been used by TDHCA for ten years. It has been determined that another approach may be more efficient and more effective at obtaining compliance. The Board instructing staff to hold in abeyance the findings related to the Annual Eligibility Certification and the Fair Housing Disclosure Notice supports the need to develop a new approach.

The proposed Previous Participation rule and the proposed Compliance Monitoring rule eliminate the concept of Material Noncompliance. These proposed rules also incorporate changes made to Texas Government Code §2306.6719 which instructs staff to not consider issues of noncompliance that are corrected during the corrective action period for future funding determinations. Therefore, the proposed Previous Participation rule includes a report to the Executive Award and Review Advisory Committee (EARAC) from the Compliance Division that will only include uncorrected events of noncompliance and those events that were not corrected during the corrective action period.

At both the roundtable held on August 26, 2013, and through the Department's online discussion forum owners and managers have expressed concern about events of noncompliance that cannot be corrected during the corrective action period being included in their compliance history. For example, if during an onsite monitoring visit, it is determined that a unit has been leased to an ineligible household, the owner may not be able to correct that during the corrective action period because of the timing of the household's lease expiration. In response, staff has pointed out that inclusion of these items is not an automatic termination of an application. The rule itself provides some factors that EARAC could consider and still proceed with a positive recommendation to the Board. Staff does not see any statutory support for excluding uncorrected events of noncompliance in the report to EARAC and recommends approval as presented.

Attachment 1: Preamble and proposed repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures §1.5.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures §1.5, concerning Previous Participation Reviews. The purpose of this proposed repeal is to improve the Department’s process for reviewing an applicant’s previous participation and incorporate legislative changes to Texas Government Code §2306.6719. The proposed new Chapter 1, Administration, Subchapter A, General Policies and Procedures §1.5 is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, there will be no change in the public benefit anticipated as a result of the repeal. There will be no economic impact to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013, to October 28, 2013 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 28, 2013.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§1.5. Previous Participation Review.

Attachment 2. Preamble and proposed new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures §1.5.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures §1.5, concerning Previous Participation Reviews. The purpose of this proposed new section is to provide a procedure the Department will use to evaluate an applicant’s compliance history. In addition, the purpose of the proposed new section is improve the Department’s process for reviewing an applicant’s previous participation and incorporate legislative changes to Texas Government Code §2306.6719.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved compliance with affordable housing program administered by the Department. There will not be any increased economic cost to any individuals required to comply with the new section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 28, 2013, to receive input on the proposed new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3140. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 28, 2013.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

§1.5 Previous Participation Reviews

(a) The governing board (“Board”) of the Texas Department of Housing and Community Affairs (the “Department”) designates the Executive Award and Review and Advisory Committee (“EARAC”), established pursuant to Texas Government Code, §2306.1112, to receive reports regarding the compliance history of an applicant for financial assistance or awards from the Department and any affiliate of any such applicant and provide to the Board the assessment contemplated in Texas Government Code, §2306.057 in order that this Board may consider the compliance history and make and document its award decisions with full knowledge of these matters.

(b) The executive director of the Department shall designate the membership of EARAC, and the makeup of EARAC shall include, at a minimum, those members required by Texas Government Code, §2306.1112.

(c) For any application for financial assistance or awards presented to EARAC and in addition to any application-specific considerations including but not limited to threshold evaluation, selection scoring criteria and underwriting, EARAC shall receive the following reports regarding the applicant and each affiliate of the applicant:

(1) From the division responsible for monitoring for compliance:

(A) A report of any instance(s) of noncompliance that remain uncorrected and for which the applicable period for corrective action has expired;

(B) A report of any instance(s) of noncompliance that have been corrected within the last three (3) years, but that were not corrected within the applicable period for corrective action; and,

(C) If the applicant or any affiliate of the applicant is subject to the requirement of an annual single audit:

(i) A report of any required single audit or single audit certification form that is currently past due; and

(ii) If such single audit has been submitted and the most recent single audit report contained findings, a copy of that single audit.

(d) From the division responsible for the receipt and application of payments on loans held by the Department and the receipt of fees associated with multifamily bond developments or housing tax credit developments:

(1) A report of any payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents;

(2) A report of any failure to provide evidence of or maintain any required insurance on any collateral for any loan held by the Department;

(3) A report of any failure to pay property taxes or provide evidence of the payment of property taxes on any collateral for any loan held by the Department unless either provision has been made for such payment or the Department has been provided satisfactory evidence of a tax exemption; and

(4) A report of any past due fees.

(e) From the division responsible for overseeing asset management issues for affordable rental properties assisted by the Department a report documenting any known current or ongoing concerns

regarding the applicant or any affiliate of the applicant to financially or operationally manage one or more affordable rental properties assisted by the Department in a manner to keep the development sanitary, decent, and safe, including but not limited to:

- (1) The establishment and maintenance of appropriate reserves;
- (2) Identification of the development's capacity to meet financial obligations consistent with the minimum ratios to meet underwriting feasibility for the long term;
- (3) Requests for significant modifications or amendments;
- (4) Any financing known to be in a workout status; and
- (5) Delays in issuance of form 8609s which are within the control of the owner.

(f) EARAC shall review the reports provided and determine whether and the extent to which matters set forth in the report bear on the applicant's or affiliate's ability to perform, in a compliant manner, with regard to funding and allocation decisions by the Board. While EARAC may review and analyze the information provided, EARAC does not function as an appeal panel and does not affirm or overturn findings in division reports. However, EARAC may return the matter to the respective division, as time permits, for further review, information, and development.

(g) If an issue is identified during a review, prior to EARAC notification, the applicant will be provided a five (5) business day period to submit evidence to resolve the issue(s) identified.

(h) Requests for funding and allocation assistance that involve disqualification or termination required by operation of law, such as an applicant who has been disbarred, will not be brought before EARAC, and such matters will be handled or terminated at the program level, subject to any applicable appeals process.

(i) For each application EARAC shall either:

- (1) Recommend approval;
- (2) Recommend denial, accompanied by an assessment of all reports received and setting out the factual basis for the denial recommendation;
- (3) Recommend approval but disclose that one or more issues under section (c), (d) or (e) of this section, above, have been reported, but after consideration of relevant material facts, and circumstances it has been determined that denial is not warranted because:
 - (A) It is in the best interests of the state to proceed with the award;
 - (B) The award will not present undue increased program risk or financial risk to the Department or the state;
 - (C) The applicant is not acting in bad faith; and
 - (D) The applicant has taken reasonable measures within its power to remedy the issue; or,
- (4) Take such other action as deemed reasonable and necessary to make full, accurate, and informative recommendations to the Board regarding funding and allocation decisions, including recommendations with conditions.

(j) EARAC is designated to review and shall follow the same procedure prior to approval of an entity as a reservation system participant and for assessing an applicant and each affiliate when the applicant seeks a non-affiliate, as defined by §10.3 of this title, transfer of ownership of an affordable rental property assisted by the Department.

(k) An applicant or any affiliate of an applicant who is not recommended for an award of funding based on their compliance history may appeal EARAC's determination in accordance with §1.7 and §1.8 of this Subchapter.

6c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11, concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) is authorized to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Texas Government Code §2306.67022, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits; and

WHEREAS, pursuant to Texas Government Code, Chapter 2306.6724, the Board shall adopt a proposed Qualified Allocation Plan no later than September 30;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 11 and proposed new 10 TAC Chapter 11, regarding the Qualified Allocation Plan, are hereby approved, together with the preambles presented to this meeting, for publication in the *Texas Register* for public comment;

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal and the draft Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached to this Board Action Request is the 2014 Draft Qualified Allocation Plan (“QAP”) which reflects staff’s recommendations for the Board’s consideration. In getting the 2014 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff provided the Board, at the July 11, 2013, Board meeting, with a

report item that included an overview of anticipated changes for the 2014 program year. Moreover, staff released a preliminary draft of the 2014 QAP on its website on August 19, 2013, and also launched, as it has in prior years, the online discussion forum to allow interested registered users of the forum an opportunity to engage with the Department and one another and provide feedback on possible scoring changes and other requirements. On August 26, 2013, staff hosted a roundtable discussion with approximately 120 people in attendance to discuss proposed changes that were included in the released preliminary draft. Staff has considered this input and has addressed some of these items in the draft included herein.

Rule-Making Timeline: Upon Board approval, the draft QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 27th and October 21st and there will be a consolidated public hearing during this time to receive public comment as well. The QAP will be brought before the Board in November for final approval followed by the statutorily mandated submission to the Office of the Governor by November 15. Upon the Governor's approval or approval with modifications, which generally occurs no later than December 1, the adopted QAP will be published in the *Texas Register*.

Format of the QAP: The overall layout of the 2014 Draft QAP stems from a change implemented last year following the Department's reorganization and consolidation of multifamily activities centralized in a single division. Essentially, the eligibility, threshold and other criteria that would be applicable across all multifamily programs is contained in the Uniform Multifamily Rules. The draft QAP primarily contains statutory provisions specific to housing tax credit applications and other items specific to the competitive housing tax credit program.

TDHCA Sunset Bill – House Bill 3361: Significant changes in the 2014 Draft QAP include the incorporation of statutory changes made during the 83rd Legislative Session. These changes include the following:

- The “top ten” scoring items have been revised to the “top eleven” with the addition of a new scoring criterion for resolutions of support from the local government in the second highest position;
- Quantifiable Community Participation from Neighborhood Organizations (“QCP”) was moved to the tenth highest item in the top eleven (was previously ranked 2nd); and
- Letters of support or opposition from State Representatives or Senators was modified to provide scores only for letters from State Representatives; this item was also moved to the new eleventh position in the top eleven (was previously ranked 6th);

Remedial Plan & Annual Report: The 2013 QAP addressed requirements under the Remedial Plan (the “Plan”) and subsequent Memorandum Opinion and Order and Judgment. While the Plan required compliance in the five county remedial area, which is in region 3, the Department applied the Plan criteria on a statewide basis. The Plan requires the Department to perform an analysis of the awards and other outcomes of the 2013 tax credit round and specific elements of the 2013 QAP. This Annual Report must be submitted to the court no later than 120 days from when the Board awards the final allocations which is November 22, 2013. In anticipation of the analysis and taking into account funding allocations under the 2013 QAP, the recommended 2014 Draft QAP includes changes that staff believes are appropriate to address the court's

objectives; however, it's important to note that such changes must be approved by the court. To the extent the court rejects any aspects of the rules in its annual review; the court may impose other requirements in the remedial area. All applications proposing development in other regions of the State would continue to follow the rules and requirements as reflected in the final Governor approved rules for the 2014 program year.

Summary of Other Proposed Changes to the QAP: This section outlines some of the more significant recommendations by staff, including more details relating to the statutory changes and Plan requirements described above. Citation and page references are indicated for ease of reference. Staff notes that the track changes noted in the attached QAP do not represent changes made from the 2013 QAP, but reflects changes made since the release of the preliminary 2014 Draft QAP released on August 19, 2013.

1. **§11.2 – Program Calendar** (*Page 2 of 27*). Changes to some of the dates in this section include the removal of the date-specific requirement for neighborhood organization requests at pre-application and full application and all third party reports (including market studies) as well as any required resolutions are due with the application.
2. **§11.3 – Housing De-concentration Factors** (*Page 4 of 27*). A new de-concentration factor has been included as it relates to developments in certain urban sub-regions and counties. Specifically, qualified elderly developments proposed in urban areas of Wichita, Collin, Denton, Ellis, Johnson, Henderson, Hays, Lamar, Gillespie, Guadalupe, Kendall, and Starr, are considered ineligible. Moreover, qualified elderly developments in urban areas regions 5, 6 and 8 are ineligible. Staff has evaluated the distribution of units serving elderly households relative to census data concerning the percentage of qualifying elderly households at the county and regional levels. In the above referenced counties and regions, staff has found that the general population is proportionately underserved. Imposing limits on developments exclusively serving qualified elderly households is expected to result in additional units serving the general population in these areas. All general population developments serve households regardless of age.
3. **§11.4 – Tax Credit Request and Award Limits** (*Page 5 of 27*). The increase in eligible basis has been modified to allow the 30% boost for developments in QCTs with less than 20% housing tax credit (“HTC”) units per total households. Moreover, allowing the boost for non-qualified elderly developments not located in a QCT that is an area covered by a community revitalization plan has been removed and replaced with applications that restrict an additional 10% of the proposed low-income units for households at or below 30% of AMGI. Such units must be in addition to any units required under any of the scoring related items.
4. **§11.5 – Competitive HTC Set-Asides** (*Page 6 of 27*). This section has been modified to allow relocation of At-Risk units and subsidies to areas that qualify as high opportunity areas. This will allow developments that may be currently located near undesirable area features or in a floodplain, for example, to relocate the units to a new site if they are able to gain approved to transfer the At-Risk subsidies to the new site.

5. **§11.8 – Pre-application Requirements** (*Page 9 of 27*). The substantive change to this section includes the removal of the specific deadline by which the neighborhood organizations must be requested from the appropriate municipality. It remains the applicant’s responsibility to ensure that all qualifying neighborhood organizations are notified. This section also clarifies that the notifications cannot include false or misleading statements and removes the requirement that any waivers that may be needed must be requested at pre-application.

6. **§11.9 – Competitive HTC Selection Criteria** (*Page 11 of 27*). As a result of the new “top eleven” scoring items, the point values associated with several of the scoring items have changed. There is a scoring matrix at the end of this Board Action Request that identifies the specific scoring items and where they fall in rank as well as the corresponding point values. Identified below are the more significant changes to some of the scoring items:
 - *Sponsor Characteristics* (*Page 12 of 27*): This point item has been modified to reflect that a HUB must be certified by the Texas Comptroller of Public Accounts by the full application deadline. Moreover, if utilizing a qualified nonprofit organization to qualify for points, clarifying language specifies that such nonprofit must have a combination of ownership interest in the general partner of the applicant.

 - *Opportunity Index* (*Page 13 of 27*): This scoring item has been modified to incorporate changes in the school testing and ratings system by the Texas Education Agency. Moreover, for developments in a rural area, achieving points is based on the proximity to essential community assets that include a grocery store, an elementary school with a Met Standard rating, a before or after-school program, a child-care center and being located in a census tract with income in the top or second quartile of median household income of the county or metropolitan statistical area (“MSA”), as applicable. Staff continues to do research concerning the ratings and may recommend additional changes in the final document.

 - *Educational Excellence* (*Page 14 of 27*): This item reflects modifications that are the result of changes made by the Texas Education Agency pertaining to the school testing and ratings system. Staff continues to do research concerning the ratings and may recommend additional changes in the final document.

 - *Tenant Populations with Special Housing Needs* (*Page 15 of 27*): This scoring item has been modified to allow funding requested from the Department’s Section 811 program which is designed to serve persons with special needs. Specifically, developments located in certain MSA’s of the state may be eligible for the points provided at least 10 units in the development are committed for participation in the program. The item provides further guidance that applicants who desire to withdraw their commitment in the program may only do so if authorized by the Board or eligibility issues relating to the program arise. Should such action occur, the Applicant may identify other properties within their own or an affiliate’s

portfolio to participate in the program. Aside from this option, for those developments not located within the specific MSA's, certain applications may continue to qualify for points if they set aside 5% of the units for persons with special needs during the initial 12 months of the lease-up period.

- *Location Outside of "Food Deserts" (Page 16 of 27):* This is a new point item developed for the 2014 QAP. An Application with a Development Site that is located outside of a "food desert" qualifies for one (1) point. A food desert is a census tract identified as low income and low access at one (1) mile for urban areas and ten (10) miles for rural areas (also known as the Original Food Desert measure) based on the U. S. Department of Agriculture's (USDA) Food Access Research Atlas. USDA manages the data and process for accessing those areas of the country considered food deserts. According to the USDA website the indicators include access to sources of healthy food, individual-level resources such a family income or access to a vehicle, and neighborhood level resources such as public transportation and average incomes.
- *Local Government Support (Page 16 of 27):* The inclusion of this item is based on the passage of House Bill 3361, the Department's Sunset Bill. As the second highest scoring item, an application can receive varied points for a resolution from the appropriate governing body expressing support or no objection (based on the desired points) for the proposed development.
- *Commitment of Funding by a Local Political Subdivision (Page 17 of 27):* This scoring item clarifies that should the local political subdivision borrow funds in order to commit funding to the development, the applicant or related party to the applicant can provide collateral or guarantees for the loan only to the local political subdivision. This item further states that changes to the funding source may occur; however, the funding that is secured must have been eligible at the time the application was submitted. This scoring item has also been modified to allow an applicant to qualify for points (using the population mechanism further defined in the scoring item) if seeking funding from the municipality or qualifying instrumentality of the municipality if the development site is located in the ETJ of a municipality, whether located in an unincorporated place or not. Moreover, an additional point may be obtained if a commitment for the source identified in the application is submitted at the time the commitment notice is due back to the Department. An additional point may also be obtained for grant or in-kind contributions or permanent loans with a minimum term of 15 years, minimum amortization of 30 years and an interest rate no higher than 3%, provided an applicant certifies that they intend to maintain the development funding for the full term of the funding barring any unanticipated events.
- *Declared Disaster Area (Page 18 of 27):* This scoring item has been modified simply to take into account whether the proposed development is in a county for which a qualified declaration has been made.

- *Quantifiable Community Participation (Page 18 of 27):* Changes to this scoring item reflect that among the criteria needed to qualify as a neighborhood organization, a certification must be submitted that indicates at least 80% of the current membership of the neighborhood organization consists of persons residing or owning real property within the boundaries of the neighborhood organization.
- *Community Revitalization Plan (Page 20 of 27):* This scoring item allows maximum points for developments in urban region 3 and has been further modified for such developments to require at least five of the seven factors listed in order to be eligible for points and also adds clarifying language for some of those factors. Moreover, the target areas in a community revitalization plan cannot encompass large areas of the city or county, but must be limited in size along the lines of specific neighborhoods. Other modifications affecting urban region 3 developments include a limitation on the budget within the adopted plan to expenditures that occurred within the past 4 years in the applicable target area. For developments in a rural area, the scoring item provides that such community revitalization efforts should be related the expansion of basic infrastructure and adds more specific requirements relating to the expansion project.
- *Cost of the Development per Square Foot (Page 23 of 27):* This scoring item proposes to remove the “deviation from the mean” concept from the prior year’s QAP as the sole determinant of points. The points are bifurcated based on developments that reflect specific costs relating to building costs, hard costs or that are considered a high cost development as newly defined within this scoring item. An additional point may be achieved if the hard cost per square foot is within 5% of the mean cost per square foot, calculated separated for high cost developments.
- *Pre-application Participation (Page 24 of 27):* The modifications to this scoring item indicate that the total number of units cannot change (increase or decrease) by more than 10% from pre-application to application and removes the requirement that any applicable waivers and/or pre-clearance be requested at the time of pre-application.
- *Leveraging of Private, State and Federal Resources (Page 25 of 27):* This scoring item clarifies that the application must include a commitment of the funding.
- *Point Adjustments (Page 26 of 27):* A point deduction for an applicant that elects points for a scoring item on their self score form and is unable to provide sufficient documentation for Department staff to award those points has been removed.

8. **§11.10 – Challenges and Priority Reviews Regarding Competitive HTC Applications** (Page 32 of 27). This section clarifies that staff may send a deficiency notice in order to

provide the applicant with a specific issue that needs clarification and time to address the matter, provided such issue is relative to the rules regarding administrative deficiencies.



2014 Draft Qualified Allocation Plan Scoring Criteria

	Scoring Rank	Scoring Item	Maximum Points
"Top Eleven" Scoring Items (Tx Government Code Sec. 2306.6710)	1	Financial Feasibility	18
	2	Local Government Support	17
	3	Income Levels of Tenants	16
	4	Size and Quality of Units	15
	5	Commitment of Funding by LPS	14
	6	Rent Levels of Tenants	13
	7	Cost of Development per Square Foot	12
	8	Tenant Services	11
	9	Declared Disaster Area	10
	10	Quantifiable Community Participation evaluated based on input from neighborhood organizations	9
	11	Community Support by State Representative	8
"Below the Line" Scoring Items	11	Opportunity Index	7
	12	Pre-application Participation	6
	13	Community Revitalization Plan	6
	14	Input from Community Organizations	4
	15	Leveraging of Private, State and Federal	3
	16	Educational Excellence	3
	17	Underserved Area	2
	18	Tenant Populations with Special Housing Needs	2
	19	Extended Affordability or Historic Preservation	2
	20	Right of First Refusal	1
	21	Development Size	1
	22	Sponsor Characteristics	1
23	Location Outside of Food Deserts	1	

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 11, §§11.1 – 11.10, concerning the 2014 Housing Tax Credit Qualified Allocation Plan. The purpose of the proposed new sections is to replace the current Qualified Allocation Plan with a new Qualified Allocation Plan applicable to the 2014 cycle.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a rule that encompasses requirements for all applications applying for housing tax credit funding through the Department. There will not be any new economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning the Low Income Housing Tax Credit Program.

- 11.1 General*
- 11.2 Program Calendar for Competitive Housing Tax Credits*
- 11.3 Housing De-Concentration Factors*
- 11.4 Tax Credit Request and Award Limits*
- 11.5 Competitive HTC Set-Asides*
- 11.6 Competitive HTC Allocation Process*
- 11.7 Tie Breaker Factors*
- 11.8 Pre-Application Requirements*
- 11.9 Competitive Selection Criteria*
- 11.10 Challenges of Competitive HTC Applications*

2014 State of Texas
Qualified Allocation Plan

§11.1. General.

(a) Authority. The rules in this chapter apply to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Texas Government Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. These rules may need to be applied to facts and circumstances not contemplated at the time of their creation and adoption. When and if such situations arise the Board will use a reasonableness standard in evaluating and addressing Applications for Housing Tax Credits.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2013, unless specifically otherwise

provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 PM Central Standard Time on the day of the deadline.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Deadline	Documentation Required
12/16/2013	Application Acceptance Period Begins.
01/16 23 /2014	Pre-Application Final Delivery Date (including pre-clearance and waiver requests).
02/28/2014	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Market Analysis; Site Design and Development Feasibility Report; <u>and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors; and Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter</u>).
04/01/2014	Final Input from State Representative <u>Elected Officials</u> Delivery Date (<u>including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5)</u> (after opportunity to review materially complete Applications)]).
05/01/2014	Challenges to Neighborhood Organization Opposition Delivery Date.
05/15/2014	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/13/2014	Deadline for public comment to be included in a summary to the Board at a posted meeting.
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.

Deadline	Documentation Required
Mid-August	Commitments are Issued.
11/03/2014	Carryover Documentation Delivery Date.
07/01/2015	10 percent Test Documentation Delivery Date.
12/31/2016	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3. Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Texas Government Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Texas Government Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) – (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless:

(1) the Development is in a Place that has a population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter of Resolutions Delivery Date §10.4 of this title, as applicable.

(e) Developments in Certain Sub-Regions and Counties. In the 2014 Application Round the following Counties are ineligible for Qualified Elderly Developments: Wichita; Collin; Denton; Ellis; Johnson; Henderson; Hays; Lamar; Gillespie; Guadalupe; Kendall; and Starr, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area.

~~{Placeholder: Staff is currently conducting research to develop factors to manage the distribution of transactions with and without age restrictions in areas where age-restricted tax credit awards may not be in line with the proportionate need for age-restricted housing relative to housing without age restrictions.}~~

(f) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides “qualified commercial financing;”
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or \$150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant’s request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will ~~not~~ recommend no increase or such a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT;

(2) The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph pursuant to §42(d)(5) of the Code:

- (A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); or

(D) the Applicant elects to restrict an additional 10% of the proposed low income Units for households at or below 30% of AMGI. These Units must be in addition to Units required under any other provision of this chapter.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this paragraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2)

years of July 31 of the year the Application is submitted. [Developments with HUD-insured mortgages qualifying as At-Risk under §2306.6702\(a\)\(5\) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty.](#) To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. [Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:](#)

[\(i\) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site \(i.e. the site proposed in the tax credit Application\) prior to February 28, 2013;](#)

[\(ii\) the Applicant seeking tax credits must propose the same number of restricted units \(e.g. the Applicant may add market rate units\); and](#)

[\(iii\) the new Development Site must qualify for points on the Opportunity Index under §11.9\(c\)\(4\) of this chapter \(relating to Competitive HTC Selection Criteria\).](#)

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments ~~retaining public housing operating subsidies to qualify under the At Risk Set-Aside~~ [qualifying under §2306.6702\(a\)\(5\)\(B\)](#), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units [supported by public housing operating subsidy.](#) (§2306.6714(a-1))

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy

the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions;

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next

most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

§11.7. Tie Breaker Factors. In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

- (1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.
- (2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

- (1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If

such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy submitted to the Department in the form of single files as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subparagraph (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located; and

(G) Expected score for each of the scoring items identified in the pre-application materials;

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) - (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

- (ii) Superintendent of the school district in which the Development Site is located;
- (iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (vi) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (vii) All elected members of the Governing Body of the county in which the Development Site is located; and
- (viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in clauses (I) – (VI) of this subparagraph.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100% of the Units will be for Qualified Elderly and it may not indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b)-(e) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program,

Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB, as certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. The Principals of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principals of the Applicant or Developer (excluding Principals of said HUB or Qualified Nonprofit Organization).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) – (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved at least 95% on the total system safeguards (7 points);

(ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved at least 95% on the total system safeguards (5 points);

(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(iv) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) – (v) of this subparagraph.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary school with a Met Standard rating (3 points);

(ii) The Development Site is within one linear mile of a school-age before or after-school program that meets the minimum standards established by the Department of Family and Protective Services for such programs (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a child-care center that is licensed by the Department of Family and Protective Services and provides day care for children ages 6 months through 5 years, at a minimum (2 points); and/or

(v) The Development Site is located in a census tract with income in the top or second quartile of median household income for the county or MSA as applicable (3 points).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved at least 95% on the total system safeguards by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points to meet the Special Housing Needs of the State if the Applicant agrees to participate in the Department's Section 811 Project Rental Assistance Demonstration Program (Section 811 Program) and the Development Site meets the requirements in subparagraph (A). Development Sites not meeting the requirements in subparagraph (A) may qualify under subparagraph (C).

(A) Applications meeting the following requirements are eligible to receive two (2) points if they agree to commit at least 10 units (or the maximum allowed) for participation in the Section 811 Program as described in subparagraph (B). The maximum number of units allowed will be restricted by the Department's Integrated Housing Rule, 10 TAC §1.15, and the Section 811 Program integration requirements, (the total number of units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18% of Units for Developments of 50 Units or more or exceed 25% for Developments with less than 50 Units).

(i) The Development must target the general population or be Supportive Housing;

(ii) The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance; and

(iii) The Development Site must be located in one of the following areas: Austin-Round Rock MSA; Brownsville-Harlingen MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA.

(B) Applicants seeking points under subparagraph (A) and this paragraph are required to satisfy the requirements of the Section 811 Program as outlined in the Section 811 Program guidance and contracts unless a specific requirement of the Section 811 Program is otherwise waived by the Board. The Section 811 Program provides project-based rental assistance to Developments to serve extremely low income persons with disabilities (who meet target population requirements and are age 18 and over, but less than 62 years of age) who are referred to each participating Development by the Department. Participation in the Section 811 Program requires execution of a Rental Assistance Contract by the later of Carryover Allocation deadline or upon preparation of a Rental Assistance Contract by the Department. Because HUD has not yet released Section 811 Program guidance or agreements between the Department and HUD, the Board may make adjustments or accommodations for participation of each Applicant in this Program, however, once elected, Applicants may not withdraw their commitment to participate in the Section 811 Program unless so authorized by the Board or as a result of program eligibility issues. Should an Applicant receive a Housing Tax Credit award, the Department may allow Applicants to identify an alternate existing Development in the Applicant's or an Affiliate's portfolio, consistent with Department Section 811 Program criteria, to participate in the Section 811 Program.

(C) Only if the Applicant that is making application for a Development Site does not meet the requirements in subparagraph (A) may an Application qualify for points under this subparagraph. An Application will receive two points for Developments for which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as households where one individual has with alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Woman Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to households with special needs.

[\(8\) Location Outside of "Food Deserts". An Application with a Development Site that is located outside of a "food desert" qualifies for one \(1\) point. A food desert is a census tract identified as low income and low access at one \(1\) mile for urban areas and ten \(10\) miles for rural areas \(also known as the Original Food Desert measure\) based on the U. S. Department of Agriculture's Food Access Research Atlas. Applicants must submit a map using the Food Access Research Atlas indicating that the Development Site is not located in a food desert. Applicants can access said map at <http://www.ers.usda.gov/data-products/food-access-research-atlas/>. If the location of the map or data changes, the Department will provide updated information concerning accessing the map or data on the Department's website.](#)

(d) Criteria promoting community support and engagement.

(1) Local Government Support. An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) – (C) of this paragraph, as applicable. The resolution(s) must be dated prior to ~~February 28~~April 1, 2014 and must be submitted ~~in the Application~~to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

- (i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under (i) or (ii) and under (iii) or (iv) of this subparagraph:

- (i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and
- (iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
- (iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

- (i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
- (ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6710(b)(1)(E)) An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities first award the funds to the city or county for their administration, at least 60 percent of the governing board of the instrumentality consists of city council members from the city in which the Development Site is located (if located in a city) or county commissioners from the county in which the Development Site is located, or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development Site is located (if located within a city) or county in which the Development Site is located. The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than 3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Local Political Subdivision by the Applicant or a Related Party. Should the Local Political Subdivision borrow funds in order to commit funding to the Development, the Applicant or a Related Party to the Applicant can provide collateral or guarantees for the loan only to the Local Political Subdivision. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support to the proposed Development. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding is expected to occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted.

[\(A\) Option for Development Sites located in the ETJ of a municipality. For an Application with a Development Site located in the ETJ of a municipality, whether located in an unincorporated Place or not, the Applicant may seek Development funding from the municipality or a qualifying instrumentality of the municipality, provided the Applicant uses the population of said municipality as the basis for determining the Application's eligible points under subparagraph \(B\) of this paragraph. Applicants are encouraged to contact Department staff where an Applicant is uncertain of how to determine the correct Development funding amounts or qualifying Local Political Subdivisions.](#)

(A) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

- (i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit or \$15,000 in funding per Low Income Unit;
- (ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit or \$10,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit or \$5,000 in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit or \$1,000 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit or \$500 in funding per Low Income Unit.

(BC) Two (2) points may be added to the points in clauses (i) – (v) of subparagraph (AB) and subparagraph (CD) if the Applicant provides a firm commitment for funds in the form of a resolution from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph.

(CD) One (1) point may be added to the points in clauses (i) – (v) of subparagraph (AB) and subparagraph (BC) if the financing to be provided is in the form of a grant or in-kind contribution meeting the requirements of this paragraph or a permanent loan with a minimum term of 15 years, minimum amortization period of 30 years, and interest rate no higher than 3 percent per annum. [An Applicant must certify that they intend to maintain the Development funding for the full term of the funding, barring unanticipated events.](#) For Applicants electing this additional point that have not yet received an award or commitment, the structure of the funds will be reviewed at Commitment for compliance with this provision.

(3) Declared Disaster Area. (§2306.6710(b)(1)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) by the Full Application Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that ~~the at least 80 percent of the current~~ membership of the Neighborhood Organization ~~only includes~~ consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) five (5) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make

determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from ~~Elected Officials State Representative~~ Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (*e.g.* "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this subparagraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive one (1) point for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive one (1) point for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive one (1) point for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's

efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Community Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) – (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following seven (7) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (*e.g.* not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or -poor condition and/or performance of public education; or

(-g-) the lack of local business providing employment opportunities.

(III) The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county. Staff will review the target areas for presence of the factors identified in subclause (II) of this subparagraph.

(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.

(V) The adopted plan must describe the planned budget and uses of funds to accomplish its purposes within the applicable target area. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) evidenced by a letter from the appropriate local official stating that:

(-a-) the plan was duly adopted with the required public input processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of \$6,000,000 or greater; or

(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$4,000,000; and

(III) Applications may receive (2) points in addition to those under subclauses (I) or (II) if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for ~~six~~ four (4) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (IV) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) affirmatively address Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAAT);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAAT), approved by the Texas General Land Office; and

(IV) be in place prior to the Pre-Application Final Delivery Date.

(C) For Developments located in a Rural Area.

(i) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to ~~six-four (64)~~ points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for ~~four-two (42)~~ points for one of the items described in subclauses (I) – (V) of this clause or ~~six-four (64)~~ points for at least two (2) of the items described in subclauses (I) – (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one quarter (1/4) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one quarter (1/4) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one quarter (1/4) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project which must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each

year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.

(A) A high cost development is a Development that meets one of the following conditions:

- (i) the Development is elevator served, meaning it is either a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
- (ii) the Development is more at least 75 percent single family design;
- (iii) the Development is Supportive Housing; or
- (iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of the section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

- (i) The Building Cost per square foot is less than \$60 per square foot;
- (ii) The Building Cost per square foot is less than \$65 per square foot, and the Development is a meets the definition of a high cost development;
- (iii) The Hard Cost per square foot is less than \$80 per square foot; or
- (iv) The Hard Cost per square foot is less than \$90 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

- (i) The Building Cost per square foot is less than \$65 per square foot;
- (ii) The Building Cost per square foot is less than \$70 per square foot, and the Development meets the definition of a high cost development;
- (iii) The Hard Cost per square foot is less than \$85 per square foot; or
- (iv) The Hard Cost per square foot is less than \$95 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

- (i) The Building Cost is less than \$80 per square foot; or
- (ii) The Hard Cost is less than \$100 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$130 per square foot.

(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraphs (B) or (C), if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) – (G) of this paragraph will qualify for four (4) points:

(A) The total number of Units does not change by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

~~(F) All necessary waivers and pre-clearance were requested in the pre-application;~~

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the

developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive (2 points) for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive two (2) points; or

(B) An Application proposing the use of historic (rehabilitation) tax credits and providing documentation that an existing building that will be part of the Development will reasonably be able to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609 may qualify to receive two (2) points.

(6) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(7) Development Size. An Application may qualify to receive one (1) point if the Development is proposed to be fifty (50) total HTC Units or less and the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of \$500,000 or less.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this section, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this section based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Challenges of Competitive HTC Applications.

The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process is reflected in paragraphs (1) - (13) of this section. A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

- (1) The challenge must be received by the Department no later than seven (7) days after the ~~Department posts the final score of the Application being challenged or the~~ Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits); ~~whichever is earlier,~~ and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.
- (2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge and, if they are acting on behalf of anyone else, on whose behalf they are acting.
- (3) Challengers must provide, at the time of filing the challenge, ally briefings, documentation, and other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.
- (4) Challenges to the financial feasibility of the proposed Development are premature unless final underwriting reports on the challenged Application have been posted to the Department's website..
- (5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this title (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed or a material misrepresentation about a disclosed item.
- (6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;
- (7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;
- (8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;
- (9) The Department shall notify the Applicant that a challenge was received within seven (7) days of the challenge deadline;
- (10) Where, upon review by staff, an issue is not clearly resolved, staff may send an Applicant an Administrative Deficiency notice to provide the Applicant with a specific issue in need of clarification and time to address the matter in need of clarification as allowed by the rules related to Administrative Deficiencies;
- (11) The Applicant must provide a response regarding the challenge within fourteen (14) days of their receipt of the challenge;
- (12) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting; and
- (13) Staff determinations regarding all challenges will be reported to the Board.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 11, §§11.1 – 11.10, concerning the 2013 Housing Tax Credit Qualified Allocation Plan. The purpose of the repeal is to replace the sections with a new rule that encompasses requirements for all applications applying for housing tax credit funding through the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of sections within the rule with a new rule that encompasses requirements for all applications applying for housing tax credit funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning the Low Income Housing Tax Credit Program.

- 11.1 General*
- 11.2 Program Calendar for Competitive Housing Tax Credits*
- 11.3 Housing De-Concentration Factors*
- 11.4 Tax Credit Request and Award Limits*
- 11.5 Competitive HTC Set-Asides*
- 11.6 Competitive HTC Allocation Process*
- 11.7 Tie Breaker Factors*
- 11.8 Pre-Application Requirements*
- 11.9 Competitive Selection Criteria*
- 11.10 Challenges of Competitive HTC Applications*

6d

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 12, 2013

Presentation, Discussion, and Possible Action on proposed repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and a proposed new 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold and procedural requirements relating to applications requesting multifamily funding; and

WHEREAS, changes have been proposed that would improve the efficiency of the funding sources involved and to demonstrate compliance with recent statutory and federal requirements that govern such funding sources;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10 Subchapter A General Information and Definitions, Subchapter B Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G Fee Schedule, Appeals and Other Provisions and proposed new 10 TAC Chapter 10, Subchapters A, B, C and G concerning Uniform Multifamily Rules together with the preambles presented to this meeting, are approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Uniform Multifamily Rules together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached behind this Board Action Request is the 2014 proposed Uniform Multifamily Rule which reflects staff's recommendations for the Board's consideration. This rule establishes the general requirements associated in making an award of multifamily development funding. In getting the 2014 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff provided the Board, at the July 11, 2013, Board meeting, with a report item that included an overview of anticipated changes for the 2014 program year. Moreover, staff released a preliminary

draft of the 2014 QAP on its website on August 19, 2013, and also launched, as it has in prior years, the online discussion forum to allow interested registered users of the forum an opportunity to engage with the Department and one another and provide feedback on possible scoring changes and other requirements. On August 26, 2013 staff hosted a roundtable discussion with approximately 120 people in attendance to discuss proposed changes that were included in the released preliminary draft.

Rule-Making Timeline: Upon Board approval, the draft Uniform Multifamily Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 27th and October 21st and there will also be a consolidated public hearing during this time to garner public comment. The Uniform Multifamily Rules will be brought before the Board in November for final approval and subsequently published in the *Texas Register*.

Subchapters for this Action Request: This Board Action Request includes the subchapters, as noted below, that are part of the 2014 draft Uniform Multifamily Rule. The other subchapters (*e.g.*, Subchapters D, E and F) are found under a separate Board Action Request and include specific changes to those rules.

Subchapter A – Provides general information regarding the Department's multifamily funding and includes an extensive list of definitions specific to multifamily applications.

Subchapter B – Outlines the site and development requirements and restrictions, including but not limited to, floodplain restrictions, proximity to community assets, undesirable site and area features, development size limitations, rehabilitation costs, common and unit amenities, and tenant supportive services.

Subchapter C – Includes procedural requirements for submitting an application, the documentation required as part of the application including forms and templates, criteria that would render an applicant or application ineligible, how applications will be prioritized for review, information regarding board decisions, and the waiver process.

Subchapter G - This section contains information regarding Department fees and other general requirements, including but not limited to, the appeals process, adherence to obligations and the alternative dispute resolution policy.

TDHCA Sunset Bill – House Bill 3361: One of the more significant changes in the 2014 draft Uniform Multifamily Rule involves the incorporation of statutory changes made during the 83rd Legislative Session. Specifically, tax-exempt bond applications must include a resolution from the appropriate governing body indicating no objection to the housing tax credit application. The process for obtaining such a resolution includes notice by the applicant to the governing body of their intent to file such application and a subsequent hearing held by the appropriate governing body that allows for public comment concerning the proposed development. (*Page 10 of 21 in Subchapter C*)

Remedial Plan & Annual Report: The 2013 Uniform Multifamily Rules addressed requirements under the Remedial Plan (the "Plan") and subsequent Memorandum Opinion and Order and Judgment. While the Plan required compliance in the five county remedial area which is in region 3, the Department applied the Plan criteria on a statewide basis. The Plan requires the Department to perform an analysis of the awards and other outcomes of the 2013 tax credit round and specific elements of the 2013 QAP. This Annual Report must be submitted to the court no later than November 22, 2013 (120 days from when the Board awards the final allocations). While many of the Plan requirements are incorporated into the 2014 Draft QAP, the Uniform Multifamily Rules incorporates a few of the Plan requirements. The most notable requirement includes the Undesirable Area Features for development sites proposed to be located

in an area that would not qualify as high opportunity and located within 1,000 feet from any of the following characteristics: a history of significant or recurring flooding, significant presence of blighted structures, fire hazards which will increase the fire insurance premiums for the proposed development or locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports. Staff has modified these features slightly as reflected in the draft; however, it's important to note that such changes must be approved by the court. To the extent the court rejects any aspects of these rules in its annual review, the court may impose other requirements in the remedial area. All applications proposing development in other regions of the State would continue to follow the rules and requirements as reflected in the final Governor approved rules for the 2014 program year unless otherwise dictated.

Summary of Other Proposed Changes to the Uniform Multifamily Rule: This section outlines some of the more significant recommendations by staff outside of the Plan requirements described above. Citation and page references are indicated for ease of reference. Staff notes that the track changes noted in the attached subchapters of the Uniform Multifamily Rules do not represent changes made from the 2013 Uniform Multifamily Rules, but reflects changes made since the release of the preliminary 2014 Draft Uniform Multifamily Rules released on August 19, 2013, with the exception of Subchapter G of which a preliminary draft was not released.

1. **Subchapter A §10.2 -§10.3 General & Definitions** (*Various Pages in Subchapter A*). A clarification of the census data utilized by the Department to determine Rural and Urban designations has been added. Specifically, it is the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset. The Department will utilize the most current data available as of October 1, 2013. Moreover, this section clarifies that information contained in a pre-application or full application, once submitted to the Department, must be made available to the Department, in their entirety, on the Department's website. New definitions for developer fee and developer services have been added; some definitions have been streamlined and others have been modified based on the HOME Final Rule and statutory changes as the result of H.B. 3361.
2. **Subchapter A §10.4 Program Dates** (*Page 14 of 14 Subchapter A*). This section removes the requirement for requests for neighborhood organizations by a date certain and this section clarifies the deadline for challenges relating to neighborhood organization opposition.
3. **Subchapter B §10.101 Site and Development Requirements and Restrictions** (*Page 1 of 10 in Subchapter B*). Rehabilitation (excluding Reconstruction) developments with ongoing and existing federal assistance from HUD or USDA are not automatically exempt from this restriction but must request an exemption at the time of or prior to the filing of an application. Such exemption may be granted by the Board. Moreover, applications proposing Rehabilitation (including Reconstruction) that are requesting HOME Direct Loan funds from the Department are considered ineligible. Mandatory Community Assets (fka mandatory site characteristics) have been expanded to include a limited financial service center and a community, civic or service organization.
4. **Subchapter B §10.101 Unit and Development Features** (*Page 8 of 10 in Subchapter B*). The percentage of masonry on all building exteriors has been modified to reflect greater than 30% as a threshold that includes stone and brick; however, it excludes cementitious siding.

5. **Subchapter C §10.201(2) Filing of Application for Tax-Exempt Bond Developments** (*Page 2 of 21 in Subchapter C*). This section has been modified to reflect that changes to a tax-exempt bond application after submission may warrant a delay in presenting the application to the Board for consideration. Moreover, this section states that in instances where the applicant is not reasonably expected to close within 60 days of the issuance of a Determination Notice, then Board action concerning such Determination Notice may be delayed.
6. **Subchapter C §10.203(2) Public Notifications** (*Page 7 of 21 in Subchapter C*). This section has been modified to require re-notification if there is a change, whether it's a decrease or increase, of the total units greater than 10%. Moreover, this section reflects that requests for neighborhood organizations from the appropriate municipality are no longer required to occur by a date certain and any changes in notification recipients, such as officials, between the pre-application and full Application necessitates additional notifications at full Application. The correct person must be notified with a timely and compliant written notification
7. **Subchapter C §10.204(5) Required Documentation for Application Submission** (*Page 11 of 21 in Subchapter C*). The experience requirement in this section has been modified to exclude Experience Certifications issued within the last two years; the Principal of the Developer, Development Owner, or General Partner must establish they have the experience in the development and placement in service of 150 units or more.
8. **Subchapter C §10.204(5) Required Documentation for Application Submission** (*Page 12 of 21 in Subchapter C*). The financing requirements section has been modified to require permanent loans, as part of gap financing, to include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than 30 years.
9. **Subchapter C §10.204(5) Required Documentation for Application Submission** (*Page 13 of 21 in Subchapter C*). The rent schedule section has been modified to reflect applications that utilize the Department's HOME funds, at least 90% of the Units restricted under such program, must be available to families whose income does not exceed 60% of AMGI.
10. **Subchapter C §10.205(5) Required Third Party Reports** (*Page 18 of 21 in Subchapter C*). This section proposes that Market Analyses and/or Property Condition Assessments (PCA) that are dated more than six months but not more than twelve months prior to application acceptance period may submit a statement from the report provider that reaffirms the findings of the original report. The statement may not be older than six months prior to application acceptance period and the original Market Analysis or PCA provider must accompany the statement.
11. **Subchapter C §10.207 Waiver of Rules or Pre-clearance for Applications** (*Page 20 of 21 in Subchapter C*). This section clarifies that waiver requests will not be submitted after the submission of the application and further includes a general process for the pre-clearance of issues related to Undesirable Area Features. Specifically, that written requests for pre-clearance may be requested at or prior to submission of the pre-application or the Application and such requests should include sufficient documentation and where appropriate a plan for mitigation or alternative solutions.
12. **Subchapter G §10.901 Fee Schedule, Appeals and Other Provisions** (*Page 3 of 5 in Subchapter G*). The fee schedule has been modified to reflect the inclusion of a compliance monitoring fee specific to the Department's HOME developments.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter A §§10.1 - 10.4, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to explain the purpose of the uniform multifamily rules, define terms, and provide guidance on program dates.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to explain the purpose of the uniform multifamily rules, define terms and provide guidance on program dates. There will not be any economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

10.1 Purpose

10.2 General

10.3 Definitions

10.4 Program Dates

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter B §10.101, concerning the Uniform Multifamily Rules. The purpose of the new sections is to provide guidance relating to site and development requirements and restrictions relating to applications applying for multifamily funding through the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to provide guidance relating to site and development requirements and restrictions relating to applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new section affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§10.101 Site and Development Requirements and Restrictions

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter C §§10.201 - 10.208, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide guidance for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to provide requirements for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions. There is no change in economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§10.201 Procedural Requirements for Application Submission

§10.202 Ineligible Applicants and Applications

§10.203 Public Notifications

§10.204 Required Documentation for Application Submission

§10.205 Required Third Party Reports

§10.206 Board Decisions

§10.207 Waiver of Rules or Pre-clearance for Applications.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter G §§10.901 - 10.904, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide for fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections will have some implications related to revenues of the state government. The new sections propose a new compliance fee of \$34/unit relating to applications that receive funding through the Department’s HOME Multifamily Rental Development program. This fee will be used to cover administrative costs, including staff time, associated with monitoring these developments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be adequate revenue to cover the cost of monitoring compliance with the program requirements. The amount of change in economic cost to any individual required to comply with the proposed new subchapter would be incurred if the individual decided to pursue this program as a funding source.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that any new economic impact on small or micro-businesses is expected to be minimal and would only be incurred if the business engages in actions that are at its option. There is no anticipated difference in cost of compliance between small and large businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code §2306.144, §2306.147, and §2306.6716.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning Low Income Housing Tax Credit Program.

10.901 Fee Schedule

10.902 Appeals Process

10.903 Adherence to Obligations

10.904 Alternative Dispute Resolution (ADR) Policy

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1. Purpose.

The rules in this chapter apply to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the “Department”) and establish the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program, including but not limited to, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This rule does not apply to any project-based rental or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this rule remain subject to this rule.

§10.2. General.

(a) These rules may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

- (1) deadlines for filing Applications and other documents;
- (2) any additional submission requirements that may not be explicitly provided for in this chapter;
- (3) any applicable Application set-asides and requirements related thereto;
- (4) award limits per Application or Applicant;
- (5) any federal or state laws or regulations that may supersede the requirements of this chapter; and
- (6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the multifamily rules or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this rule.

(d) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2013, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the

designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(e) Public Information Requests. Pursuant to Texas Government Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of Texas Government Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property administered by Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code, Chapter 2306, Internal Revenue Code (the "Code"), §42, the HOME Final Rule, and other Department rules as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code, §42(i)(1) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent if such timing is deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress prior to February 28, 2014;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Application Acceptance Period--That period of time during which Applications may be submitted to the Department.

(7) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(8) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(9) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(10) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(11) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.

(12) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(13) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(14) Certificate of Reservation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(15) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(16) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(17) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Texas Water Code, §17.921; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department.

(18) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(19) Commitment of Funds--Occurs when the Development is approved by the Department and a Commitment is executed between the Department and a Development Owner or Applicant. For Direct Loan Programs, this process is distinct from Federal Commitment, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(20) Committee—See *Executive Award and Review Advisory Committee*

(21) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

(22) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(23) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(24) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(25) Contract--See *Commitment*.

(26) Contractor--See *General Contractor*.

(27) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Multiple Persons may be deemed to have Control simultaneously.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(30) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(31) **Deferred Developer Fee**—The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(32) **Deobligated Funds**--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(33) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(34) **Developer**--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a developer fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10% of the total Developer fee. The Developer may or may not be a Related Party or Principal of the Owner.

(35) **Developer Fee**--Compensation in amounts defined in §10.302(e)(7) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

(36) **Developer Services**--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination and construction over site of the Property generally including but not limited to:

site selection and purchase or lease contract negotiation

(A) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department

(B) coordination and administration of activities including the filing of applications to secure such financing

(C) coordination and administration of governmental permits and approvals required for construction and operation

(D) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants

(E) selection and coordination of the General Contractor and construction contract(s) construction over site

(F) other consultative serves to and for the Owner

(G) guaranties, financial or credit support if a Related Party

(H) any other customary and similar activities determined by the Department to be Developer Services.

(37) **Development Site**--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(38) **Development**--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(39) **Development Consultant or Consultant**--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) **Development Owner** (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(41) Development Team--All Persons and Affiliates thereof that play a role in the Development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(42) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(43) Economically Distressed Area— An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income, in a census tract that is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA, and in a municipality or county that has ~~been awarded~~received funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period.

(44) Effective Gross Income (EGI)--The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(45) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(46) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(47) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(48) Executive Award and Review Advisory Committee (also referred to as the "Committee")--The Department committee created under Texas Government Code, §2306.1112.

(49) Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

(50) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement; or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(51) Federal Commitment --A commitment of funding that meets all of the federal requirements for the specific federal funding source being committed. This commitment may be distinct and separate from a Commitment or Commitment of Funds.

(52) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(53) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(54) General Partner—Any person or entity identified as a general partner in articles of limited partnership for the partnership that is the Development Owner and that has general liability for the partnership or that has Control with respect to any such general partner. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(55) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(56) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(57) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(58) Gross Demand--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(59) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(60) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(61) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(62) HTC Property--See *HTC Development*.

(63) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(64) Historically Underutilized Businesses (HUB)--An entity that is certified as such under Texas Government Code, Chapter 2161 by the State of Texas.

(65) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(66) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(67) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(68) Housing Quality Standards (HQS)--The property condition standards described in 24 CFR §982.401.

(69) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(70) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(71) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(72) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(73) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (54) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(74) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(75) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(76) Market Rent-- The achievable rent at the subject Property for a unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(77) Market Study—See *Market Analysis*.

(78) Material Deficiency—Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(79) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(80) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(81) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(82) Net Rentable Area (NRA)--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(83) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(84) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(85) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer and other utilities to provide access to and service the Site.

(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(87) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(88) Owner—See *Development Owner*.

(89) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(90) Persons with Disabilities--With respect to an individual, means that such person has:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(91) Physical Needs Assessment--See *Property Condition Assessment*.

(92) Place – An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas know as census designated places. The Department may provide a list of Places for reference.

(93) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(94) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(95) Primary Market (PMA)--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(96) Primary Market Area—See *Primary Market*.

(97) Principal--Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(98) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(99) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(100) Property Condition Assessment (PCA)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(101) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(102) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(103) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(104) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of "housing for older persons" under the federal Fair Housing Act. The age restrictions associated with or character of such a Development are sometimes referred to as "Qualified Elderly".

(105) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706 and §2306.6729, and §42(h)(5) of the Code.

(106) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(107) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(108) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.

(109) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(110) Related Party-- As defined in Texas Government Code, §2306.6702.

(111~~09~~) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this

chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(1121) Report--See *Credit Underwriting Analysis Report*.

(1132) Request--See *Qualified Contract Request*.

(1143) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(1154) Right of First Refusal--An Agreement to provide a right to purchase the Property to a nonprofit or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(1165) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(1176) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(1187) Secondary Market Area—See *Secondary Market*.

(1198) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(12019) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(1210) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, and underground utilities.

(1221) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code and Treasury Regulation 1.42-14.

(1232) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(1243) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt unless the development is a Tax Exempt Bond Development with a project based rental assistance contract that assures a contract rent for a majority of the Units, in which case the Development is treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(1254) Target Population--The designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(1265) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(1276) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(1287) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter, and published on the Department's web site (www.tdhca.state.tx.us).

(1298) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer or General Contractor; or

(C) anyone receiving any portion of the administration, contractor or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) – (C) of this paragraph.

(13029) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development.

(13130) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(1321) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(1332) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

- (1343) Unit--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.
- (1354) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than one-hundred twenty (120) square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.
- (1365) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.
- (1376) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (114)(B) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.
- (1387) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.
- (1398) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.
- (14039) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation §1.42-10 and §10.607 of this chapter (relating to Utility Allowances).
- (1410) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Re-use and Target Population fail to account fully for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4. Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter.

(2) Notice to Submit Lottery Application Delivery Date. No later than December 13, 2013, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 27, 2013, Applicants that participated in the BRB Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report. For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

(8) Unless specifically stated otherwise in the Department rules, if an item is due on a specific day or a period expires on a specific day, the applicable period ends at 5:00 pm, local Austin time on such day.

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the state or local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.

(2) Mandatory Community Assets. Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) community assets. Only one community asset of each type listed in subparagraphs (A) - (T) of this paragraph will count towards the number of assets required. A map must be included identifying the Development Site and the location of the community assets by name. All assets must exist or, if under construction, must be under active construction, post pad (*e.g.* framing the structure) by the date the Application is submitted:

- (A) full service grocery store;
- (B) pharmacy;
- (C) convenience store/mini-market;
- (D) department or retail merchandise store;
- (E) bank/credit union;
- (F) restaurant (including fast food but not including establishments that are primarily bars and serve food as an incidental item);
- (G) indoor public recreation facilities, such as, community centers, and libraries accessible to the general public;
- (H) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;
- (I) medical office (physician, dentistry, optometry) or hospital/medical clinic;
- (J) public schools (only eligible for Developments that are not Qualified Elderly Developments);
- (K) senior center accessible to the general public;
- (L) religious institutions;
- (M) community, civic or service organizations, such as Kiwanis or Rotary Club;
- (N) child care center (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);

(O) post office;

(P) city hall;

(Q) county courthouse;

(R) fire station;

(S) police station; or

(T) designated public transportation stop at which public transportation stops on a regular, scheduled basis; a site's eligibility for on demand transportation or transportation provided directly or indirectly by the Development Owner do not meet this requirement.

(3) Undesirable Site Features. Development Sites with the undesirable features identified in subparagraphs (A) - (H) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application. For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (H) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;

(F) Developments in which the buildings are located within the accident zones or clear zones for commercial or military airports;

(G) Developments located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002; or

(H) Any other Site deemed unacceptable, which would include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(4) Undesirable Area Features. If the Development Site is located within 1,000 feet of any of the undesirable area features in subparagraphs (A) - (H) of this paragraph, the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether a confluence of undesirable area features are of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria). The presence of such feature must be disclosed at the time the Application is submitted to the Department. An Applicant may [choose to](#) disclose the presence of such feature at the time the pre-application (if applicable) is submitted to the

Department if requesting pre-clearance. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules or Pre-clearance for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of Site ineligibility and termination of the Application cannot be appealed.

- (A) A history of significant or recurring flooding;
- (B) Significant presence of blighted structures, blighted being the visible and physical decline of a property or properties due to a combination of economic downturns, residents and businesses leaving the area, and the cost of maintaining the quality of older structures;
- (C) Fire hazards that could impact the fire insurance premiums for the proposed Development;
- (D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of being locally known and regarded within the community as a high crime area and reported as such in the press, substantiated by a significant and regular need for a higher than normal level of police activity and/or emergency response in the area;
- (E) A hazardous waste site or a continuing source of localized hazardous emissions, whether corrected or not;
- (F) Heavy industrial use;
- (G) Active railways (other than commuter trains); or
- (H) Landing strips or heliports.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

- (i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);
- (ii) Any Development with any building(s) with four or more stories that does not include an elevator;
- (iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
- (iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);
- (v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation §1.42-9 or a documented exception thereto;
- (vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision; or
- (vii) An Application proposing Rehabilitation (including Reconstruction) is not eligible for HOME Direct Loan funds from the Department.

(B) Ineligibility of Qualified Elderly Developments.

- (i) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;
- (ii) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or
- (iii) Any Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance. The following minimum Rehabilitation amounts must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable:

- (A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$19,000 per Unit in Building Costs and Site Work;
- (B) For Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum Rehabilitation will involve at least \$15,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work; or
- (C) For all other Developments, the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (C) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. These amenities must be at no charge to the tenants.

- (A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;
- (B) Laundry Connections;
- (C) Blinds or window coverings for all windows;
- (D) Screens on all operable windows;
- (E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);
- (F) Energy-Star rated refrigerator;
- (G) Oven/Range;
- (H) Exhaust/vent fans (vented to the outside) in bathrooms;
- (I) At least one Energy-Star rated ceiling fan per Unit;
- (J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;
- (K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);

(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units in Supportive Housing Developments only); and

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) – (vi) of this subparagraph. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

- (i) Developments with 16 to 40 Units must qualify for four (4) points;
- (ii) Developments with 41 to 76 Units must qualify for seven (7) points;
- (iii) Developments with 77 to 99 Units must qualify for ten (10) points;
- (iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;
- (v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
- (vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

- (i) Full perimeter fencing (2 points);
- (ii) Controlled gate access (2 points);
- (iii) Gazebo w/sitting area (1 point);
- (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (v) Community laundry room with at least one washer and dryer for each 25 Units (3 points);
- (vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);
- (vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);
- (viii) Swimming pool (3 points);
- (ix) Splash pad/water feature play area (1 point);
- (x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All

Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);

(xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);

(xii) Furnished Community room (2 points);

(xiii) Library with an accessible sitting area (separate from the community room) (1 point);

(xiv) Enclosed community sun porch or covered community porch/patio (1 point);

(xv) Service coordinator office in addition to leasing offices (1 point);

(xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);

(xvii) Health Screening Room (1 point);

(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(xix) Horseshoe pit, putting green; shuffleboard court; video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);

(xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot; (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or

(xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;

(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);

(xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);

(xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);

(xxvii) Common area Wi-Fi (1 point);

(xxviii) Twenty-four hour live monitored camera/security system in each building (3 points);

(xxix) Secured bicycle parking (1 point);

(xxx) Rooftop viewing deck (2 points); or

(xxxi) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED) and National Green Building Standard (NAHB) Green. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) – (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily

Developments. Six (6) of the nine (9) items listed under items (-a-) - (-i-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this item;

(-a-) at least 20 percent of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved greywater collection system. This can include rainwater harvested from gutters and downspouts to a storage tank or cistern where it can be treated or filtered for potable uses; untreated rainwater may be used for non-potable uses;

(-b-) native trees and plants installed that are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;

(-c-) install water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units are located so they are fully shaded 75 percent of the time during summer months (i.e. May through August);

(-e-) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service provided throughout the Compliance Period.

(II) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e. Certified, Silver, Gold or Platinum).

(IV) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) Unit Requirements.

(A) **Unit Sizes.** Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit;

(B) Unit and Development Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points. Applications not funded with Housing Tax Credits (*e.g.* Direct Loan Applications) must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);

(vii) Laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required [UFAS-accessible compliant](#) Units (1.5 points);

(viii) Thirty (30) year shingle or metal roofing (0.5 point);

(ix) Covered patios or covered balconies (0.5 point);

(x) Covered parking (including garages) of at least one covered space per Unit (1.5 points);

(xi) Greater than 30% percent masonry on all building exteriors (includes stone and brick but excludes cementitious siding); the percentage calculation may exclude exterior glass entirely (2 points);

(xii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xiii) 14 SEER HVAC (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);

(xiv) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point); and

(xv) Desk or computer nook (0.5 point)

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) – (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Applications not funded with Housing Tax Credits (*e.g.* HOME Program or other Direct Loans) must include enough amenities to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.614 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

- (A) joint use library center, as evidenced by a written agreement with the local school district (2 points);
- (B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.) (2 points);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
- (D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom or online course is not acceptable (1 point);
- (H) annual health fair (1 point);
- (I) quarterly health and nutritional courses (1 point);
- (J) organized team sports programs or youth programs offered by the Development (1 point);
- (K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);
- (L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (M) weekly exercise classes (2 points);
- (N) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);
- (O) annual income tax preparation (offered by an income tax prep service) (1 point);
- (P) monthly transportation to community/social events such as lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc. (1 point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
- (R) specific and pre-approved caseworker services for seniors, Persons with Disabilities or Supportive Housing (1 point);
- (S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc. and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points); and
- (T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point).
- (8) Development Accessibility Requirements.** All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) – (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), as specified under 24 C.F.R. Part 8, Subpart C, and as further defined in Chapter 1 Subchapter B of this title (relating to Accessibility Requirements).

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom [one bath](#), two bedroom [one bath, two bedroom two bath](#), three bedroom [two bath](#)) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7)).

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as Substantial Alteration, in accordance with [§1.205 of this title](#).

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-clearance for Applications

§10.201. Procedural Requirements for Application Submission.

The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed and that digital media is fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete Application to the Department. Each copy must be in a single file and individually bookmarked in the order as required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (*e.g.*, Third Party Reports) outside of the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications for Tax-Exempt Bond Developments will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications that receive a Certificate of Reservation from the Texas Bond Review Board (TBRB) on or before November 15 of the prior program year will be required to satisfy the requirements of the prior year QAP and Uniform Multifamily Rules. Applications that receive a Certificate of Reservation from the TBRB on or after January 2 of the current program year will be required to satisfy the requirements of the current program year QAP and Uniform Multifamily Rules.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to

Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application fee described §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. Those Applications designated as Priority 3 must submit Parts 1 - 4 within fourteen (14) calendar days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. The remaining parts of the Application and any other [substantive](#) outstanding documentation, [in Department staff's determination and](#) regardless of TBRB Priority designation, must be submitted to the Department at least seventy-five (75) calendar days prior to the Board meeting at which the decision to issue a Determination Notice would be made, [unless Department staff completes its evaluation in sufficient time for Board consideration. Applicants should be aware that changes to an Application \(e.g. submission of new financing term sheets\) subsequent to submission may delay completion of Department staff's review or underwriting of the Application and presentation to the Board for consideration of a Determination Notice. Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty \(60\) days of the issuance of a Determination Notice.](#)

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant in such a situation would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) and (B) of this paragraph:

(A) the new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The Application must remain unchanged which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration; or

(B) if there are changes to the Application as referenced in subparagraph (A) of this paragraph the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of a reissuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Department shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the Texas Bond Review Board (TBRB); and
- (ii) For all other Developments, the date the Application is received by the Department; and
- (iii) Notwithstanding the foregoing, after July 31 a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round will take longer to process due to the statutory constraints on the award and allocation of competitive tax credits.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points,

eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice then an [Administrative Deficiency Notice Late Fee](#) ~~late fee~~ of \$500 for each business day the deficiency remains unresolved will be assessed and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. [Department staff may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond Developments during periods when private activity bond volume cap is undersubscribed. Applicants should be prepared for delays as described in §10.201\(2\)\(B\) of this chapter.](#)

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this subsection if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §104 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days

to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications.

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. If such ineligibility is determined by staff to exist, then prior to termination the Department may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed below include those requirements in §42 of the Internal Revenue Code, Texas Government Code, Chapter 2306 and other criteria considered important by the Department and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) – (M) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; (§2306.6721(c)(2))

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has breached a contract with a public agency and failed to cure that breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(F) has been found by the Board to be ineligible because of material uncured noncompliance reflected in the Applicant's compliance history to the extent and where allowed by law [or as assessed in accordance with §1.5 of this title](#);

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous contracts or commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations and the Party is on notice that such deobligation results in ineligibility under these rules;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of these rules and will subject the Applicant to the assessment of administrative penalties under Chapter 2306 of the Texas Government Code and this title;

(L) was the owner or Affiliate of the owner of a Department HOME-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or HOME funds repaid;

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. If, not later than 30 days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) – (v) of this subparagraph shall be considered:

(i) the amount of resources in a development and the amount of the benefit received from the development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or propose termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves that would likely have the effect of fomenting ~~of~~ opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to

participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the challenge process described in §11.10 of this title. An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) – (C) of this paragraph apply to the Application:

(A) a violation of Texas Government Code, §2306.1113 exists relating to Ex Parte Communication. (§2306.1113) An ex parte communication occurs, when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Texas Government Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; (§2306.6703(a)(1)); or

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

§10.203. Public Notifications. (§2306.6705(9))

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit change of greater than 10 percent. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Notifications

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state whose boundaries include the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) – (H) of this paragraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county whose boundaries include the Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in subparagraphs (i) – (vi) of this paragraph.

(i) the Applicant's name, address, individual contact name and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and

(vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100% of the Units will be for Qualified Elderly and it may not imply or indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated below is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, as provided in the Application, must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Texas Government Code, Chapter 552 and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Texas Government Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(2) Certification of Principal. This form, as provided in the Application, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Texas Government Code §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter.

(B) The [Governing Body of a](#) municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The [Governing Body of a](#) county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to [elicit solicit](#) public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an Application with a Development Site that is:

- (i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;
- (ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:
 - (I) a resolution from the Governing Body of that municipality; and
 - (II) a resolution from the Governing Body of the county; or
- (iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

- (i) Notice has been provided to the Governing Body in accordance with Texas Government Code, §2306.67071(a) and 10 TAC §10.204(4)(A);
- (ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Texas Government Code, §2306.67071(b) and 10 TAC §10.204(4)(B); and

(iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban. Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B) for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in subclauses (i) – (ix) of this clause:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(ii) AIA Document G704--Certificate of Substantial Completion;

(iii) AIA Document G702--Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609, (only one per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) Partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience.

(B) For purposes of this requirement any individual attempting to use the experience of another individual must demonstrate they have or had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(i) The names on the forms and agreements in subparagraph (A)(i)-(ix) of this paragraph must tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application.

(ii) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(iii) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(iv) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance; or

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors, if known;

(VI) include the principal amount of the loan; and

(VII) include and address any other terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified in the Application. Acceptable documentation may include a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than 30 years.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than

syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter or where scoring is concerned.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- (iv) anticipated developer fees paid during construction; and
- (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5% of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.607 of this chapter (relating to Utility Allowances). Where the Applicant uses any method that requires Department review, such review must have been requested prior to submission of the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing HOME funds, at least 90 percent of the Units restricted in connection with the HOME program must be available to families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

- (i) Applicants must provide a detailed cost breakdown of projected Site Work costs, if any, prepared by a Third Party engineer. If Site Work costs exceed \$15,000 per Unit and are included in Eligible

Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) – (vii) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) – (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) – (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph unless specifically stated otherwise and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) A site plan which:

- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
- (ii) identifies all residential and common buildings;
- (iii) clearly delineates the flood plain boundary lines and shows all easements;
- (iv) if applicable, indicates possible placement of detention/retention pond(s); and
- (v) indicates the location of the parking spaces.

(B) Building floor plans must be submitted for each building type. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area; and

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each building type and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that does not expressly preclude an ability to assign the Site Control to the Development Owner or another party. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided:

- (i) a recorded warranty deed with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or
- (ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or
- (iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter (relating to Underwriting Rules and Guidelines), then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) – (D) of this paragraph.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change (may include an acknowledgement that a zoning application was received by the political subdivision) and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) Owner's rights to reconstruct in the event of damage; and
- (iv) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous

Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities, other government instrumentalities and publicly traded corporations are required to submit documentation for the entities involved, individual board members, and executive directors. Any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee is also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The Previous Participation and Background Certification Form will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. Applications for Competitive Housing tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;

(ii) The Nonprofit Participation exhibit as provided in the Application;

(iii) A Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;

(III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the

Application involves a nonprofit that is not a §501(c)(3) or (4) then they must disclose in the Application the basis of their nonprofit status.

§10.205. Required Third Party Reports.

The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report must be submitted no later than the Resolutions Delivery Date as identified in §10.4 of this chapter (relating to Program Dates) or Full Application Delivery Date §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits), as applicable. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. This report, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

(5) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site is required for any New Construction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes and local design requirements impacting the Development (do not attach ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). The survey or plat may not be older than twelve (12) months from the beginning of the Application Acceptance Period.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development and building coded ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of, retaining walls, set-back requirements and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing and an itemization specific to the Development of total anticipated impact, site development permit, building permit and other required fees.

§10.206. Board Decisions. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with and fulfillment of the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207. Waiver of Rules or Pre-clearance for Applications.

(a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application. Waiver requests will not be accepted after submission of the Application. The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program. Where appropriate the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Application materials. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved.

(b) General Pre-clearance Process. Pre-clearance may be requested for issues related to Undesirable Area Features pursuant to §10.101(a)(4) of this chapter. An Applicant may request pre-clearance in writing at or prior to the submission of the pre-application (if applicable) or the Application. Pre-clearance requests will not be accepted after submission of the Application. Requests for pre-clearance should include sufficient documentation for the Board to make a fully informed determination and must be submitted to the Department in the format required in the Application materials. Where appropriate the Applicant is encouraged to submit with the requested pre-clearance any plans for mitigation or alternative solutions. Any pre-clearance, if granted, shall apply solely to the Application and should not be construed to apply in other situations that may appear similar.

(c) Waivers and/or Pre-Clearance Granted by the Executive Director. The Executive Director may waive requirements or grant pre-clearance as provided in this rule. Even if this rule grants the Executive Director authority to waive or pre-clear a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver or pre-clear any item to the extent such requirement is mandated by statute. Denial of a waiver and/or pre-clearance by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(d) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters B, C, E, and G of this chapter except no waiver shall be granted to provide forward commitments or if the requested waiver is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules.

Subchapter G – Fee Schedule, Appeals and Other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract and ineligible to submit extension requests, ownership transfers and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be \$30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements and for which a pre-application fee was paid, the Application fee will be \$20 per Unit based on the number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application. Pursuant to Texas Government Code, §2306.147(b) the Department is required to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this

chapter (relating to Procedural Requirements for Application Submission) if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of \$500 for each business day the deficiency remains unresolved.

(7) Challenge Processing Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$500 for challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of \$750 must be submitted. Building inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the applicable deadline must be accompanied by an extension fee of \$2,500. An extension fee will not be required for extensions requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve U.S. Department of Agriculture (USDA) as a lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request ~~to be considered for a~~ non-material [change](#) that has not been implemented will not be required to pay an amendment fee. Material [amendment requests \(whether implemented or not\)](#), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests to offer a property for sale under a Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-

refundable processing fee in an amount equal to the lesser of \$3,000 or one-fourth (1/4) of 1 percent of the Qualified Contract Price determined by the Certified Public Accountant.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$500.

(18) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC and HOME Developments Only.) Upon receipt of the cost certification for HTC or HTC and HOME ~~d~~Developments, or upon the completion of the 18--month development period and the beginning of the repayment period for HOME only ~~d~~Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit and \$34 per HOME designated Unit, with two fees due for units that are dually designated. For HTC ~~d~~Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For HOME only ~~d~~Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. ~~For Tax-Exempt Bond Developments with the Department as the issuer, the tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to \$40/Unit beginning two (2) years from the first payment date of the bonds.~~ Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(21) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and HOME programs will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902. Appeals Process. (§2306.0321; §2306.6715)

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

- (1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements) and Subchapter C of

this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules), pre-application threshold criteria, underwriting criteria;

- (2) The scoring of the Application under the applicable selection criteria;
- (3) A recommendation as to the amount of Department funding to be allocated to the Application;
- (4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;
- (5) Denial of a change to a Commitment or Determination Notice;
- (6) Denial of a change to a loan agreement;
- (7) Denial of a change to a LURA;
- (8) Any Department decision that results in the erroneous termination of an Application ~~unless the termination is based on Material Noncompliance~~;
- (9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

- (1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or,
- (2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Subchapter A §§10.1 - 10.4, concerning the Uniform Multifamily Rules. The purpose of the repeal is to replace the sections with a new rule that encompasses requirements for all applications applying for multifamily funding through the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of sections within the rule with a new rule that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

10.1 Purpose

10.2 General

10.3 Definitions

10.4 Program Dates

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Subchapter B §10.101, concerning the Uniform Multifamily Rules. The purpose of the repeal is to replace the sections with a new rule that encompasses requirements for all applications applying for multifamily funding through the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

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The proposed new section affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§10.101 Site and Development Requirements and Restrictions

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Subchapter C §§10.201 - 10.208, concerning the Uniform Multifamily Rules. The purpose of the repeal is to replace the sections with a new rule that encompasses requirements for all applications applying for multifamily funding through the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of sections within the rule with a new rule that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

- §10.201* Procedural Requirements for Application Submission
- §10.202* Ineligible Applicants and Applications
- §10.203* Public Notifications
- §10.204* Required Documentation for Application Submission
- §10.205* Required Third Party Reports
- §10.206* Board Decisions
- §10.207* Waiver of Rules for Applications.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Subchapter G §§10.901 - 10.904, concerning the Uniform Multifamily Rules. The purpose of the repeal is to provide for updated guidance relating to fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal will have some implications related to revenues of the state government. The new sections propose a new compliance fee of \$34/unit relating to applications that receive funding through the Department’s HOME Multifamily Rental Development program. This fee will be used to cover administrative costs, including staff time, associated with monitoring these developments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of sections within the rule with a new rule that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 27, 2013 to October 21, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 21, 2013.**

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repealed sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code §2306.144, §2306.147, and §2306.6716.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning Low Income Housing Tax Credit Program.

- 10.901* Fee Schedule
- 10.902* Appeals Process
- 10.903* Adherence to Obligations
- 10.904* Alternative Dispute Resolution (ADR) Policy