

BOARD BOOK OF OCTOBER 12, 2017



J. B. Goodwin, Chair
Leslie Bingham Escareño, Vice-Chair
Paul Braden, Member
Asusena Reséndiz, Member
Sharon Thomason, Member
Leo Vasquez, III, Member

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT IN FISCAL YEAR 2016

The Texas Department of Housing and Community Affairs (“TDHCA”) is the State of Texas’ lead agency responsible for affordable housing and administers a statewide array of programs to help Texans become more independent and self-sufficient. Short descriptions and key impact measures for these programs – including the total number of households/individuals to be served and total funding either administered or pledged for Fiscal Year 2016 (September 1, 2015, through August 31, 2016) – are set out below:

Multifamily New Construction & Rehabilitation:

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

Total Households Served: 11,728

Total Funding: \$1,127,191,576

Single Family New Construction, Rehabilitation, Bootstrap, and Stabilization:

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

Total Households Served: 317

Total Funding: \$17,905,785

Single Family Homeownership Program & Homebuyer Assistance:

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

Total Households Served: 2,987

Total Funding: \$351,564,766

Rental Assistance:

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

Total Households Served: 1,287

Total Funding: 13,978,985

Weatherization Assistance Program:

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

Total Households Served: 3,384

Total Funding: \$20,656,298

Homelessness

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

Total Individuals Served: 33,297

Total Funding: \$13,076,967

Comprehensive Energy Assistance Program:

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

Total Households Served: 136,071

Total Funding: \$106,246,875

Community Services Block Grant:

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

Total Individuals Served: 559,322

Total Funding: \$28,937,414

Source: This data comes from the TDHCA 2017 State Low Income Housing Plan and Annual Report and the Economic Indicators database. Multifamily New Construction & Rehab data come from the most recent award logs for FY2016.

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



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

**A G E N D A
9:00 AM
October 12, 2017**

**John H. Reagan Building
JHR 140, 105 W 15th Street
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

J.B. Goodwin, Chair

CERTIFICATION OF QUORUM

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

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

CONSENT AGENDA

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

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

POLICY AND PUBLIC AFFAIRS

- a) Presentation, discussion, and ratification of programmatic, contractual, and other actions taken by the Executive Director with respect to the use of state or federal funds for disaster response and recovery efforts related to Hurricane Harvey

Michael Lyttle
Chief, External Affairs

LEGAL

- b) Presentation, discussion, and possible action regarding the adoption of Agreed Final Order concerning Lively Oaks (HTC 92043 / CMTS 1042)
c) Presentation, discussion, and possible action regarding the adoption of Agreed Final Order concerning North Park Townhomes (HTC 94022 / CMTS 1219)

Jeffrey T. Pender
Deputy General Counsel

SINGLE FAMILY OPERATIONS AND SERVICES

- d) Presentation, discussion and possible action on the appointment of Colonia Residents Advisory Committee ("C-RAC") members

Homero Cabello, Jr.
Director

MULTIFAMILY FINANCE

- e) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer
17425 Medio Springs Ranch San Antonio
17427 Housing First Oaks Springs Austin
f) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds
17401 Primrose Village Weslaco
17405 Bridge at Cameron Austin

Marni Holloway
Director

HOME AND HOMELESS PROGRAMS

- g) Presentation, discussion and possible action on Conditional Program Year 2017 Emergency Solutions Grants Program Awards

Jennifer Molinari
Director

- h) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program (“HOME”) Single Family Programs Homebuyer Assistance (“HBA”) and Tenant-Based Rental Assistance (“TBRA”) Open Cycle Notice of Funding Availability (“NOFA”)

ASSET MANAGEMENT

- i) Presentation, discussion and possible action regarding a Material Amendments to the Housing Tax Credit Land Use Restriction Agreement
02009 Las Villas de Merida San Antonio
02080 Fallbrook Ranch Apartments Houston
05022 The Enclave Houston
- j) Presentation, discussion and possible action regarding Material Amendments to the Housing Tax Credit Application
15173 The Heights Apartments Edinburg
16380 Avanti East Edinburg
- k) Presentation, discussion, and possible action regarding Placed in Service Deadline Extensions
14291 Cypress Creek at Wayside Houston

Raquel Morales
Director

BOND FINANCE

- l) Presentation, discussion and possible action on Resolution No. 18-006 approving an increase in the maximum amount of outstanding advances under the Advances and Security Agreement with Federal Home Loan Bank of Dallas; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject
- m) Presentation, discussion and possible action regarding Resolution No. 18-007 authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 88; approving the form and substance of the program manual and the program summary; authorizing the execution of documents and instruments necessary or convenient to carry out Mortgage Credit Certificate Program 88; and containing other provisions relating to the subject

Monica Galuski
Director

COMPLIANCE

- n) Presentation, discussion and possible approval of amendment to conditions recommended by the Executive Award Review Advisory Committee and approved by the Board for applications 17376, 17700, 17719, and 17307

Patricia Murphy
Chief

RULES

- o) Presentation, discussion, and possible action on adoption of amendments to 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing that these be published in the *Texas Register*
- p) Presentation, discussion, and possible action on an Order adopting the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an Order adopting new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing that these be published in the *Texas Register*
- q) Presentation, discussion, and possible action on the proposed amendments of 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication for public comment in the *Texas Register*
- r) Presentation, discussion, and possible action on proposed amendments of 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policy, and directing its publication for public comment in the *Texas Register*

Homero Cabello, Jr.
Director, SF Operations
and Services

Marni Holloway
Director, MF Finance

Brent Stewart
Director, Real Estate
Analysis

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, (September-October)

Michael Lyttle
Chief, External Affairs

- b) Report on 2019 Regional Allocation Formula timeline and possible changes in methodology as it relates to housing need, available resources and other variables due to disaster response and recovery efforts impacted by Hurricane Harvey
- c) Report on the submission of the 2017 National Housing Trust Fund Allocation Plan
- d) Report Regarding Ranking of Applications on the Waiting List from the 2017 Competitive Housing Tax Credit Application Cycle
- e) Report on funding for Down Payment and Closing Cost Assistance provided in conjunction with loans originated through the Texas Department of Housing and Community Affairs single family mortgage loan program
- f) Quarterly Report on Texas Homeownership Division Activity
- g) Report on the determination that Urban Inter-Tribal Center of Texas (“UITCT”) did not satisfy the conditions of its Federal Fiscal Year (“FFY”) 2017 Community Services Block Grant (“CSBG”) Discretionary Funds award, and opportunity for possible Board action

Elizabeth Yevich
Director, Housing
Resource Center

Marni Holloway
Director, MF Finance

Monica Galuski
Director, Bond Finance

Cathy Gutierrez
Director, Texas
Homeownership

Michael DeYoung
Director, Community
Affairs

ACTION ITEMS

ITEM 3: ASSET MANAGEMENT

- a) Presentation, discussion and possible Action regarding Extension to the 10% Test Deadline, Waiver of Extension Fee and Potential Penalty Points
16040 Parklane Villas Brenham
- b) Presentation, discussion, public comment and possible Board action or direction to staff regarding the handling of extension requests for Placed in Service deadlines for Developments located in a Major Disaster Area
 - 15076 Provision at Four Corners Four Corners
 - 15110 Place of Grace Beaumont
 - 15116 The Carlyle China
 - 15121 The Glades of Gregory Gregory
 - 15126 Brazoria Manor Brazoria
 - 16012 Mariposa at Clear Creek Clear Creek
 - 16040 Parklane Villas Brenham
 - 16172 Lumberton Senior Village Lumberton
 - 16246 Gala at Four Corners Four Corners
 - 16256 Chapman Crossing Houston
 - 16258 Provision at West Bellfort Houston

Raquel Morales
Director

ITEM 4: RULES

- a) Presentation, discussion, and possible action on the proposed amendments of 10 TAC Chapter 13 concerning the Multifamily Direct Loan Rules, and directing its publication for public comment in the *Texas Register*
- b) Presentation, discussion and possible action on the proposed amendment 10 TAC Chapter 10 Subchapter E, concerning the Post Award and Asset Management Requirements, and directing its publication for public comment in the *Texas Register*

Marni Holloway
Director, MF Finance

Raquel Morales
Director, Asset
Management

ITEM 5: MULTIFAMILY FINANCE

- a) Presentation, discussion and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Emli at Liberty Crossing) Series 2017 Resolution No. 18-008 and a Determination Notice of Housing Tax Credits
- b) Presentation, discussion and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Springs Apartments) Series 2017 Resolution No. 18-009 and a Determination Notice of Housing Tax Credits
- c) Presentation, discussion, and possible action regarding awards of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability
 - 17506 Tuscany Park at Arcola Arcola
 - 17502 Freedom's Path at Kerrville Kerrville

Marni Holloway
Director

- d) Presentation, discussion, and possible action regarding a waiver of 10 TAC §13.8(c)(5) of the Multifamily Direct Loan Rule

| | |
|---|----------|
| 17500 Works at Pleasant Valley Phase II | Austin |
| 17509 Poesta Creek Apartments | Beeville |
- e) Presentation, discussion, and possible action regarding a refinancing of a Direct Loan-funded Development

| | |
|-------------------|---------|
| 1001829 The Azure | Midland |
|-------------------|---------|

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

EXECUTIVE SESSION

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

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
3. Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
4. Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

J.B. Goodwin
Chair

OPEN SESSION

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

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nicole Krueger, 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 Elena Peinado, 512-475-3814, 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 Elena Peinado, al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

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

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

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

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

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

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

CONSENT AGENDA

1a

BOARD ACTION REQUEST

EXECUTIVE DIVISION

OCTOBER 12, 2017

Presentation, discussion, and ratification of programmatic, contractual, and other actions taken by the Executive Director with respect to the use of state or federal funds for disaster response and recovery efforts related to Hurricane Harvey

RECOMMENDED ACTION

WHEREAS, on August 25, 2017, Hurricane Harvey ("Harvey") made landfall in Texas as a Category 4 hurricane and remained within Texas for several days causing numerous counties to sustain significant and catastrophic damage;

WHEREAS, on September 7, 2017, The Board authorized the Executive Director to take prompt action as needed to provide disaster response and recovery efforts, conditioned on keeping the Chairman of this Governing Board and the Office of the Governor advised of matters being undertaken; and bringing actions taken under this authority to this Governing Board for ratification and adoption as the acts and deeds of this Governing Board; and

WHEREAS, the Chairman of the Governing Board and the Office of the Governor have been duly consulted of the action taken herein under this authority, and these items are now being presented for ratification and adoption;

NOW, therefore, it is hereby

RESOLVED, consistent with the authority provided by the Board on September 7, 2017, the following actions are hereby ratified and approved:

- Implementation of a disaster response loan policy, approved on September 8, 2017, providing for deferrals and actions of the Department in its role as a servicer of loans held by the Department (disaster response loan policy attached).
- Award of \$1,000,000 in Low Income Home Energy Assistance Program ("LIHEAP") funds for Baker Ripley to assist eligible low income households of Harris County affected by Harvey.
- Forbearance of loan payments for three months for Foundation of Hope, Inc. (HOME Loan #534031003)
- Unrequested HOME funds in the amount of \$9,086,316 were subtracted from the 2017-1 Multifamily Direct Loan NOFA and subsequently added to the current HOME Disaster Reservation Fund for single family activities, also known as Disaster Relief Set-Aside, resulting in approximately \$11 million in HOME funds available for this purpose.
- Deadline extension of three months for HOME Program benchmarks for the City of Kountze, City of Smithville, County of Jim Wells, and the County of Refugio.

- Issuance of separate contracts to reallocate \$261,827.46 in uncommitted Emergency Solutions Grant Program (“ESG”) funds to three 2016 ESG Subrecipients whose service area includes at least one county with a presidential disaster declaration for the provision of emergency sheltering assistance and necessities of life to eligible households.

BACKGROUND

Hurricane Harvey made landfall in Texas on August 25, 2017, and continued to hover over the state for several days. To date 39 counties have been designated by the Federal Emergency Management Agency as eligible for individual assistance. The Department is committed to assisting in all ways possible. Typical response to disasters (hurricanes, forest fires, tornadoes, etc.) via the Department progresses through several phases and accesses various programs at different points.

In the immediate response period, programs such as LIHEAP and Community Services Block Grant (“CSBG”) are channeled through the existing program network of providers to deliver immediate assistance including, but not limited to, such things as provision of food, clothes, fuel, temporary housing, and personal items.

In the short to mid-term those same subrecipients are able to continue providing ongoing CSBG eligible assistance. Additionally the Department may, through direct award to existing subrecipients or fast-response Notices of Funding Availability, offer funding opportunities to provide disaster related assistance through HOME (including tenant-based rental assistance), Emergency Solutions Grants, or Homeless Housing Services Program.

In the longer term, should any additional federal or state resources be appropriated for programs assigned to the Department, staff will develop and present future plans for the use of such funds for longer term recovery activities. Even if additional resources are not provided, the staff will assess current available funding for possible use of disaster recovery including the programs listed herein, and the Housing Choice Voucher Program and the 811 Project Rental Assistance Program. Additionally, as the Department has a significant portfolio of single and multifamily loans, for which some of the properties are located in the affected counties, the Department may be able to alleviate households or properties’ immediate housing obligations through payment deferment or other remedies.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Memorandum

To: Tim Irvine, Executive Director
Brooke Boston, Deputy Executive Director

From: Homero Cabello, Jr., Director, Single Family Operations and Services

Date: September 8, 2017

Subject: Hurricane Harvey Mortgage Assistance

In an effort to ease the burden facing homeowners affected by Hurricane Harvey, we request your authorization to offer the following relief options to borrowers with TDHCA-owned mortgages located within FEMA- declared disaster areas that are eligible for FEMA Individual Assistance. There are approximately 161 loans with addresses in an affected county. The Board's action yesterday granted authority for the Executive Director to "execute, deliver and cause action on Department loans and properties in the Department's single and/or multifamily portfolio granting deferments or other remedies necessary to assist the Department's borrowers."

1. *Waive late fees for affected mortgages.* Not only are many households displaced and focused primarily on immediate food and shelter needs, but even for those in a position to make payments timely, post office and delivery services are still erratic and timely mail delivery is limited and unreliable. We anticipate waiving late fees for up to six months.
2. *Temporarily suspend (forbearance) mortgages.* Because at this time we do not yet know which of the properties in our portfolio were affected, we are suggesting entering forbearance in MITAS for 3 months initially for all loans in the affected counties. As communications with the borrower occur we will determine what other steps may be appropriate. If payments are received regularly, which is expected of those unaffected, we will remove the forbearance status in MITAS. At the end of the initial 3 months Loan Servicing staff will review all mortgages in the affected areas for which we have had no contact and no payment to determine the appropriate handling of these loans including possibly extending the forbearance period.
3. *Temporary Escrow-Only Payments.* If requested, loans for which the Department is collecting funds for taxes and/or insurance (escrow) will be adjusted to allow the monthly loan payment to cover only the required escrow portion of the payment for up to six months.
4. *Previously Delinquent.* Approximately 18 mortgages were more than 90 days delinquent at the time the disaster occurred. Those loans will be reviewed individually to determine the appropriate relief option. If the borrower is under a repayment plan, that plan will be adjusted consistent with the approaches in items 1 to 3 above.
5. *Credit bureau reporting.* Experian, the credit bureau to which the Department reports, has offered options for the reporting of disaster related credit issues. Staff will adjust our reporting to utilize those options, specifically; loans in areas affected by the disaster will be reported as deferred with a special comment code indicating that the borrower was impacted by a natural disaster. The submission of credit activity for August will be adjusted prior to submission since reporting to the credit bureau occurs in September.

6. *Suspend delinquency notices.* Delinquency notices for mortgages in affected counties will not be sent for September, October or November delinquencies, consistent with the 3 month forbearance. This will include mortgages that were previously delinquent, but not covered by #4 above, because they were delinquent for less than 90 days.
7. *Billing.* Staff intends to continue regular billing statements as it is our hope that returned statements will assist us in better pursuing subsequent contact.
8. *Foreclosure/Eviction.* Foreclosures that would have been imminently initiated and/or eviction proceedings that would have been initiated will be suspended for 3 months for properties in the affected areas.

Staff will be making every effort to contact borrowers in the affected areas that have not already reached out to the Department with a goal of having had initial contact by September 15, 2017 (Friday).

Loan Servicing staff is also expecting an increase in insurance claims. TDHCA, as loss payee, will be on the insurance settlement checks and involved appropriately in releases of payments, retainage, etc. It is still unknown what volume this will entail. Some of the Department's loans are being serviced by nonprofit servicers associated with the Bootstrap Program; we anticipate insurance claims for some of these borrowers as well and staff will work with those services on insurance settlement issues.

We will work to ensure borrowers have access to the information and resources they need to help manage their housing challenges. Loan Servicing also services the Department's multifamily portfolio; staff will coordinate with the Asset Management and Multifamily Divisions to determine any appropriate deferral actions needed to assist multifamily property owners that have a loan on properties in areas affected by the hurricane.

Please review and approve.

I approve the disaster assistance strategies contained in this Memorandum.



Timothy K. Irvine

Date

September 8, 2017

Award of Program Year ("PY") 2017 Low Income Home Energy Assistance Program ("LIHEAP") Comprehensive Energy Assistance Program ("CEAP") disaster related funds as a result of Hurricane Harvey

In the wake of Hurricane Harvey, many Harris County low income households have been left without certain basic necessities such as electricity to run the houses in which they live. In some cases, these households have also been left without jobs so that they can adequately pay for electricity in their homes. In order to assist the low income households of Harris County in their recovery after Harvey, the Texas Department of Housing and Community Affairs (the "Department") elected to award Baker Ripley a LIHEAP CEAP award in the amount of \$1,000,000 to assist eligible low income households of Harris County affected by Harvey. The awarded funds will be distributed by Baker Ripley to only those low income households who are CEAP eligible, affected by Harvey, and need assistance with the payment of their utility bills. Assistance with utility bills may come in the form of payment for outstanding utility bills, reconnection fees, future monthly bills, and the potential use of vouchers for overnight hotel stays until power is restored to their home.

At the September 7, 2017 meeting of the Governing Board, staff recommended awards of \$50,000 in CSBG funds for each affected county in order to provide meaningful assistance and maximum flexibility to the smaller counties. This resulted in Harris County getting less than they might have been allocated, had such a minimum award not been in place. A straight analysis of poverty by county would have reflected in some awards to counties in the amount of \$5,000 to \$10,000 for many of the smaller counties. Staff felt it was imperative to provide a more significant award of the most flexible dollars to those smaller entities and not require that the smaller entities manage two contracts; CSBG funds are able to also be used for utility assistance types of activities so those entities were not limited in how they could use the funds by only having one program contract. Alternatively staff recognized that Harris County had significantly more resources and experience in Disaster Relief and could more adeptly deal with the complexities of 2 different fund sources and separate providers of LIHEAP and CSBG. Therefore the state provided the allocation of funding to Harris County through the subsequent award of LIHEAP funds to Baker Ripley in the amount of \$1,000,000. Appropriately, staff has facilitated the collaboration between Gulf Coast Community Services Association and Baker Ripley to provide coordinated services for our Harris County clients.

Baker Ripley is the provider of LIHEAP CEAP in Harris County. In addition, Baker Ripley has been instrumental in providing utility assistance for low income residents of Harris County in the past and can be relied upon to provide swift assistance throughout the recovery effort. Baker Ripley and GCCSA can serve populations with different needs and can coordinate with one another to ensure the maximum number of eligible low income households may be served. With this flexibility, staff believes Harris County's low income residents are well served.

Staff expects these funds to be spent by November 30, 2017.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Memorandum

To: Tim Irvine, Executive Director

From: Raquel Morales, Director of Asset Management

CC: Homer Cabello, Director of Single Family Operations
Stephanie D' Couto, Manager, Loan Servicing
Melissa Whitehead, Senior Loan Servicing Coordinator
Matt Zimmerman, Asset Resolution Manager

Date: September 14, 2017

Subject: Rincon Point (CMTS: 2618/HOME #534031)

Rincon Point was awarded HOME funds in 1994 to newly construct 36 multifamily units in Taft, Texas. A Direct HOME loan in the amount of \$1,490,000 was awarded to Foundation of Hope, Inc. The note structures this award such that interest of 3% would be applied on \$1,007,500, with principal and interest due and payable every month. Foundation of Hope, Inc. has consistently made the required monthly payments as required by the note. The remaining \$482,500 would be waived upon maturity (April 2034), only in the event that the owner has not been in default under any of the terms of the note, Deed of Trust or Land Use Restriction Agreement.

The representative of the owner, Ruben Garza of Southside Community Center, has reached out to Asset Management requesting deferral of loan payments and possible restructure of the existing loan. Asset Management staff has been working with Mr. Garza to come to a resolution regarding the difficulties the property has been facing in the last year with respect to needed capital replacements and property repairs, and the depletion of the property's replacement reserves in attempts to repair what it could. After Hurricane Harvey, Mr. Garza contacted the Department to report that the property sustained more damage in addition to what was already requiring attention and repair. He again asked for a deferral or forbearance of loan payments in order to direct those funds to address property repairs immediately.

Rincon Point is located in San Patricio County, which is included in FEMA's initial notice (FEMA-4332-DR) of areas designated as adversely affected by a major disaster (Hurricane Harvey). Asset Management recommends a temporary three month suspension (forbearance) of loan payments for Foundation of Hope, Inc. (HOME Loan #534031003). During this time Asset Management will continue to work with the owner through the available options to get this property and loan back on track.

Please contact me if you have any questions.

Concur
[Signature]
9/14/17





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2017-1 NOTICE OF FUNDING AVAILABILITY (NOFA)
FOURTH AMENDMENT

THIS AMENDMENT SUBTRACTS \$9,086,316 IN HOME FUNDS FROM THE GENERAL SET-ASIDE PURSUANT TO BOARD ACTION TAKEN AT THE BOARD MEETING OF SEPTEMBER 7, 2017. THE SUBTRACTED HOME FUNDS ARE BEING REPROGRAMMED FOR SINGLE FAMILY DISASTER ASSISTANCE ACTIVITIES. ALL OTHER TERMS AND CONDITIONS OF THE 2017-1 NOFA REMAIN AS ORIGINALLY PUBLISHED.

- 1) Summary.** The Texas Department of Housing and Community Affairs (the “Department”) announces the availability of up to **\$37,073,353** in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. The availability and use of these funds are subject to 10 TAC Chapters 1 (“Administration”), 2 (“Enforcement”), 10 (“Uniform Multifamily Rules”), 13 (“Multifamily Direct Loan Rule”), and Chapters 11 (“Qualified Allocation Plan”) and 12 (“Multifamily Housing Revenue Bonds”) as applicable, as well as Chapter 2306 of the Texas Government Code. Applications proposing development of affordable multifamily rental housing will be subject to the Department of Housing and Urban Development (“HUD”) HOME regulations governing the HOME and NSP1-PI programs found at 24 CFR Part 92 (“HOME Final Rule”) except when NHTF – which is governed by 24 CFR Part 93 – is awarded and these regulations differ. Other regulations that apply to federal funds include, but are not limited to, fair housing (42 U.S.C. 3601-3619), environmental requirements (42 U.S.C. 4321; and 24 CFR part 50 or part 58 depending on the type of activity), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Section 104(d) of Housing and Community Development Act of 1974. HOME funds are further regulated by Davis-Bacon and Related Labor Acts for labor standards (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs). HOME-funded developments must comply with HUD Section 3 requirements (24 CFR Part 135). Section 3 requires HOME-funded housing and community development activities to give, to the greatest extent feasible (and consistent with existing Federal, State and local laws and regulations) job training, employment, contracting and other economic opportunities to Section 3 residents and business concerns.
- 2) Sources of Multifamily Direct Loan Funds.** Multifamily Direct Loan funds are made available through program income generated from prior year HOME allocations, de-obligated funds from prior HOME allocations, the 2015 and 2016 Grant Year HOME allocations, loan repayments

from the Tax Credit Assistance Program (“TCAP Repayment funds” or “TCAP RF”), program income generated from Neighborhood Stabilization Program Round 1 (“NSP1 PI”), and the 2016 Grant Year National Housing Trust Fund (“NHTF”) allocation.

- 3) Set-Asides.** All funds – except TCAP Repayment Funds that were added to the 2017-1 NOFA by the First Amendment, NSP1-PI funds added to the 2017-1 NOFA by the Second Amendment, and NHTF funds added to the 2017-1 NOFA by the Third Amendment – will be subject to the Regional Allocation Formula (“RAF”, located in Attachment A) until February 9, 2017, and then available on a statewide basis within each set-aside. NHTF funds added to the 2017-1 NOFA by the Third Amendment will be subject to the Regional Allocation Formula June 30, 2017, through August 14, 2017, as reflected in Attachment B, and then available on a statewide basis August 15, 2017, through October 31, 2017. Applications under any and all set-asides may or may not be layered with 9% or 4% Housing Tax Credits (“HTC”). The funds made available under this NOFA are available under three set-asides:

| Set-Aside | Amount Available | Maximum Request |
|---|------------------|--------------------------|
| CHDO (HOME only) | \$4,723,589 | \$3,000,000 |
| Supportive Housing/ Soft Repayment (TCAP RF and NHTF) | \$8,310,529 | \$800,000 ¹ |
| | | \$1,500,000 ² |
| General | \$24,039,235 | |
| | New Construction | \$3,000,000 |
| | Rehabilitation | \$2,000,000 |

1: Applications received through June 29, 2017.

2: Applications received June 30, 2017, through October 31, 2017.

- a. **CHDO Set-Aside.** At least **\$4,723,589** in HOME funds are set aside for eligible Community Housing Development Organizations (“CHDO”).
- b. **Supportive Housing/ Soft Repayment Set-Aside.** Up to **\$8,310,529** of **TCAP RF and NHTF funds** are available in this set-aside.
- c. **General Set-Aside.** Up to \$7,000,000 in NSP1-PI as well as all remaining TCAP RF , HOME and NSP1-PI funds available (currently anticipated to be approximately \$24,039,235 total). Staff will prioritize the use of NSP1 PI funds for applications that are also planning on utilizing FHA-insured 221(d)(4) loans, or other federal funds since those sources are subject to many of the same cross-cutting requirements as NSP1 PI funds.

4) Timelines for Awards

Awards for the development of affordable multifamily rental housing will be made subject to the requirements in 10 TAC §13.11. Applications that are unable to progress on the timelines described herein due to incomplete information or lack of responsiveness will be given notice and a five day period to cure the incomplete information or non-responsiveness. Failure to cure the notice will result in a reestablishment of the application submission date to the date at which the cure to the notice was provided. As such, an applicant could be de-prioritized in favor of another application received prior to the new application submission date. Applications will be

prioritized for an award as described in §13.4(c). **The application submission deadline for all applications submitted under this NOFA is October 31, 2017.**

2016 HOME Investment Partnerships Program ("HOME") Contract Amendments granted
in response to Hurricane Harvey

On November 10, 2016, the governing board of the Texas Department of Housing and Community Affairs ("Department") approved awards of funds to eligible Applicants under the 2016 HOME Single Family Programs Notice of Funding Availability ("NOFA"). The NOFA included a stipulation that extensions to the HOME Contract performance benchmark for submission of qualified projects would not be granted, and that funds remaining in the contract would be automatically deobligated and placed into the HOME Reservation System for single family general set-aside activities.

On September 7, 2017, the Board passed an emergency authorization in response to Hurricane Harvey. This authorization provides specific authority to the Executive Director to extend benchmarks and other deadlines which could only be extended through specific board action and which do not violate any federal or statutory restriction to extend the use of previously awarded funds to areas impacted by Hurricane Harvey so long as the matter is subsequently reported and ratified at the next available Board meeting.

In response to this Board authorization, HOME Program staff contacted HOME administrators who were approaching a contract benchmark and who serve areas impacted by Hurricane Harvey to determine if an extension to the contract benchmark was warranted due to matters related to the disaster.

Six HOME Administrators responded with a request for a 3 month extension to the performance benchmark. Of those six requests, three have been approved and three are pending final disposition. Those awards pending final disposition were not in federally declared counties and have been asked to provide further detail about how Hurricane Harvey directly or indirectly impacted their ability to meet the established performance benchmark. Approval action has been taken on three HOME Homeowner Rehabilitation Assistance contracts as follows:

| Administrator | Contract No. | Declaration Type | Status |
|--------------------|--------------|------------------|--------------------------|
| City of Kountze | 1002588 | Federal | Approved on 10/2/2017 |
| City of Smithville | 1002600 | Federal | Approved on 9/19/2017 |
| Refugio County | 1002579 | Federal | Approved on 9/18/2017 |

2016 Emergency Solutions Grants (“ESG”) Contracts granted in response to Hurricane Harvey

The Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) sought approval from the Governing Board on September 7, 2017, to direct funding sources to meet the emergency needs of Texans affected by Harvey, including but not limited to awarding available federal uncommitted funds to provide emergency sheltering assistance and necessities of life to eligible households.

Following this authority, on September 13, 2017, the U.S. Department of Housing and Urban Development (“HUD”) requested that the Department review balances from Emergency Solutions Grants Program (“ESG”) funding from Fiscal Years (“FY”) 2011 through 2015, currently totaling \$261,827.46, which are currently past the two year expenditure limit, to develop a plan of action to expend those balances. The Department has completed research on how those fiscal years were previously allocated and expended, including the amount of match reported associated with those fiscal years, administrative funds associated with those grant years, and the total amount previously expended for emergency shelter operations, to ensure that any reallocation of funds would meet all ESG requirements. With this information, TDHCA sought input from the lead Continua of Care (“CoCs”) agencies in the most heavily impacted area, including the Houston/Pasadena/Harris/Fort Bend and Texas Balance of State CoCs. The funding plan below represents our plan to address immediate needs following Hurricane Harvey with input from affected regions.

TDHCA will issue separate contracts to reallocate funds to three 2016 ESG Subrecipients whose service area includes at least one county with a presidential disaster declaration. Each Subrecipient will receive a contract totaling the exact amount of funding remaining in each fiscal year. The contract term will be for a six-month period, with final expenditure reports due not later than 60 days following the contract end date, anticipated to occur by April, 2018. Expenditure of these funds will be subject to all current, applicable ESG program requirements.

TDHCA will not retain any funds for its administration of these contracts. In addition, TDHCA anticipates that sufficient match will be generated from the expenditure of FY2017 funds that will be reported in next year’s CAPER; however it should be noted that match reported from expenditure of FY 2011 – 2015 contracts exceeded the ESG Grant Amount by 102%, or \$659,406. As this amount exceeds the total of the remaining funds, TDHCA’s preference would be that HUD consider the 100% matching requirement as met for the expenditure of the \$261,827.46. Contract Amounts will be as follows:

Coastal Area 2016 ESG Subrecipient (serving Victoria and surrounding communities)

FY 2011 ESG Funds Estimated Allocations by Sub-Activity – Mid-Coast Family Services

| Activity | Funding Amount |
|--|----------------|
| Homelessness Prevention –rental assistance | \$44,859.92 |
| Rapid Re-Housing - rental assistance | \$50,102.94 |
| HMIS | \$6,955.68 |
| Administration | \$3,152.12 |
| Total Funds Committed | \$105,070.66 |

Houston/Harris County Area 2016 ESG Subrecipients

FY 2012 ESG Funds Estimated Allocations by Sub-Activity – ACAM

| Activity | Funding Amount |
|--|----------------|
| Homelessness Prevention –rental assistance | \$66,324.23 |
| Administration | \$5,370 |
| Total Funds Committed | \$71,694.23 |

FY 2013 ESG Funds Estimated Allocations by Sub-Activity – ACAM

| Activity | Funding Amount |
|--|----------------|
| Homelessness Prevention –rental assistance | \$1,240 |
| Administration | \$100 |
| Total Funds Committed | \$1,340.00 |

FY 2014 ESG Funds Estimated Allocations by Sub-Activity – SEARCH

| Activity | Funding Amount |
|--|----------------|
| Emergency Shelter - essential services | \$49,770.22 |
| Administration | \$4,029 |
| Total Funds Committed | \$53,799.22 |

FY 2015 ESG Funds Estimated Allocations by Sub-Activity – SEARCH

| Activity | Funding Amount |
|--|----------------|
| Emergency Shelter - essential services | \$27,682.35 |
| Administration | \$2,241 |
| Total Funds Committed | \$29,923.35 |

2016 Emergency Solutions Grants (“ESG”) Contracts granted in response to Hurricane Harvey

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1b

BOARD ACTION REQUEST

LEGAL DIVISION

OCTOBER 12, 2017

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Lively Oaks (HTC 92043 / CMTS 1042)

RECOMMENDED ACTION

WHEREAS, Enchanted Oaks, owned by Hitchcock Manor Limited (“Owner”), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, Lively Oaks, owned by Lively Oaks Limited (“Owner”), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on July 25, 2017, Owner’s representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into two Agreed Final Orders, assessing a \$500 administrative penalty for Lively Oaks, and a \$1,000 administrative penalty for related property, Enchanted Oaks, each to be fully forgiven if training is completed and all violations are resolved as specified in the Agreed Final Orders within 90 days of Board approval;

WHEREAS, an Agreed Final Order for Enchanted Oaks was approved by the Board on September 7, 2017, and the Agreed Final Order for Lively Oaks is now being presented for approval;

WHEREAS, unresolved compliance findings for Lively Oaks include a utility allowance violation, a violation for written policies and procedures that do not meet minimum requirements, an Affirmative Marketing Plan Violation, and one household income violation; and

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

NOW, therefore, it is hereby

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

BACKGROUND

Enchanted Oaks and Lively Oaks are owned by related entities, ultimately controlled by Evonne Tompkins, wife of the late Marion Tompkins, former general partner for both entities who died in 2013. Records of the Texas Secretary of State still list Marion Tompkins as the general partner and were not updated after his death. His wife, Evonne Tompkins now controls the properties and is the primary contact listed in CMTS. The properties are self managed.

| Property | Owner | LURA Effective Dates | Units | Location |
|----------------|-------------------------|----------------------|-------|-----------------------------|
| Enchanted Oaks | Hitchcock Manor Limited | HTC 11/23/1990 | 40 | Hitchcock, Galveston County |
| Lively Oaks | Lively Oaks Limited | HTC 12/14/1993 | 32 | Hitchcock, Galveston County |

Owner was previously referred for an administrative penalty for file monitoring and reporting violations, but referrals were closed informally when full corrections were received. Mr. Tompkins was the primary contact for the properties from the time of funding through his death in 2013. Accommodations were made as a result of Mr. Tompkins' serious illness, then death. Discussions with Mrs. Tompkins and her part-time property manager, Maria Garcia, demonstrate that both have a limited understanding of program requirements and confuse the requirements of their two monitoring agencies, TDHCA and USDA. For example, both agencies set maximum income and rental limits separately. In cases where the two programs conflict, owners must comply with the lower rental limit in order to meet the requirements of the federal programs monitored by both agencies. Mrs. Tompkins and Ms. Garcia believed that the higher USDA income limits would override the lower TDHCA income limits, resulting in household income violations. Similarly, USDA approved an affirmative marketing plan, but that plan did not meet minimum requirements under the compliance monitoring rules for TDHCA.

Owner participated in an informal conference with the Enforcement Committee on July 25, 2017, and agreed to sign Agreed Final Orders with the following terms:

Enchanted Oaks:

1. A \$1,000 administrative penalty, subject to forgiveness as indicated below;
2. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA within 90 days of Board approval;
3. Property manager must attend First Thursday Income Eligibility Training and HTC Compliance Training, then provide copies of completion certificates to TDHCA, on or before December 6, 2017;
4. If Owner complies with all requirements and addresses all violations as required, the full administrative penalty in the amount of \$1,000 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Lively Oaks:

1. A \$500 administrative penalty, subject to forgiveness as indicated below;
2. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA within 90 days of Board approval;
3. Property manager must attend First Thursday Income Eligibility Training and HTC Compliance Training, then provide copies of completion certificates to TDHCA, on or before December 6, 2017;
4. If Owner complies with all requirements and addresses all violations as required, the full administrative penalty in the amount of \$1,000 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

An Agreed Final Order was approved and signed by the Board on September 7, 2017, for violations at Enchanted Oaks that were referred for an administrative penalty.

The following compliance violations identified during 2015 are unresolved for Lively Oaks and are part of the Agreed Final Order that is before the Board for consideration:

1. Violation for failure to maintain a current utility allowance as required;
2. Violation for failure to maintain written policies and procedures that meet minimum requirements;
3. Violation for failure to maintain an Affirmative Marketing Plan and evidence of associated marketing efforts; and
4. Household income violations for unit B502.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty is recommended for Lively Oaks, in the amount of \$500. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
LIVELY OAKS LIMITED WITH
RESPECT TO
LIVELY OAKS APARTMENTS
(HTC FILE # 92043 / CMTS # 1042)

§
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§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of October, 2017, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or "Department") considered the matter of whether enforcement action should be taken against **LIVELY OAKS LIMITED**, a Texas limited partnership ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 1992, Lively Oaks Limited ("Respondent") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$39,925 to build and operate Lively Oaks Apartments ("Property") (HTC file No. 92043 / CMTS No. 1042 / LDLD No. 319).
2. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 14, 1993, and filed of record at Document Number 9400318 of the Official Public Records of Real Property of Galveston County, Texas ("Records").

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

Compliance Violations¹:

4. An on-site monitoring review was conducted on October 22, 2015, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a June 19, 2016, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
 - a. Respondent does not have an updated utility allowance for the property, a violation of 10 TAC §10.607 (Utility Allowances), which requires all developments to establish and implement a utility allowance annually. The utility allowance was last updated in 2014;
 - b. Respondent failed to maintain written policies and procedures, including tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written policies and procedures that meet minimum TDHCA requirements;
 - c. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled; and
 - d. Respondent failed to collect complete documentation to prove that the household income for unit B502 was within prescribed limits upon initial occupancy, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.
5. The following violations remain outstanding at the time of this order:
 - a. Utility allowance violation described in FOF #4.a;
 - b. Written policies and procedures violation described in FOF #4.b;
 - c. Affirmative marketing plan violation described in FOF #4.c; and
 - d. Household income violation described in FOF #4.d.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC §§ 10 and 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.607 in 2015 by failing to maintain a current utility allowance.
5. Respondent violated 10 TAC §10.610 in 2015, by not maintaining written policies and procedures criteria meeting TDHCA requirements.
6. Respondent violated 10 TAC §10.617 in 2015, by failing to provide a complete affirmative marketing plan and associated marketing materials.
7. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2015, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit B502.
8. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
9. 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.
10. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code § 2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
11. An administrative penalty of \$500 is an appropriate penalty in accordance with 10 TAC §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the 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 \$500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that the property manager at Lively Oaks Apartments shall attend First Thursday Income Eligibility Training and submit a completion certificate to the Department on or before December 6, 2017.

IT IS FURTHER ORDERED that the property manager at Lively Oaks Apartments shall attend Housing Tax Credit (HTC) Compliance Training and submit a completion certificate to the Department on or before December 6, 2017.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before January 10, 2018.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the full 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, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

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

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

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Attachment 4, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on October 12, 2017.

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

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

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 12th day of October, 2017, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 12th day of October, 2017, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

LIVELY OAKS LIMITED, a Texas limited partnership

By: _____
Name: _____
Title: _____

Given under my hand and seal of office this _____ day of _____, 2017.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>
Affirmative Marketing Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>
Affirmative Marketing Technical Assistance: <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
 - i. Do not backdate any documents listed below.
 - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.
6. **Utility Allowance** – Respondent is required to update its utility allowance and receive annual approval from USDA. During the informal conference, Respondent indicated that this was last done in 2014. Respondent must perform its annual analysis as required by USDA, then submit its updated utility allowance documentation to USDA for approval.
What to submit: Calculate a utility allowance as required by USDA and submit for USDA approval. Provide a copy of your USDA submittal via CMTS upload. Also submit the development's updated Unit Status Report to demonstrate that the new utility allowance has been implemented.
Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>
7. **Written policies and procedures, including tenant selection criteria**
How to prepare compliant criteria: First watch the webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Then prepare updated written policies and procedures addressing all requirements at 10 TAC §10.610. Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy.
What to submit: Once your written policies and procedures are complete, the owner must review the criteria, then sign and upload to CMTS the applicable Owner Certification included at Attachment 3, along with a copy of the complete written policies and procedures.

8. **Household income violations for unit B502 –**

Problems for B502 included: Resident indicated in the application that she receives disability income from Standard Insurance Company in the monthly amount of \$1,516, but the source of income was not verified. When this unverified income is added to the Social Security Income, the household's income is above the limit for a one-person household. Respondent then submitted a 2015 tax return as evidence of correction, which does not resolve the noncompliance.

What to submit:

| Circumstance | Instruction |
|---|---|
| <p>If the household that moved in 3/14/2015 remains in the unit and qualifies for occupancy under their current financial circumstances</p> | <p>Submit a new application, verifications of all sources of income and assets, a new tenant income certification, lease, lease addendum, and a Tenant Rights and Resources Guide Acknowledgment.</p> <p>The documentation present during the onsite review included Social Security Income, along with a monthly payment of \$1,516 from Standard Insurance Company. If social security income is still received, you must submit verification (typically in the form of a benefits letter). If payments from Standard Insurance Company are still received, you must submit a third-party verification. If either of these sources is no longer received, you must provide a written explanation from the tenant regarding what happened to the income source. Omitting one or both from your submission without an explanation will cause the file to be rejected.</p> |
| <p>If unit is occupied by a new qualified household</p> | <p>Submit the full tenant file*.</p> |
| <p>If unit is occupied by a nonqualified household on a month-to-month lease</p> | <p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.**</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 1/10/2018 is acceptable for this circumstance provided that all other requirements above are fulfilled.</p> |
| <p>If unit is occupied by a nonqualified household with a current lease</p> | <p>A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.**</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 1/10/2018 is acceptable for this circumstance provided that all other requirements above are fulfilled.</p> |
| <p>If unit has been vacant <i>more than</i> 30 days</p> | <p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 1/10/2018 is acceptable for this circumstance provided that all other requirements above are fulfilled.</p> |

| | |
|--|--|
| If unit has been vacant <i>less than</i> 30 days | <p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 1/10/2018 is acceptable for this circumstance provided that all other requirements above are fulfilled.</p> |
|--|--|

**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment.*

*** If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)*

9. Affirmative marketing plan –

How to prepare a compliant plan and marketing materials: First read the rule at 10 TAC §10.617, read the technical assistance guide at <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>, and watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, to gain a general understanding regarding affirmative marketing. Next, review the following list of frequent problems observed, which include, but are not limited to:

- Not using HUD Form 935.2A;
- Not correctly identifying populations “least likely to apply”. In general, those populations that are least likely to apply *might* include: White, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Hispanic or Latino, Persons with Disabilities, Families with Children, and Other. Analysis is required to determine which of these groups are least likely to apply;
- Not affirmatively marketing to the disabled. All properties must market to the disabled population;
- Not correctly identifying organizations that are specifically associated with groups identified as “least likely to apply”. For example, marketing to the Housing Authority or placing ads in Craigslist would be considered general marketing, not affirmative marketing, because both serve all persons living in the area;
- Not including evidence of special outreach efforts, such as marketing letters, to those “least likely to apply” populations through specific media, organizations, or community contacts that work with “least likely to apply” populations or work in areas where “least likely to apply” populations live; and
- Not including a sentence in English and Spanish in the outreach marketing materials that prospective tenants can access if reasonable accommodations are needed to complete the application process.

Steps to complete affirmative marketing plan:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply and mark them in your plan. The Affirmative Marketing Web Tool referenced at 10 TAC §10.617(d)(5) to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. The groups *currently* identified by the tool are Persons with Disabilities, Hispanic, and Asian.

Alternatively, if you do not use the Tool, you may perform your own analysis to determine groups that are least likely to apply, but you must perform and document a reasonable analysis by which those groups were identified, you must always include persons with disabilities, and populations representing less than 1% of the total population of the County or MSA will not be required in your affirmative marketing. This analysis must be included with the plan.

- c. Identify in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups designated as least likely to apply. The Tool provides a link to a map that will show which Census tracts may be most beneficial for affirmative marketing. The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

Specific examples of marketing organizations:

- i. Least likely to apply population - People with disabilities:

1. Local Center for Independent Living ("CIL") – serve persons with all disability types. Not all counties are covered http://www.txsilc.org/page_CILs.html
2. Aging and Disability Resource Center ("ADRC") – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
3. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
4. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
5. Local non-profits in your area serving people with disabilities
6. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community

- ii. Least likely to apply population - Hispanic:

1. Local Hispanic Chamber of Commerce
2. Local Young Hispanic Professional Association
3. The Hispanic Alliance
4. Mexican American Cultural Center
5. Local Spanish language publications
6. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

- iii. Least likely to apply population - Asian:

1. Local Asian real estate association
2. Local Asian Chamber of Commerce
3. Local Asian American Resource Center
4. Local organizations serving the Asian community
5. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

- d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 10 TAC §10.617(f)(5) requires marketing materials to include the Fair Housing Logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms “reasonable accommodation” and must be in English and Spanish. Here is a sample of an acceptable sentence recently included in marketing materials from another property: *“Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX.”*
- g. Maintain all documentation in your files for future review.

What to submit: Once your Affirmative Marketing plan *and* outreach materials are complete, the owner must review them, then sign and upload to CMTS the applicable Owner Certification included at Attachment 3.

Attachment 2

Tenant File Guidelines

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

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

screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.

4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:

- a. **Under \$5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
- b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
- c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.

5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members and be signed by each adult household member.
6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm> When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary

repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.

7. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(k), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

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

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

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

<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Attachment 3
Owner Certifications
(see attached)

Once you complete the requirements of Attachment 1, the owner should review these certifications, then sign and submit via CMTS.

The rules at 10 TAC §10 that are referenced in the attached certifications are available at this link
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

Texas Department of Housing and Community Affairs
Owner Certification of Corrected Noncompliance
Written Policies and Procedures 10.610

Development Name: Lively Oaks

CMTS ID: 1042

The above referenced Development was monitored on 10/22/2015 to determine if the Development is in compliance with the requirements of the HTC program. The review resulted in a finding of noncompliance under Title 10, Chapter 10, Subchapter F related to Compliance Monitoring, §10.610, Written Policies and Procedures. Please see attached Findings Report for details as to the specific policy/procedure affected and the reason for which the noncompliance was cited. Update that policy/procedure as detailed and submit a copy of the updated policy/procedure, with a revised effective date as required under the rule, to support this certification.

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

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

Signature of Authorized Owner Representative

Date

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

TDHCA
December 2016

Texas Department of Housing and Community Affairs
Owner Certification of Corrected Noncompliance
Affirmative Marketing 10.617

Development Name: Lively Oaks CMTS ID: 1042

The above referenced Development was monitored on 10/22/2015 to determine if the Development is in compliance with the requirements of the HTC program. The review resulted in a finding of noncompliance under Title 10, Chapter 10, Subchapter F related to Compliance Monitoring, §10.617, Affirmative Marketing Requirements. Please see attached Findings Report for details as to the specific reason for which the noncompliance was cited.

Under 10 TAC §2401(c)(1), *The Department may debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including a material or repeated violation of a land use restriction agreement (LURA) regarding a development supported with a housing tax credit allocation. Repeated failure to comply with the provisions prescribed in §10.617 may be considered a material violation of the LURA. Owners that repeatedly and materially violate their LURAs will be recommended for debarment from participation in programs administered by the Department. A copy of §10.617 is attached to ensure ongoing compliance.*

I, _____, on behalf of Lively Oaks, am a duly authorized representative, who is so authorized by reason of my position as _____ to hereby certify, as true and correct, that the above referenced noncompliance related to §10.617 has been corrected in the manner described and that all required affirmative marketing requirements under §10.617 are fully compliant with the rule. If at the next onsite review, there has not been an ownership transfer and this event of noncompliance is cited again, I understand that the owner will be recommended for debarment.

Signature of Authorized Owner Representative

Date

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

TDHCA
March 2017

Attachment 4:

Texas Administrative Code

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

(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 or Controlling interest in 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 the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), 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. Exceptions include 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. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) 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 non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) 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 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) 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.

(i) 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.

(j) 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).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1c

BOARD ACTION REQUEST

LEGAL DIVISION

OCTOBER 12, 2017

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning North Park Townhomes (HTC 94022 / CMTS 1219)

RECOMMENDED ACTION

WHEREAS, North Park Townhomes, owned by NPTH Investments LP (“Owner”), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on September 26, 2017, Owner’s representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$5,000, with \$1,000 to be paid within 30 days of signature and the remaining \$4,000 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before January 10, 2018;

WHEREAS, unresolved compliance findings include a utility allowance violation, Household Income Above Limit Upon Initial Occupancy violations for three units; and an Annual Eligibility Certification violation for one unit; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$5,000, subject to partial forgiveness as outlined above, for noncompliance at North Park Townhomes, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

NPTH Investments LP (“Owner”) is the owner of North Park Townhomes (“Property”), a low income apartment complex composed of 154 units, located in Houston, Harris County. Records of the Texas Secretary of State list the general partner as Grand Forte Company, with Lian-Ming Tian as the sole director for that organization. CMTS lists Yan Zhang as the primary contact for Owner. Attendees for the informal conference included Lian-Ming Tian, Vice President for Grand Forte Company, Yan Zhang, President of Grand Forte Company, and Monica Dilbeck, property manager for North Park Townhomes. The property is self-managed.

The Property is subject to a Land Use Restriction Agreement (“LURA”) signed by a prior owner in 1994, in consideration for an annual housing tax credit allocation in the amount of \$174,822 to acquire, rehabilitate and operate the Property. The current owner acquired the property in 2014 with prior approval by the Department, and the LURA remains in effect per Section 2 of the LURA which stipulates that its restrictions run with the land.

The owner was previously referred for an administrative penalty for Uniform Physical Condition Standards (“UPCS”) violations at the end of 2016, but that referral was closed informally when full corrections were received. Owner has been referred for a second time, now for tenant file violations. An informal conference notice was sent and the Owner responded by hiring a property management firm to consult on a one-time basis in order to work on corrections to tenant files. Although this was a promising step, there does not appear to be a long term plan to ensure future compliance, particularly as it relates to annual review of utility allowances and maximum rents. The informal conference highlighted Owners’ lack of program knowledge and need for training in order to supplement what they learned from the consulting firm. Committee members also recommended maintaining a relationship with the consulting firm.

The following compliance violations identified during 2016 were referred for an administrative penalty and have been resolved by the consulting property management company:

1. Failure to submit Quarterly Vacancy Reports;
2. Failure to maintain an Affirmative Marketing Plan and evidence of associated marketing efforts;
3. Failure to maintain written policies and procedures;
4. Failure to sign required lease language for unit 201;
5. Household income violations for units 604, 1101, and 809; and
6. Failure to maintain Annual Eligibility Certifications for units 309 and 1007.

The following compliance violations identified during 2016 were referred for an administrative penalty and are unresolved:

1. Failure to maintain acceptable utility allowance;
2. Household income violations for units 201, 1304, and 1503; and
3. Failure to maintain Annual Eligibility Certifications for unit 1503.

Owner participated in an informal conference with the Enforcement Committee on September 26, 2017, and agreed to sign an Agreed Final Order with the following terms:

1. A \$5,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$1,000 portion of the administrative penalty on or before November 13, 2017;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before January 10, 2018;
4. Property manager and at least one owner must attend First Thursday Income Eligibility Training and HTC Compliance Training, then provide copies of completion certificates to TDHCA, on or before January 10, 2018;
5. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$4,000 will be forgiven; and
6. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$5,000 is recommended. This will be a reportable item of consideration under previous participation for any transfer request or new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
NPTH INVESTMENTS LP WITH
RESPECT TO
NORTH PARK TOWNHOMES
(HTC FILE # 94022 / CMTS # 1219)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of October, 2017, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) considered the matter of whether enforcement action should be taken against **NPTH INVESTMENTS LP**, a Texas limited partnership (“Respondent”).

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 1994, D&B Housing Opportunities Limited Partnership (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$174,822 to acquire, rehabilitate, and operate North Park Townhomes (“Property”) (HTC file No. 94022 / CMTS No. 1219 / LDLD No. 80).
2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 31, 1994, and filed of record at Document Number R273603 of the Official Public Records of Real Property of Harris County, Texas (“Records”); said

LURA having been re-recorded on March 17, 1995 under Document Number R314250 of the Records. 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.

3. Respondent took ownership of the Property and signed an agreement with TDHCA acknowledging its assumption of the duties imposed by the LURA and its agreement to comply fully with the terms thereof (Agreement to Assume and Comply and First Amendment to Declaration of Land Use Restrictive Covenants for Low-Income Housing), effective October 24, 2014, and filed in the Records at Document Number 20140515382.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on January 28, 2016, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a June 3, 2016, corrective action deadline was set, however, the following violations were not corrected before that deadline:
 - a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received, but did not meet minimum requirements. The violation was corrected July 28, 2017, 330 days past the deadline.
 - b. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. The violation was corrected July 28, 2017, 330 days past the deadline.
 - c. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TAC §10.607 (Utility Allowances), which requires all developments to establish a utility allowance. This violation remains unresolved.
 - d. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 604, 1101, 201, 809, 1304, and 1503, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. Violations for units 604, 1101, and 809, were resolved on July 28, 2017, 330 days after the deadline. The violations for units 201, 1304, and 1503 remain unresolved.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC §§ 10 and 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

- e. Respondent failed to provide an Annual Eligibility Certifications for units 309, 1007, and 1503, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household. Violations for units 309 and 1007, were resolved on July 28, 2017, 330 days after the deadline. The violation for unit 1503 remains unresolved.
 - f. Respondent failed to execute required lease provisions or exclude prohibited lease language, a violation of 10 TAC §60.110 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process. The violation was corrected July 28, 2017, 330 days past the deadline.
6. The following violations remain outstanding at the time of this order:
- a. Utility allowance violation described in FOF #5.c;
 - b. Household income violations for three units described in FOF #5.d;
 - c. Annual Eligibility violation for one unit described in FOF #5.e;

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.617 in 2016, by failing to provide a complete affirmative marketing plan;
5. Respondent violated 10 TAC §10.610 in 2016, by not maintaining written tenant selection criteria meeting TDHCA requirements;
6. Respondent violated 10 TAC § 60.109 in 2012 by failing to properly maintain a utility allowance;
7. Respondent violated representations made on page 1 of the LURA, Section 4 of the LURA and 10 TAC §10.611 and Section 4 of the LURA in 2016 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 604, 1101, 201, 809, 1304, and 1503.
8. Respondent violated 10 TAC §10.612 in 2013 by failing to collect Annual Eligibility Certifications for units 309, 1007, and 1503.

9. Respondent violated 10 TAC §10.611 in 2016 by failing to execute required lease language for unit 201.
10. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
11. 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.
12. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code § 2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
13. An administrative penalty of \$5,000 is an appropriate penalty in accordance with 10 TAC §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the 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 deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$1,000 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 the property manager and at least one owner representative for North Park Townhomes shall attend Housing Tax Credit Compliance Training offered by TDHCA via the Texas Apartment Association, and submit a completion certificate to the Department on or before January 10, 2018. Registration is available online at: <https://www.taa.org/events/>.

IT IS FURTHER ORDERED that the property manager and at least one owner representative for North Park Townhomes shall attend Income Eligibility Training (also known as First Thursday Income Eligibility Training), and submit a completion certificate to the Department on or before January 10, 2018. This course is available at multiple locations throughout the state, offered by TDHCA (1) at its headquarters, with registration available online at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>, or (2) via the Texas Apartment Association, with registration available online at: <https://www.taa.org/events/>.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachments 2 and 3 and submit full documentation of the corrections to TDHCA on or before January 10, 2018.

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

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

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

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty in the amount of \$4,000, and that remaining amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$4,000 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" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on October 12, 2017.

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

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

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 12th day of October, 2017, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 12th day of October, 2017, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

NPTH INVESTMENTS LP, a Texas limited partnership

By: _____
Name: _____
Title: _____

Given under my hand and seal of office this _____ day of _____, 2017.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
 - i. Corrective documentation submitted on September 25, 2017 and September 26, 2017 have not been reviewed because they were submitted after the deadline set by the Enforcement Committee, and there was not enough time to review them in advance of the September 26, 2017 informal conference. TDHCA staff recommends that you attend the required training courses, review this Attachment 1 thoroughly, then supplement your September 25, 2017 and September 26, 2017 submissions as necessary to ensure full compliance with this Agreed Final Order.
 - ii. Do not backdate any documents listed below.
 - iii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.
9. **Utility Allowance** – As Corrective Action, the Development submitted documentation of the Harris County Public Housing Authority's Utility Allowance schedules, leases and ledgers as requested. In addition, the Development submitted what appeared to be refund checks to several tenants. Further documentation submitted to the Department appeared to indicate that the Development may have two building types, one with a boiler system and the other with individual gas water heaters. In order to verify the utility allowance, the Department needs to know specifically which building types exist, then the source of water heating for each building and who pays for it. The Department has been unable to establish the utility allowance.

What to submit:

- a. Complete the Utility Allowance Questionnaire and submit it along with any other back-up documentation to support the Development's utility allowance;
- b. Submit a list of all buildings, the type(s) of water heaters in each (i.e. boiler system, individual gas water heaters, etc), the utility used to heat the water (i.e. gas, electric), and who pays for the water heating (i.e. Respondent, tenant); and
- c. Updated Unit Status Report with the correct household, rent and utility allowance information.

Once the Department has received the above documentation, the Development's gross rents (tenant paid portion + utility allowance) will be tested development-wide, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

10. Household income above limit upon initial occupancy violations for units 201, 1304, and 1503, and annual eligibility violation for unit 1503:

- a. **Unit 201:** The Department received an executed Income Certification; however the certification was over 120 days from the verifications. Complete a certification for the household and have all adult members execute an Income Certification. Submit copies of the household's application, verifications of income and assets, executed Income Certification form, first and signatory page of the lease contact, applicable lease addendums, Tenant Selection Criteria and the Tenants Rights and Resource Guide.

If the household does not qualify or no longer occupies the unit, follow the alternate instructions in the table below.

- b. **Units 1304 and 1503:** The Department received a Corrective Action Plan for the units listed; however, the Corrective Action Plan did not identify a date of correction for unit 1304, and the date listed in the plan for unit 1503 passed without documentation being submitted for the unit. To correct 1) complete a retroactive certification that completely and clearly documents the sources of income and assets, using third party or firsthand verifications that were in place at the time the initial certification should have been effective. Submit a copy of the original application, income and asset verifications and updated Income Certification for review; or 2) complete a new certification using current income and asset sources and current income limits. Submit to the Department copies of the current application, verifications of all sources of income and assets, Income Certification, Lease/Lease Addendum, and Tenant Rights and Resources Guide acknowledgement.

If the household does not qualify or no longer occupies the unit, follow the alternate instructions in the table below.

| Alternate instructions with respect to units listed above | Instruction |
|---|---|
| If unit is occupied by a new qualified household | Submit the full tenant file*. |
| If unit is occupied by a nonqualified household on a month-to-month lease | <p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.**</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after January 10, 2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p> |
| If unit is occupied by a nonqualified household with a non-expired lease | <p>A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.**</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after January 10, 2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p> |
| If unit has been vacant <i>more than</i> 30 days | <p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after January 10, 2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p> |

| | |
|---|---|
| <p>If unit has been vacant <i>less than</i> 30 days</p> | <p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after January 10, 2018 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p> |
|---|---|

**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, Tenant Rights and Resources Guide Acknowledgment, and a copy of the tenant selection criteria under which the household was screened.*

*** If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)*

Attachment 2

Tenant File Guidelines

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

1. **Intake Application:** The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with "none" or "n/a." The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a "Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs" that includes the additional requirements.
2. **Release and Consent:** Have tenant sign TDHCA's Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
 - a. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
 - b. **Employment Verification Form:** Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;
 - c. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
 - d. **Telephone Verifications:** these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;
 - e. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough

screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.

4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:

- a. **Under \$5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
 - b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
 - c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
 6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary

repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.

7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria, and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(k), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

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

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

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

<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Attachment 3:

Texas Administrative Code

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

(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 or Controlling interest in 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 the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), 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. Exceptions include 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. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) **Transfers Prior to 8609 Issuance or Construction Completion.** Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) 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 non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) 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 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) 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.

(i) 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.

(j) 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).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1d

BOARD ACTION REQUEST
SINGLE FAMILY OPERATIONS & SERVICES
OCTOBER 12, 2017

Presentation, discussion and possible action on the appointment of Colonia Residents Advisory Committee (“C-RAC”) members

RECOMMENDED ACTION

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

WHEREAS, pursuant to Tex. Gov't Code §2306.582, the Department is required to establish, operate, monitor and fund Colonia Self-Help Centers ("Colonia SHCs") in El Paso, Hidalgo, Starr, and Webb counties, and in Cameron County to serve Cameron and Willacy counties;

WHEREAS, in 2001 the Department opened two additional Colonia SHCs in Maverick and Val Verde counties, as authorized by Tex. Gov't Code §2306.582, to address the needs of colonias in those counties;

WHEREAS, pursuant to Tex. Gov't Code §2306.585 the C-RAC is required to advise the Department's Governing Board on the needs of colonia residents and activities to be undertaken through the Colonia SHCs; and

WHEREAS, pursuant to Tex. Gov't Code §2306.584 C-RAC members need to be appointed by the Texas Department of Housing and Community Affairs Governing Board;

NOW, therefore, it is hereby

RESOLVED, that C-RAC members named herein are hereby appointed for each of the seven counties participating in the Colonia Self-Help Center Program for four year term limits.

BACKGROUND

The Texas Department of Housing and Community Affairs (the “Department”) is required to establish Colonia SHCs under Tex. Gov't Code §2306.582 to provide on-site technical assistance to improve the quality of life for colonia residents located in five counties (El Paso, Webb, Starr, Hidalgo, and Cameron/Willacy). Additionally, the Department is authorized to establish other Colonia SHCs if it determines it is necessary and appropriate. Since the creation of the program in 1995, two additional Colonia SHCs have been established in Maverick and Val Verde counties.

Five colonias within each county are selected to receive concentrated technical assistance in housing rehabilitation, new construction, surveying and platting, construction skills training, tool library access for self-help, housing, finance, credit and debt counseling, grant preparation, infrastructure construction, contract-for-deed conversions, and capital access for mortgages and other improvements. The Department currently oversees seven Colonia SHCs along the Texas-Mexico border in El Paso, Webb, Hidalgo, Starr, Cameron/Willacy, Maverick, and Val Verde counties.

The Department's Governing Board is required under Section 2306.584 of the Texas Government Code to appoint at least five persons who are residents of colonias to serve on the C-RAC. These members must reside in a colonia in a county designated to have a Colonia Self-Help Center, and may not be a board member, contractor, or employee of, or have any ownership interest in an entity that is awarded a contract under the Colonia Self-Help Center Program. Each county recommends to the Department the individuals they recommend for C-RAC membership with input from local nonprofit organizations.

The C-RAC advises the Department's Governing Board and evaluates the needs of colonia residents and reviews programs and activities that are proposed for or operated through the Colonia SHCs in order to better serve colonia residents. The C-RAC is required to meet 30 days before any Colonia Self-Help Center contract is scheduled to be awarded by the Department's Governing Board and may meet at other times. The C-RAC shall be composed of two persons from each county designated to have a Colonia Self-Help Center. The term of service on the C-RAC shall be for four years.

Approval of the following recommendations will allow the Department to carry out the statutory requirements of the Colonia Self-Help Center Program and C-RAC.

The term limits of the attached list of C-RAC members end on October 12, 2021.

| Name | Mailing Address | County | City | Colonia | Phone |
|----------------------|---|------------------|--------------|------------------------|--------------|
| Bella Garcia | 253 Los Altos, Laredo, TX 78043 | Webb County | Laredo | Colonia Los Altos | 956.635.7142 |
| Elvira Torres | 258 Arco Iris, Laredo, TX 78043 | Webb County | Laredo | Colonia Los Altos | 956.229.3363 |
| Rita Rodriguez | 155 Fir St, Del Rio, TX 78840 | Val Verde County | Del Rio | Cienegas Terrace | 830.488.4201 |
| Rosa Maria Martinez | 113 Burge Dr., Del Rio, TX 78840 | Val Verde County | Del Rio | Val Verde Park Estates | 830.703.6022 |
| Dora Lucia Contreras | 2043 Boulder Ridge, Eagle Pass, TX 78852 | Maverick County | Eagle Pass | Loma Bonita | 830.388.3056 |
| Irma Holguin | 1766 Coyunda St., Eagle Pass, TX 78852 | Maverick County | Eagle Pass | Loma Bonita | 830.968.4408 |
| Maria Vargas | 645 Agua Clara, El Paso, TX 79928 | El Paso County | El Paso | Agua Dulce | 915.275.7237 |
| Alma Hernandez | 651 Agua Marina, El Paso, TX 79928 | El Paso County | El Paso | Agua Dulce | 915.922.7962 |
| Yessica Gonzalez | 12567 Tejas Blvd, Mercedes, TX 78570 | Hidalgo County | Mercedes | Indian Hills Sub | 956.355.3592 |
| Cayetano Lopez | 606 Nora Lande, Mission, TX 78573 | Hidalgo County | Mission | Linda Vista Estates | 956.560.2405 |
| Rosie Jones lopez | P.O. Box 123, Garciasville, TX 78547 | Starr County | Garciasville | Garciasville | 956.353.1597 |
| Norma Guzman | P.O. Box 63, Garciasville, TX 78547 | Starr County | Garciasville | La Casita | 956.263.3075 |
| Victor Alvarez | 2618 Eduardo Ave, Brownsville, TX 78526 | Cameron County | Brownsville | Cameron Park | 956.459.6580 |
| Arron Villafranca | 1730 Rancho Grande East, San Benito, TX 78556 | Cameron County | San Benito | Rancho Grande | 956.873.6371 |
| Jessica Garza | 13744 E. 6th st., Sebastian, TX 78594 | Willacy County | Sebastian | Sebastian | 956.746.6136 |
| Emma Gonzales | 3713 Coast Ave, Sebastian, TX 78594 | Willacy County | Sebastian | Sebastian | 956.746.1023 |

1e

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#17425 Medio Springs Ranch Apartments, San Antonio)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Medio Springs Ranch Apartments, sponsored by the Bexar Management and Development Corporation, was submitted to the Department on April 28, 2017;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate from the Texas Bond Review Board (“BRB”) was issued on January 12, 2017, and will expire on December 31, 2019;

WHEREAS, the proposed issuer of the bonds is the Bexar County Housing Finance Corporation;

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

WHEREAS, the development is proposed to be located within 100 feet of an overhead high voltage transmission line, an undesirable site feature under 10 TAC §10.101(a)(2);

WHEREAS, an ordinance was adopted by the City of San Antonio that specifies a 20 foot setback requirement which is acceptable mitigation allowed under the rule, and therefore staff recommends the site be considered eligible; and

WHEREAS, the EARAC recommends the issuance of the Determination Notice with the condition that the closing occur within 120 days (on or before February 12, 2018);

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$1,929,222 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 Medio Springs Ranch Apartments is hereby approved as presented to this meeting; and

FURTHER RESOLVED, that provided the Applicant has not closed on the bond financing on or before February 12, 2018, the Board authorizes EARAC to approve or deny an extension of the Determination Notice date subject to an updated previous participation review, if necessary.

BACKGROUND

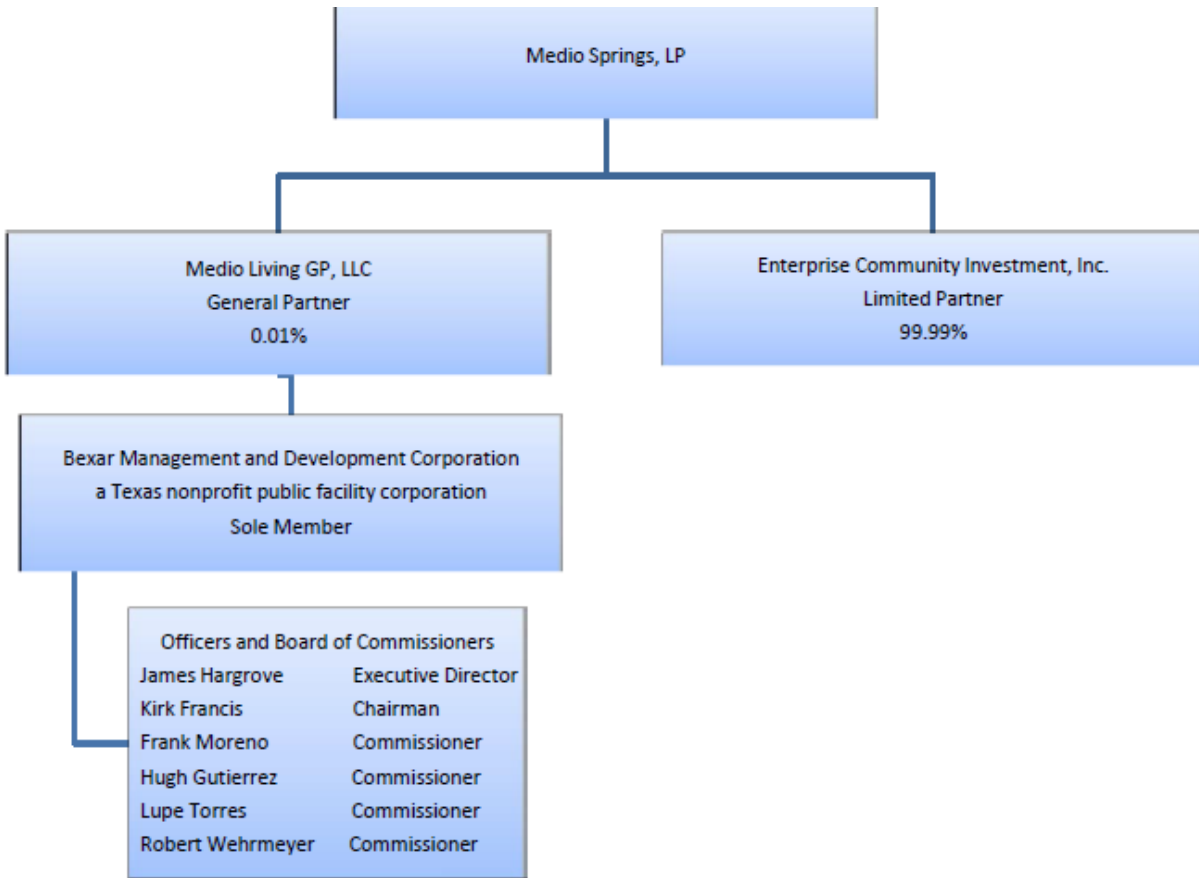
General Information: The Medio Springs Ranch Apartments, proposed to be located at 1530 Marbach Oaks in San Antonio, Bexar County, involves the new construction of 348 units; all of which will be rent and income restricted at 60% of Area Median Family Income. The development is located in an area that does not have a zoning ordinance and will serve the general population. The census tract (1719.22) has a median household income of \$61,250, is in the second quartile, and has a poverty rate of 8.20%.

During staff's review it was observed that an undesirable site feature under 10 TAC §10.101(a)(2) was present. Specifically, there were residential buildings proposed to be located within 100 feet of an overhead high voltage transmission line. Through discussions with the applicant it was confirmed that City Public Service, an entity owned by the City of San Antonio, governs the delivery of electric utilities in the city and county and all of its regulations are passed by City ordinance. The City of San Antonio adopted an ordinance that specifies a 20 foot setback requirement. Pursuant to 10 TAC §10.101(a)(2) where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used. Staff recommends the site be considered eligible based on the information provided.

Organizational Structure and Previous Participation: The Borrower is Medio Springs, L.P., and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 3 and the previous participation was deemed acceptable by EARAC after review and discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

Public Comment: The Department has not received any letters of support or opposition.

EXHIBIT A



17425 Medio Springs Ranch - Application Summary

REAL ESTATE ANALYSIS DIVISION

October 2, 2017

| PROPERTY IDENTIFICATION | | RECOMMENDATION | | | | |
|-------------------------|---------------------|-------------------|-------------|-------------|--------------|--------|
| Application # | 17425 | TDHCA Program | Request | Recommended | | |
| Development | Medio Springs Ranch | LIHTC (4% Credit) | \$1,929,222 | \$1,929,222 | \$5,544/Unit | \$1.00 |
| City / County | San Antonio / Bexar | | Amount | Rate | Amort | Term |
| Region/Area | 9 / Urban | | | | | Lien |
| Population | General | | | | | |
| Set-Aside | General | | | | | |
| Activity | New Construction | | | | | |

| KEY PRINCIPAL / SPONSOR | | |
|--|-----------------|--------------|
| 75% Co-Developer | | |
| Michael Hogan / Hogan Properties Company, Inc. dba HomeSpring Realty Partners | | |
| 25% Co-Developer | | |
| Bexar Management & Development Corporation | | |
| Related-Parties | Contractor - No | Seller - Yes |

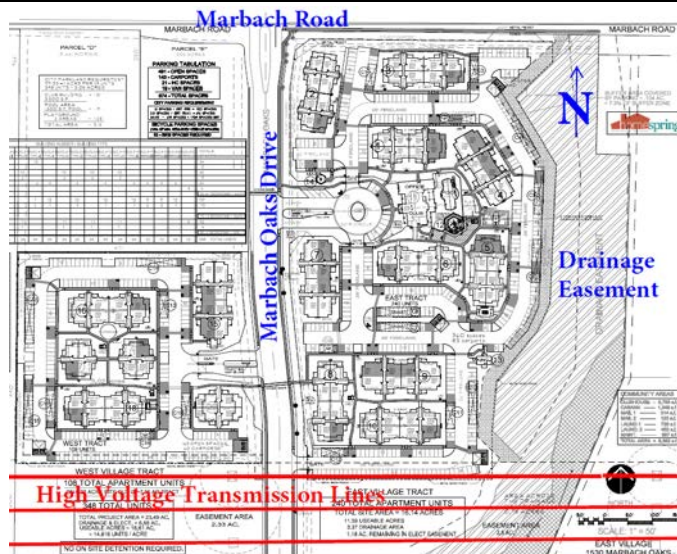
TYPICAL BUILDING ELEVATION/PHOTO



| UNIT DISTRIBUTION | | | INCOME DISTRIBUTION | | |
|-------------------|------------|-------------|---------------------|------------|-------------|
| # Beds | # Units | % Total | Income | # Units | % Total |
| Eff | - | 0% | 30% | - | 0% |
| 1 | 120 | 34% | 40% | - | 0% |
| 2 | 172 | 49% | 50% | - | 0% |
| 3 | 56 | 16% | 60% | 348 | 100% |
| 4 | - | 0% | MR | - | 0% |
| TOTAL | 348 | 100% | TOTAL | 348 | 100% |

| PRO FORMA FEASIBILITY INDICATORS | | | |
|----------------------------------|--------------|-------------------|--------------|
| Pro Forma Underwritten | | TDHCA's Pro Forma | |
| Debt Coverage | 1.15 | Expense Ratio | 44.4% |
| Breakeven Occ. | 85.7% | Breakeven Rent | \$702 |
| Average Rent | \$760 | B/E Rent Margin | \$58 |
| Property Taxes | Exempt | Exemption/PILOT | 100% |
| Total Expense | \$3,840/unit | Controllable | \$2,771/unit |

SITE PLAN



| MARKET FEASIBILITY INDICATORS | | | |
|----------------------------------|-----|----------|-----|
| Gross Capture Rate (10% Maximum) | | 9.7% | |
| Highest Unit Capture Rate | 49% | 1 BR/60% | 120 |
| Dominant Unit Cap. Rate | 44% | 2 BR/60% | 172 |
| Premiums (↑60% Rents) | No | | |
| Rent Assisted Units | N/A | | |

| DEVELOPMENT COST SUMMARY | | | |
|--------------------------|------------|-------------------|--------------|
| Costs Underwritten | | Applicant's Costs | |
| Avg. Unit Size | 935 SF | Density | 21.1/acre |
| Acquisition | | \$03K/unit | \$1,054K |
| Building Cost | \$76.70/SF | \$72K/unit | \$24,951K |
| Hard Cost | | \$90K/unit | \$31,413K |
| Total Cost | | \$145K/unit | \$50,288K |
| Developer Fee | \$5,950K | (22% Deferred) | Paid Year: 5 |
| Contractor Fee | \$3,622K | 30% Boost | Yes |

| DEBT (Must Pay) | | | | | CASH FLOW DEBT / GRANT FUNDS | | | | | EQUITY / DEFERRED FEES | |
|--------------------------------------|-------|-------|--------------|------|--------------------------------|------|------|--------|-----|---------------------------------|--------------|
| Source | Term | Rate | Amount | DCR | Source | Term | Rate | Amount | DCR | Source | Amount |
| Bellwether Enterprise FHA 221 (d)(4) | 40/40 | 3.50% | \$29,663,000 | 1.15 | | | | | | Enterprise Community Investment | \$19,290,291 |
| | | | | | | | | | | HomeSpring Realty Partners | \$1,334,854 |
| | | | | | | | | | | TOTAL EQUITY SOURCES | \$20,625,145 |
| | | | | | | | | | | TOTAL DEBT SOURCES | \$29,663,000 |
| TOTAL DEBT (Must Pay) | | | \$29,663,000 | | CASH FLOW DEBT / GRANTS | | | \$0 | | TOTAL CAPITALIZATION | \$50,288,145 |

CONDITIONS

1 Receipt and acceptance by Cost Certification:

- Certification from Appraisal District that property qualifies for a 100% property tax exemption.

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

BOND RESERVATION / ISSUER

| | |
|-----------------|------------------|
| Issuer | Bexar County HFC |
| Expiration Date | 12/31/2019 |
| Bond Amount | \$26,500,000 |
| BRB Priority | N/A |
| Close Date | TBD |
| Bond Structure | FHA 221(d)(4) |

RISK PROFILE

STRENGTHS/MITIGATING FACTORS

- HTC properties in PMA average 99% occupancy
- Attractive design should enhance leasing
- Low maintenance construction (metal roofs/masonry exteriors)
- Developer experience

WEAKNESSES/RISKS

- High unit capture rates
- Project is not feasible without property tax exemption
- Residents on west side of Marbachs Oaks have to cross street to use clubhouse, pool or recreational areas

AERIAL PHOTOGRAPH(S)



BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#17427 Housing First Oak Springs, Austin)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit award for Housing First Oak Springs, sponsored by the Austin Travis County Integral Care (“ATCIC”), was previously approved at the Board meeting of December 15, 2016;

WHEREAS, the award included a condition requiring an updated term sheet from the equity investor and the review of the term sheet resulted in changes to the housing tax credit amount previously recommended by staff and approved by the Board;

WHEREAS, the applicant was unable to close on the bond financing under the original 2016 Certification of Reservation deadline of April 8, 2017;

WHEREAS, in connection with the new 2017 Certificate of Reservation from the Bond Review Board, issued on August 15, 2017, and expiring on January 12, 2018, and the new housing tax credit amount, Board action is required; and

WHEREAS, Undesirable Neighborhood Characteristics, specifically relating to the poverty rate, pursuant to 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules, were previously disclosed, evaluated and the development site was deemed eligible by the Board and staff’s recommendation in that regard remains unchanged;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$832,349 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 Housing First Oak Springs is hereby approved as presented to this meeting.

BACKGROUND

General Information: Housing First Oak Springs is located at 3000 Oak Springs, Austin, Travis County, involves the new construction of 50 efficiency units. Of those units, 10 will be rent and income restricted at 30% of Area Median Family Income (“AMFI”) and the remaining 40 units will be equally split between 50% and 60% AMFI. The four-story supportive housing development will assist the chronically homeless in achieving housing stability. The development is proposed to include approximately 2,400 square feet of ground level leasable retail space and an on-site parking garage with 62 parking spaces. The second level will have a mix of efficiency units and approximately 5,300 square feet of office/clinic space. The commercial space will be operated as a health clinic by ATCIC and the retail space will be utilized by Goodwill

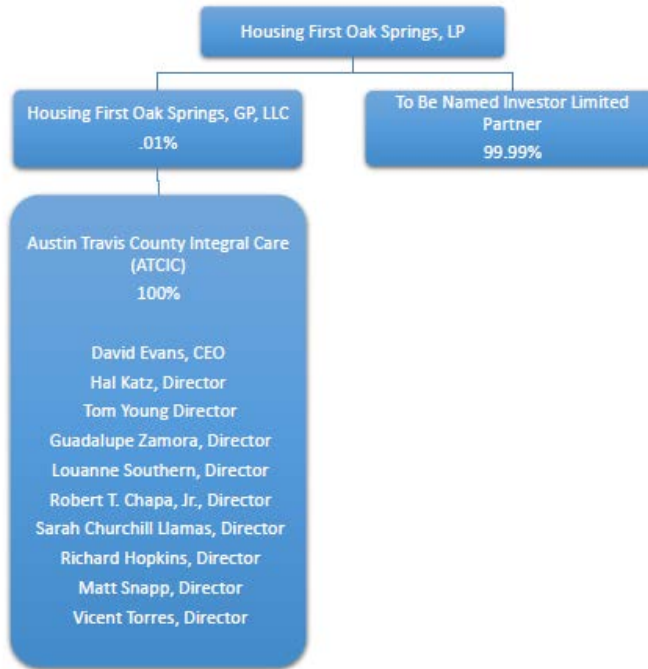
Industries for the benefit of the Oak Springs residents as well as others in need of job skills training and supported employment. The proposed site conforms to current zoning. The census tract (0008.02) has a median household income of \$27,255, is in the fourth quartile and has a poverty rate of 48.5%.

The application was previously approved at the Board meeting of December 15, 2016. In light of the uncertainty regarding syndication pricing and staff being unable to confirm pricing prior to the original Board action, the award was conditioned upon receipt of an updated term sheet reflecting current pricing and terms. Once the updated term sheet was submitted and reviewed, it reflected a different credit price and affected the credit amount recommended by staff and what the Board approved. Moreover, the applicant was unable to close on the financing prior to the deadline under the original 2016 Certificate of Reservation, and had a new 2017 Certificate of Reservation issued. The change in equity pricing prevents the applicant from following the process allowed under 10 TAC §10.201(3) of the Uniform Multifamily Rules, that requires they certify that nothing changed in their application from what the Board approved in order to have the Determination Notice re-issued. As a result, the application was re-reviewed for compliance with the 2017 rules, and an updated underwriting analysis was performed based on the updated term sheet. Moreover, the development site triggers an undesirable neighborhood characteristic as it relates to the poverty rate of the census tract which exceeds the threshold slightly. Staff originally determined the site eligible based on the mitigation provided at the time of Board action in December 2016, which included evidence of gentrification in the area based on increases in property values, proximity to a census tract (directly across the street from the subject) that has a poverty rate of approximately 14%, and various Capital Improvement Projects that have been completed with several more in the planning stages. Staff's determination of eligibility has not changed.

Organizational Structure: The Borrower is Housing First Oak Springs, LP, and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Small Category 1 and the previous participation was deemed acceptable by EARAC, without further review or discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

Public Comment: The Department received letters of support from State Senator Kirk Watson and State Representative Dawnna Dukes. No letters of opposition were received.

EXHIBIT A



17427 Housing First Oak Springs - Application Summary

REAL ESTATE ANALYSIS DIVISION

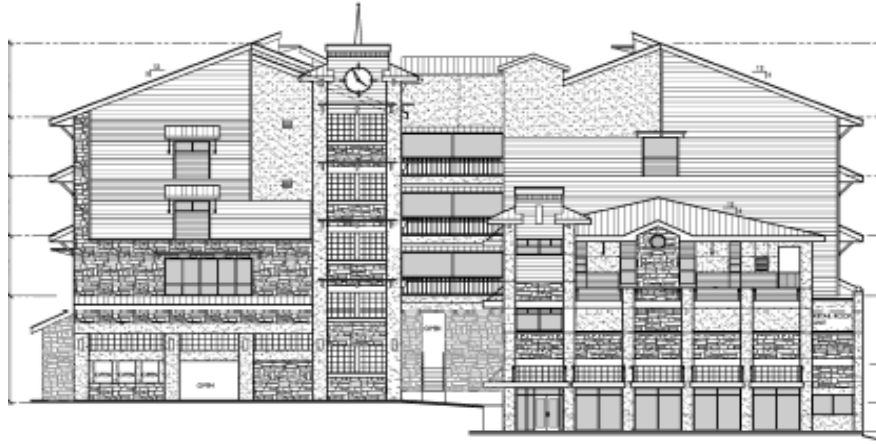
October 2, 2017

| PROPERTY IDENTIFICATION | |
|-------------------------|---------------------------|
| Application # | 17427 |
| Development | Housing First Oak Springs |
| City / County | Austin / Travis |
| Region/Area | 7 / Urban |
| Population | Supportive Housing |
| Set-Aside | General |
| Activity | New Construction |

| RECOMMENDATION | | | | | |
|-------------------|-----------|-----------|---------------|--------|--|
| TDHCA Program | Request | Approved | | | |
| LIHTC (4% Credit) | \$832,349 | \$832,349 | \$16,647/Unit | \$0.95 | |

| KEY PRINCIPAL / SPONSOR | | |
|--|------------------|--------------|
| General Partner(s) | | |
| Austin Travis County Integral Care - David Evans | | |
| Developer(s) | | |
| Austin Travis County Integral Care - David Evans | | |
| Related-Parties | Contractor - TBD | Seller - Yes |

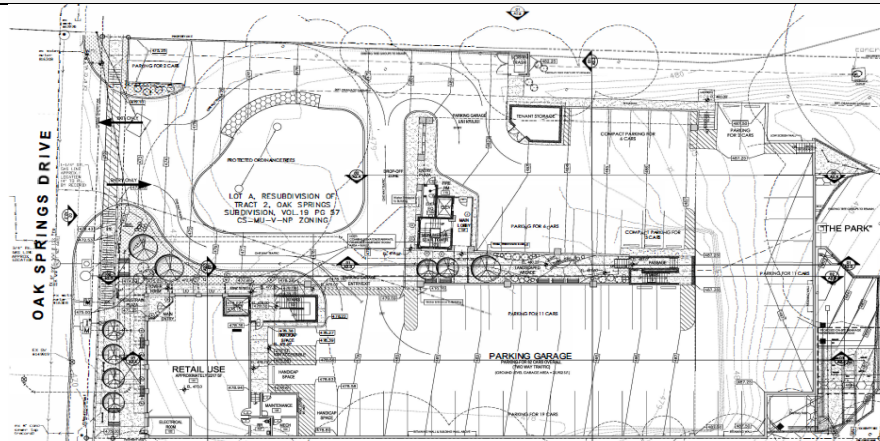
TYPICAL BUILDING ELEVATION/PHOTO



| UNIT DISTRIBUTION | | | INCOME DISTRIBUTION | | |
|-------------------|-----------|-------------|---------------------|-----------|-------------|
| # Beds | # Units | % Total | Income | # Units | % Total |
| Eff | 50 | 100% | 30% | 10 | 20% |
| 1 | - | 0% | 40% | - | 0% |
| 2 | - | 0% | 50% | 20 | 40% |
| 3 | - | 0% | 60% | 20 | 40% |
| 4 | - | 0% | MR | - | 0% |
| TOTAL | 50 | 100% | TOTAL | 50 | 100% |

| PRO FORMA FEASIBILITY INDICATORS | | | |
|----------------------------------|--------------|-----------------------|--------------|
| Pro Forma Underwritten | | Applicant's Pro Forma | |
| Debt Coverage | N/A | Expense Ratio | 84.7% |
| Breakeven Occ. | 80.4% | Breakeven Rent | \$626 |
| Average Rent | \$740 | B/E Rent Margin | \$114 |
| Property Taxes | Exempt | Exemption/PILOT | 100% |
| Total Expense | \$7,182/unit | Controllable | \$4,079/unit |

SITE PLAN



| MARKET FEASIBILITY INDICATORS | | | |
|----------------------------------|-----|----------|------------------|
| Gross Capture Rate (30% Maximum) | | | 1.5% |
| Highest Unit Capture Rate | 2% | 0 BR/50% | 20 |
| Dominant Unit Cap. Rate | 2% | 0 BR/50% | 20 |
| Premiums (↑60% Rents) | N/A | | N/A |
| Rent Assisted Units | 50 | | 100% Total Units |

| DEVELOPMENT COST SUMMARY | | | |
|--------------------------|-------------|-------------------|-----------|
| Costs Underwritten | | Applicant's Costs | |
| Avg. Unit Size | 556 SF | Density | 46.3/acre |
| Acquisition | | \$14K/unit | \$677K |
| Building Cost | \$424.34/SF | \$236K/unit | \$11,797K |
| Hard Cost | | \$280K/unit | \$14,019K |
| Total Cost | | \$446K/unit | \$22,278K |
| Developer Fee | \$2,000K | (36% Deferred) | N/A |
| Contractor Fee | \$1,788K | 30% Boost | Yes |

| DEBT (Must Pay) | | | | | CASH FLOW DEBT / GRANT FUNDS | | | | | EQUITY / DEFERRED FEES | |
|------------------------------|------|------|------------|-----|-----------------------------------|-------|-------|---------------------|-----|-----------------------------|---------------------|
| Source | Term | Rate | Amount | DCR | Source | Term | Rate | Amount | DCR | Source | Amount |
| | | | | | City of Austin GO Bond Funds | 40/40 | 0.00% | \$3,888,112 | N/A | NEF | \$7,906,525 |
| | | | | | ATCIC Loan to Project/Fundraising | 0/0 | 0.00% | \$4,640,995 | N/A | | |
| | | | | | Dept of State Health Services | 0/0 | 0.00% | \$4,442,438 | N/A | | |
| | | | | | Land - Defferal of Capital Lease | 0/0 | 0.00% | \$676,500 | N/A | | |
| | | | | | | | | | N/A | | |
| TOTAL DEBT (Must Pay) | | | \$0 | | CASH FLOW DEBT / GRANTS | | | \$13,648,045 | | TOTAL EQUITY SOURCES | \$8,629,855 |
| | | | | | | | | | | TOTAL DEBT SOURCES | \$13,648,045 |
| | | | | | | | | | | TOTAL CAPITALIZATION | \$22,277,900 |

CONDITIONS

1 Receipt and acceptance before Board Approval:

- Updated term sheets with substantially final terms from Enterprise, acknowledgement of the current market issues, and verification of the capacity of the fund.

Status: Applicant provided updated LOI dated December 8, 2016, replacing Chase Bank with Capital One as the bond purchaser. NEF also replaced Enterprise as equity provider, acknowledging the uncertainty of the market. The term sheet is dated January 6, 2017 and reflects an equity price of \$1.10 (an \$0.08 increase over the original).

2 Receipt and acceptance by Cost Certification:

- Certification from Appraisal District that the property qualifies for 100% property tax exemption.
- Fully executed agreement for 50 Project-Based Vouchers with the Austin Housing Authority.

3 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:

- All testing and recommendations for noise, lead based paint and radon were completed and implemented.

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

BOND RESERVATION / ISSUER

| | |
|-----------------|-------------------|
| Issuer | Austin HFC |
| Expiration Date | 1/12/18 |
| Bond Amount | \$13,000,000 |
| BRB Priority | Priority 3 |
| Expected Close | TBD |
| Bond Structure | Private Placement |

RISK PROFILE

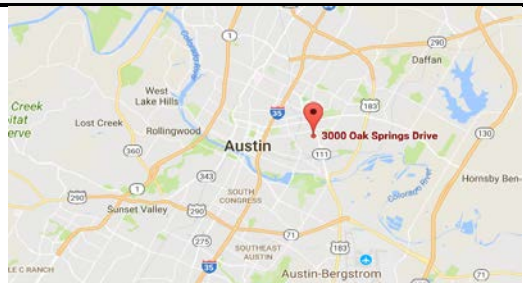
STRENGTHS/MITIGATING FACTORS

- Very low capture rates

WEAKNESSES/RISKS

- \$800K Section 8 voucher "overhang" requirement
- Tenant base highly dependant on available rent
- Expense ratio of 85%

AREA MAP



AERIAL PHOTOGRAPH(S)



CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Housing First Oak Springs, Austin, 4% HTC #17427

| CREDIT CALCULATION ON QUALIFIED BASIS | | | | |
|---------------------------------------|-------------|-----------------------------|-------------|-----------------------------|
| | Applicant | | TDHCA | |
| | Acquisition | Construction Rehabilitation | Acquisition | Construction Rehabilitation |
| ADJUSTED BASIS | \$0 | \$20,045,432 | \$0 | \$20,045,432 |
| Deduction of Federal Grants | \$0 | \$0 | \$0 | \$0 |
| TOTAL ELIGIBLE BASIS | \$0 | \$20,045,432 | \$0 | \$20,045,432 |
| High Cost Area Adjustment | | 130% | | 130% |
| TOTAL ADJUSTED BASIS | \$0 | \$26,059,062 | \$0 | \$26,059,062 |
| Applicable Fraction | 100.00% | 100.00% | 100.00% | 100.00% |
| TOTAL QUALIFIED BASIS | \$0 | \$26,059,062 | \$0 | \$26,059,062 |
| Applicable Percentage | 3.33% | 3.33% | 3.33% | 3.33% |
| ANNUAL CREDIT ON BASIS | \$0 | \$867,767 | \$0 | \$867,767 |
| CREDITS ON QUALIFIED BASIS | | \$867,767 | | \$867,767 |

| Method | ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS | | FINAL ANNUAL LIHTC ALLOCATION | | |
|--------------------|---|-------------|-------------------------------|---------------------|------------|
| | Annual Credits | Proceeds | Credit Price \$0.9499 | Variance to Request | |
| | | | Credit Allocation | Credits | Proceeds |
| Eligible Basis | \$867,767 | \$8,242,960 | ---- | ---- | ---- |
| Needed to Fill Gap | \$908,497 | \$8,629,855 | ---- | ---- | ---- |
| Applicant Request | \$832,349 | \$7,906,525 | \$832,349 | \$0 | \$0 |

| 50% Test for Bond Financing for 4% Tax Credits | | | | | | |
|--|---------------------|---------------------|---|--------------------------------------|-------------|-------------|
| Tax-Exempt Bond Amount | \$12,000,000 | | | Percent Financed by Tax-Exempt Bonds | Applicant | TDHCA |
| Aggregate Basis Limit for 50% Test | \$24,000,000 | | | | 62.2% | 62.2% |
| | Applicant | TDHCA | | | | |
| Land Cost | \$660,000 | \$660,000 | | | | |
| Depreciable Bldg Cost | \$18,641,993 | \$18,641,993 | | | | |
| Aggregate Basis for 50% Test | \$19,301,993 | \$19,301,993 | amount aggregate basis can increase before 50% test fails | 24.3% | \$4,698,007 | \$4,698,007 |

| BUILDING COST ESTIMATE | | | | |
|------------------------------------|----------|---------------|---------------|--------------------|
| CATEGORY | FACTOR | UNITS/SF | PER SF | AMOUNT |
| Base Cost: Single-Room Occupancy | | 27,800 SF | \$82.01 | 2,279,910 |
| Adjustments | | | | |
| Exterior Wall Finish | 0.96% | | 0.79 | \$21,887 |
| Elderly | 0.00% | | 0.00 | 0 |
| 9-Ft. Ceilings | 3.12% | | 2.56 | 71,133 |
| Roof Adjustment(s) | | | 0.00 | 0 |
| Subfloor | | | 0.20 | 5,560 |
| Floor Cover | | | 4.05 | 112,534 |
| Breezeways | \$28.08 | 0 | 0.00 | 0 |
| Balconies | \$0.00 | 0 | 0.00 | 0 |
| Plumbing Fixtures | \$990 | 0 | 0.00 | 0 |
| Rough-ins | \$485 | 100 | 1.74 | 48,500 |
| Built-In Appliances | \$1,725 | 50 | 3.10 | 86,250 |
| Exterior Stairs | \$2,250 | 6 | 0.49 | 13,500 |
| Heating/Cooling | | | 2.14 | 59,492 |
| Enclosed Corridors | \$73.18 | 6,195 | 16.31 | 453,357 |
| Carpports | \$11.94 | 0 | 0.00 | 0 |
| Garages | | 0 | 0.00 | 0 |
| Comm &/or Aux Bldgs | \$0.00 | 0 | 0.00 | 0 |
| Elevators | \$96,200 | 2 | 6.92 | 192,400 |
| Other: | | | 0.00 | 0 |
| Fire Sprinklers | \$2.47 | 33,995 | 3.02 | 83,968 |
| SUBTOTAL | | | 123.33 | 3,428,491 |
| Current Cost Multiplier | 0.99 | | (1.23) | (34,285) |
| Local Multiplier | 0.88 | | (14.80) | (411,419) |
| TOTAL BUILDING COSTS | | | 107.29 | \$2,982,787 |
| Plans, specs, survey, bldg permits | 3.30% | | (3.54) | (\$98,432) |
| Contractor's OH & Profit | 11.50% | | (12.34) | (343,021) |
| NET BUILDING COSTS | | \$50,827/unit | \$91.41/sf | \$2,541,335 |



KIRK WATSON
STATE SENATOR
DISTRICT 14

COMMITTEES:
BUSINESS & COMMERCE
FINANCE
HIGHER EDUCATION
NOMINATIONS
JOINT OVERSIGHT ON
GOVERNMENT FACILITIES

CAPITOL ADDRESS
P.O. Box 12068
ROOM E1.804
AUSTIN, TEXAS 78711
512/463-0114
FAX 512/463-5949

September 1, 2016


Ms. Sharon Gamble
Texas Department of Housing and Community Affairs
P.O. Box 13941
221 East 11th Street
Austin, TX 78711-3941

Dear Ms. Gamble,

I am pleased to lend my support to the Austin Travis County Integral Care (ATCIC) Oak Springs Housing First development. Aside from the positive social impacts of caring for individuals experiencing chronic homelessness and mental illness, cities across the country are also seeing positive economic impacts, including increased annual savings in public funds.

The whole-health treatment approach of the Housing First model allows individuals to recover from homelessness through the support of a healthcare team and available employment services. The results could show a potential savings of \$1 million dollars in reduced public costs for our community each year, which is just yet another reason to support such a wonderful initiative.

Sincerely,


Kirk Watson

Dawnna Duker
HOUSE OF REPRESENTATIVES

P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0506



District 46
Travis County

September 17, 2016

Ms. Sharon Gamble
Texas Department of Housing and Community Affairs
P.O. Box 13941
221 East 11th Street
Austin, TX 78711-3941

Re: Oak Springs Housing First # 16433
3000 Oak Springs Drive, Austin, Texas 78702

Dear Ms. Gamble:

I received the Public Notification for Oak Springs Housing First, located at the above address in Austin and in Texas State House District 46, which I represent. I am pleased to express my support for Housing First Oak Springs, a proposed affordable community development. The purpose of this planned community is to offer a continuum of service and care to some of our most vulnerable and underserved Travis County residents, those recovering from mental illness, those continuing substance abuse treatment, and those suffering chronic homelessness.

The Oak Springs Housing First development will allow Austin Travis County Integral Care (ATCIC) to continue its mission of improving lives by providing the opportunity for those in recovery to reside in close proximity to essential services. Thank you for your consideration of this application. I am pleased to lend my support to this development which will serve the constituents in my District. Should you have any questions regarding my support, please contact me at (512) 463-0506.

Sincerely,

A handwritten signature in black ink that reads "Dawnna Duker".

Representative Dawnna Duker
District 46
Texas House of Representatives
1400 Congress Avenue, 1W.2
Austin, TX 78701

*Committees: Appropriations; Vice-Chair Appropriations Sub-Committee on Health and Human Services;
Vice-Chair Culture, Recreation and Tourism; Vice-Chair Select Committee on Emerging Issues in Law Enforcement*

1f

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion and possible action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds (#17401 Primrose Village Apartments, Weslaco)

RECOMMENDED ACTION

WHEREAS, an application for both 4% Housing Tax Credits and Direct Loan funds for Primrose Village Apartments, sponsored by Weslaco Housing Opportunities Corporation, was submitted on March 13, 2017;

WHEREAS, the proposed issuer of the bonds is the Weslaco Housing Opportunities Corporation;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued by the Texas Bond Review Board on January 12, 2017, and will expire on December 31, 2019;

WHEREAS, the Direct Loan funds application was submitted under the 2017-1 Multifamily Direct Loan Notice of Funding Availability (“2017-1 NOFA”) and there is Multifamily Direct Loan funding available to award the subject application under the General set-aside;

WHEREAS, Direct Loan repayment may be subject to 75% surplus cash flow requirements as a result of an FHA-insured first lien loan despite 10 TAC §13.8(c)(2) not specifying an amount of surplus cash flow; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice with the condition that the closing occur within 120 days (on or before February 12, 2018);

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$1,160,605 in 4% Housing Tax Credits and award of \$1,100,000 in Neighborhood Stabilization Program Round 1 Program Income (“NSP1 PI”) funds from the 2017-1 NOFA, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for Primrose Village Apartments, is hereby approved as presented to this meeting;

FURTHER RESOLVED, that, should repayment of the Department’s loan be subject to 75% of available surplus cash flow, staff will require a guaranty from the Applicant and/or affiliates and principals of the Applicant to reimburse the Department for any losses incurred by the Department as a result of HUD enforcing any repayment liability and

obligation upon the Department for any amounts due under the NSP1 PI Loan in connection with the affordability requirements as a result of the first lien lender exercising its foreclosure rights set forth in the loan documents, regardless of the availability of Surplus Cash; and

FURTHER RESOLVED, that 10 TAC §13.11(m) requires the Board to establish a hard closing deadline at the time of award, staff recommends that closing on all sources of funds occur no later than February 12, 2018, and that should closing not occur, the Board authorizes EARAC to approve or deny an extension of the Determination Notice date subject to an updated previous participation review, if necessary.

BACKGROUND

General Information: Primrose Village Apartments is proposed to be located at the northeast corner of East Sugar Cane Drive and Mile 3 ½ Road West in Weslaco, Hidalgo County. The development will consist of 242 units, of which 149 will be income restricted at 60% of Area Median Family Income (“AMFI”), 59 will be rent and income restricted at 50% AMFI, and the remaining 34 units will be market rate with no rent or income restrictions. As a result of the NSP1 PI funds, there will be six units restricted at 50% AMFI and 15 at 60% AMFI layered among the 242 HTC restricted units. The application is proposing new construction, will serve a general population, and conforms to current zoning ordinances. The census tract (0225.01) has a median household income of \$21,397, is in the fourth quartile, and has a poverty rate of 44.10 percent. As required in section 4 of the 2017-1 NOFA, the Department’s Governing Board must establish a hard closing deadline at the time of award. In line with the closing deadline established associated with the bond financing, such deadline is appropriate for closing on the Direct Loan funds as well.

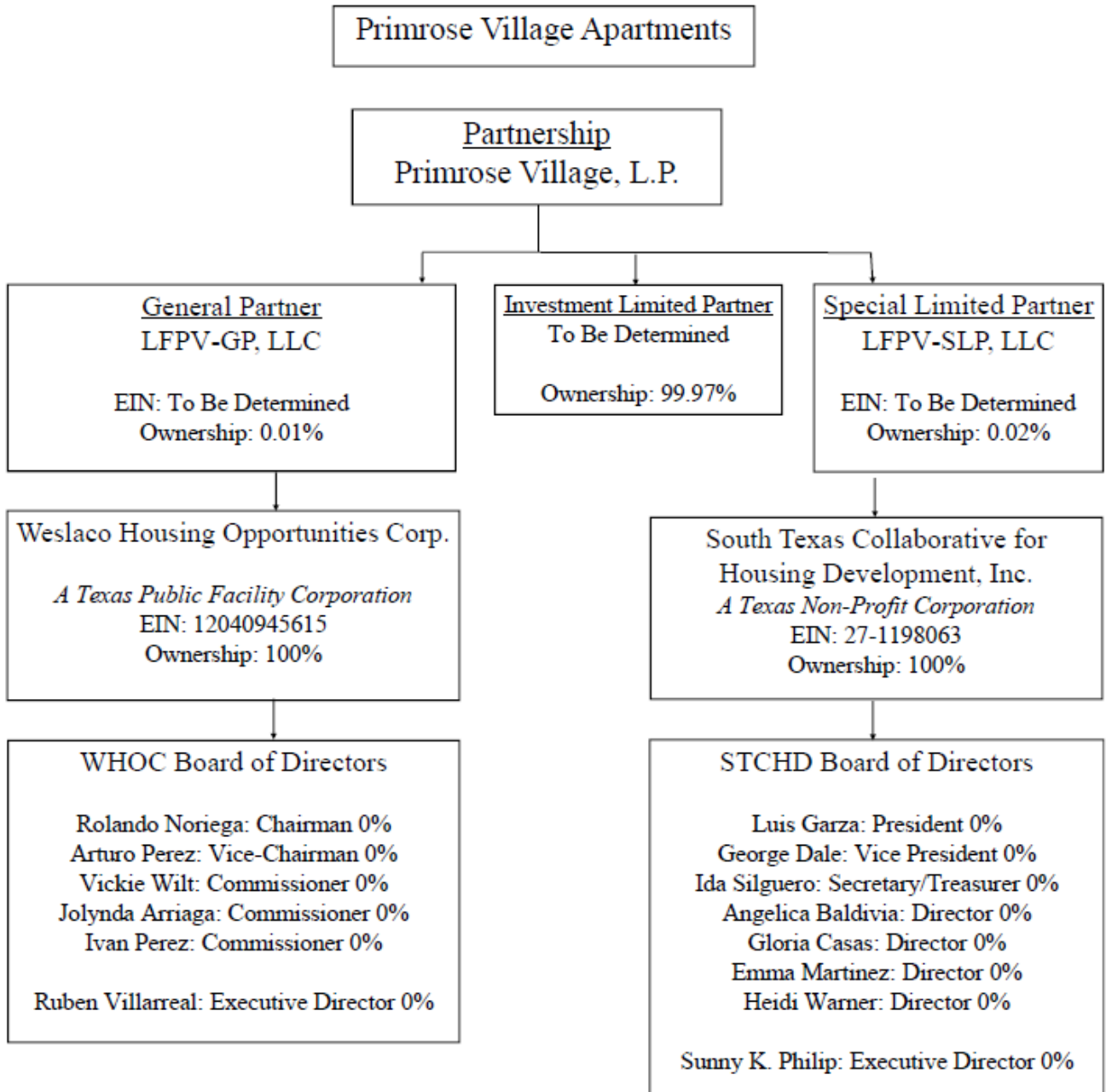
As discussed at recent Board meetings, 10 TAC §13.8(c)(2) allows the Department’s Direct Loans to be subordinate to FHA-insured first lien debt, with repayment subject to available surplus cash flow. Although, a specific percentage of surplus cash flow from which the Department’s loan could be repaid is not discussed in the rule; HUD has recently been enforcing a section of the Multifamily Accelerated Processing (“MAP”) Guide that specifies that repayment on subordinate debt is subject to 75% of surplus cash flow. Should HUD continue to enforce this provision on this particular transaction, staff will require a guaranty from the Applicant and/or affiliates and principals of the Applicant to reimburse the Department for any losses incurred by the Department as a result of HUD enforcing any repayment liability and obligation upon the Department for any amounts due under the NSP1 PI Loan in connection with the affordability requirements as a result of the first lien lender exercising its foreclosure rights set forth in the loan documents, regardless of the availability of Surplus Cash.

Pursuant to 10 TAC §10.204(16), 4% non-competitive housing tax credit applications layered with Direct Loan funds are required to participate in the Department’s Section 811 Project Rental Assistance Program. The applicant has provided an existing development, Sunrise Terrace in La Feria, for participation in the Section 811 PRA Program, and such development was approved by staff.

Organizational Structure and Previous Participation: The Borrower is Primrose Village, L.P. and includes the entities and principals as illustrated in Exhibit A. The applicant’s portfolio is considered a Category 2, and the previous participation was deemed acceptable by EARAC without further review or discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice and award of NSP1 PI funds.

Public Comment: The Department received letters of support from State Senator Eddie Lucio, Jr., State Representative Oscar Longoria, Amigos Del Valle, Inc., Big Brothers Big Sisters of South Texas, Easter Seals of the Rio Grande Valley, and the Food Bank of the Rio Grande Valley Inc. No letters of opposition have been received.

EXHIBIT A



17401 Primrose Village - Application Summary

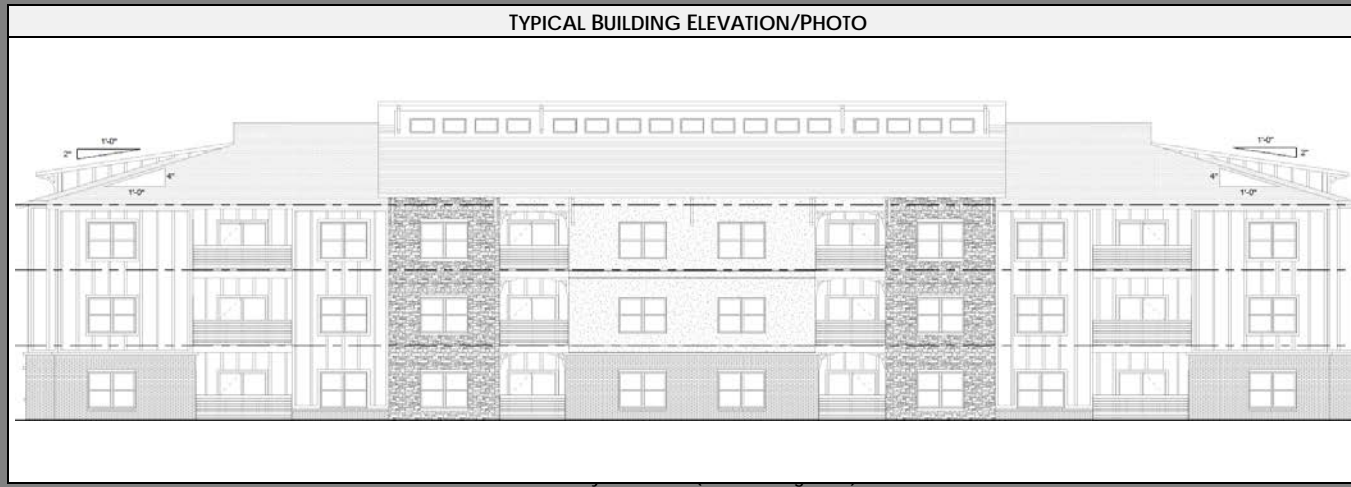
REAL ESTATE ANALYSIS DIVISION

October 5, 2017

| PROPERTY IDENTIFICATION | |
|-------------------------|-------------------|
| Application # | 17401 |
| Development | Primrose Village |
| City / County | Weslaco / Hidalgo |
| Region/Area | 11 / Urban |
| Population | General |
| Set-Aside | General |
| Activity | New Construction |

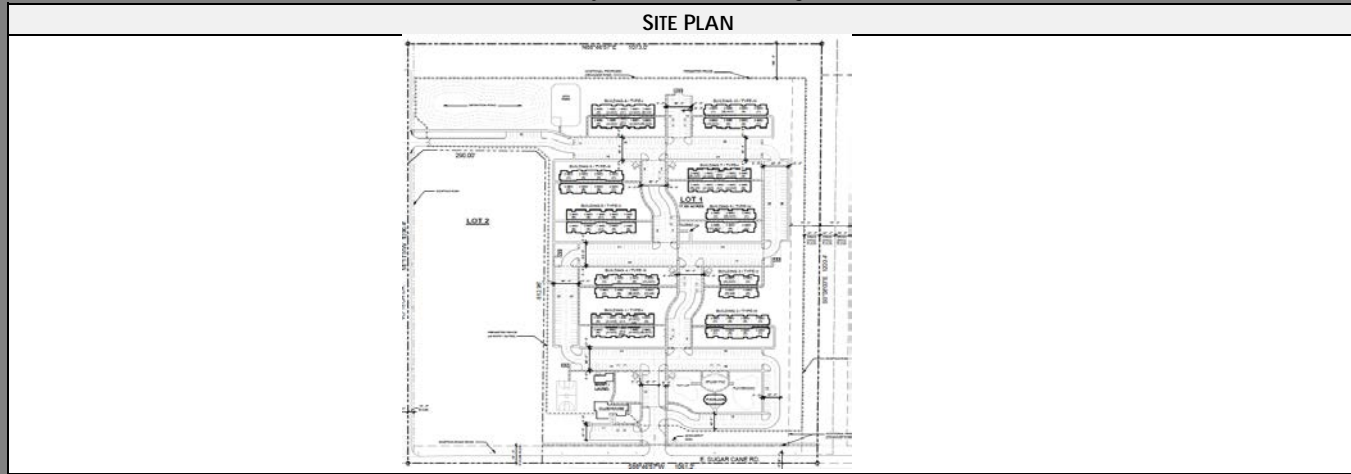
| RECOMMENDATION | | | | | | |
|-------------------------------------|-------------|-------------|--------------|--------|------|------|
| TDHCA Program | Request | Recommended | | | | |
| LIHTC (4% Credit) | \$1,160,605 | \$1,160,605 | \$4,796/Unit | \$0.91 | | |
| | | Amount | Rate | Amort | Term | Lien |
| Multifamily Direct Loan (Repayable) | \$1,100,000 | | 3.25% | 30 | 40 | 2nd |

| KEY PRINCIPAL / SPONSOR | | |
|--|------------------|-------------|
| Ruben Villareal - City of Weslaco Housing Authority | | |
| Sunny Philip - South Texas Collaborative for Housing Development, Inc. | | |
| Related-Parties | Contractor - Yes | Seller - No |



| UNIT DISTRIBUTION | | | INCOME DISTRIBUTION | | |
|-------------------|------------|-------------|---------------------|------------|-------------|
| # Beds | # Units | % Total | Income | # Units | % Total |
| Eff | - | 0% | 30% | - | 0% |
| 1 | 60 | 25% | 40% | - | 0% |
| 2 | 114 | 47% | 50% | 59 | 24% |
| 3 | 60 | 25% | 60% | 146 | 60% |
| 4 | 8 | 3% | MR | 37 | 15% |
| TOTAL | 242 | 100% | TOTAL | 242 | 100% |

| PRO FORMA FEASIBILITY INDICATORS | | | |
|----------------------------------|--------------|-------------------|--------------|
| Pro Forma Underwritten | | TDHCA's Pro Forma | |
| Debt Coverage | 1.15 | Expense Ratio | 42.0% |
| Breakeven Occ. | 85.5% | Breakeven Rent | \$677 |
| Average Rent | \$734 | B/E Rent Margin | \$57 |
| Property Taxes | Exempt | Exemption/PILOT | 100% |
| Total Expense | \$3,514/unit | Controllable | \$2,486/unit |



| MARKET FEASIBILITY INDICATORS | | | |
|----------------------------------|-----|-----------------|------|
| Gross Capture Rate (10% Maximum) | | | 8.8% |
| Highest Unit Capture Rate | 62% | 2 BR/60% | 80 |
| Dominant Unit Cap. Rate | 62% | 2 BR/60% | 80 |
| Premiums (↑60% Rents) | Yes | \$352/Avg. | |
| Rent Assisted Units | 53 | 22% Total Units | |

| DEVELOPMENT COST SUMMARY | | | |
|--------------------------|------------|-------------------|---------------|
| Costs Underwritten | | Applicant's Costs | |
| Avg. Unit Size | 952 SF | Density | 13.8/acre |
| Acquisition | | \$02K/unit | \$592K |
| Building Cost | \$75.16/SF | \$72K/unit | \$17,308K |
| Hard Cost | | \$90K/unit | \$21,661K |
| Total Cost | | \$139K/unit | \$33,702K |
| Developer Fee | \$4,138K | (95% Deferred) | Paid Year: 15 |
| Contractor Fee | \$2,390K | 30% Boost | Yes |

| DEBT (Must Pay) | | | | | CASH FLOW DEBT / GRANT FUNDS | | | | | EQUITY / DEFERRED FEES | |
|------------------------------|-------|-------|---------------------|------|--------------------------------|------|-------|--------------|------|-----------------------------|---------------------|
| Source | Term | Rate | Amount | DCR | Source | Term | Rate | Amount | DCR | Source | Amount |
| Berkadia Commerical Mortgage | 40/40 | 3.95% | \$18,096,800 | 1.22 | GP Equity | 0/0 | 0.00% | \$100 | 1.15 | AHPI Equity | \$10,559,395 |
| TDHCA | 40/30 | 3.25% | \$1,100,000 | 1.15 | City of Weslaco | 0/0 | 0.00% | \$50 | 1.15 | STCHD and WHOC | \$3,945,267 |
| TOTAL DEBT (Must Pay) | | | \$19,196,800 | | CASH FLOW DEBT / GRANTS | | | \$150 | | TOTAL EQUITY SOURCES | \$14,504,662 |
| | | | | | | | | | | TOTAL DEBT SOURCES | \$19,196,950 |
| | | | | | | | | | | TOTAL CAPITALIZATION | \$33,701,612 |

CONDITIONS

- Receipt and acceptance before Direct Loan Closing
 - a: Substantially final construction contract with Schedule of Values.
 - b: Updated term sheets with substantially final terms from all lenders
 - c: Substantially final draft of limited partnership agreement.
 - d: Senior loan documents (and/or partnership documents) must contain a provision(s) that any stabilization rezising on the senior debt includes the debt service on the TDHCA MDL at a 1.15 DCR.
 - e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.

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

| BOND RESERVATION / ISSUER | | AERIAL PHOTOGRAPH(S) |
|--|---|----------------------|
| Issuer | Weslaco Housing Opportunities Corporation | |
| Expiration Date | 1/20/2018 | |
| Bond Amount | \$20,000,000 | |
| BRB Priority | Priority 3 | |
| Close Date | 1/20/2018 | |
| Bond Structure | Cash Collateralized | |
| RISK PROFILE | | |
| STRENGTHS/MITIGATING FACTORS | | |
| <ul style="list-style-type: none"> ▫ Developer Experience | | |
| WEAKNESSES/RISKS | | |

THE SENATE OF TEXAS

P.O. Box 12068
CAPITOL BUILDING, 3S.5
AUSTIN, TEXAS 78711
(512) 463-0127

1210 W. INTERSTATE 2, STE. 10
PHARR, TEXAS 78577
(956) 787-5227



SENATOR
EDDIE LUCIO, JR.

7 NORTH PARK PLAZA
BROWNSVILLE, TEXAS 78521
(956) 548-0227

700 EAST KLEBERG AVENUE
KINGSVILLE, TX 78363
(361) 592-3252

June 10, 2016

Mr. Tim Irvine, Executive Director
Texas Department of Housing & Community Affairs
221 East 11th St.
Austin, TX 78701

Dear Mr. Irvine:

Please accept this letter of support for the Housing Tax Credit Program application (Non-Competitive) submitted for the proposed **Primrose Village Apartments** located in Weslaco, Texas.

As a State Senator, I understand and appreciate the need for safe, quality housing, especially in the Rio Grande Valley. The proposed development will be a significant contributor in increasing the standard of living for low-income families in the community.

In review of the intended scope of work, I am confident you will find the proposed Primrose Village Apartments to be well-conceived and an important step forward for the area. I respectfully request careful consideration of the application.

Sincerely,

A handwritten signature in black ink that reads "Eddie Lucio, Jr." with a stylized flourish at the end.

Eddie Lucio, Jr.
State Senator

ELJ/dkk





STATE REPRESENTATIVE
OSCAR LONGORIA

DISTRICT 35

May 26, 2016

Texas Department of Housing and Community Affairs
Tim Irvine, Executive Director
221 East 11th Street
Austin, TX 78701

Dear Mr. Irvine:

I am writing to extend my full support for the new construction proposed for the **Primrose Village Apartments** located in Weslaco, Texas in the County of Hidalgo. I understand that **Primrose Village** will be considered for Texas Department of Housing and Community Affairs Non-Competitive (4%) housing tax credits.

I believe this project represents a magnificent opportunity to continue to meet the growing need for affordable housing in Hidalgo County. The amenities, location, and the tenant social services to be offered will continue to raise the standard of living for all of the families fortunate enough to call **Primrose Village** home.

I fully support **Primrose Village** in its efforts to win tax credits and see this development to fruition in the coming year.

Thank you for your time and consideration of this project. Please know that my staff and I are always available, should you have any questions. I hope to hear from you soon regarding the developments concerning this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Longoria".

Oscar Longoria
Texas State Representative
House District 35



Amigos Del Valle, Inc.

16441 Support Letter

4138 Crosspoint Blvd.
Edinburg, Texas 78539
Phone (956) 213-9400
Fax (956) 213-8119

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ALEX GUERRA
EXECUTIVE DIRECTOR

June 8, 2016

Luis Garza
Primrose Village, LP
P.O. BOX 329
La Feria, Texas 78559

Dear Mr. Garza,

Amigos Del Valle, Inc. of Weslaco is classified as a non-profit organization under the 501(c) (3) of the Internal Revenue Service Code. We are dedicated to serving and providing assistance to the residents of all communities, but especially the residents of the City of Weslaco.

Amigos Del Valle, Inc. of Weslaco recognizes the need for safe housing throughout the State of Texas and fully supports the efforts of Primrose Village, L.P, to bring decent and affordable housing to the City of Weslaco and the surrounding community.

The future residents of Primrose Village Apartments, to be located at Northeast Corner of Mile 3 ½ Road West (Vo Tech Drive) and Mile 9 Road North (2929 E. Sugar Cane Drive), Weslaco, Hidalgo County, Texas, will be welcomed within our organization and may seek assistance through the programs that we offer.

Sincerely,

Alex Guerra
Executive Director



"Providing 41 Years of Service"
1974 - 2016



Big Brothers Big Sisters
of South Texas

**BBBS OF SOUTH
TEXAS STAFF**
Denise Barkhurst,
President & CEO

June 9, 2016

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Vice President of
Satellite Operations

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Prosperity Bank,
Chairwoman

Virginia Delgado,
Gado Marketing,
Vice-Chairwomen

Lisa De La Fuente
Gold Master Jewel-
ers,
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Medical Center,
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Paulette Guajardo,
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CC City Council-
man,
Stewart Title

Mark Scott,
CC City Council-
man, San Jacinto
Title

Rakesh Patel,
Radisson

Joel Murphy,
AEP Texas

Trixy Saldivar,
Prosperity Bank

Suzu Williams,
Corpus Christi
Navy League

Suzanne Taylor,
Real Estate Agent

Eduardo Gomez,
Driscoll Children's
Hospital

Michael Staff,
Apollo Towing

Scott Humpal,
Humpal Physical
Therapy

From: Cassandra Rodriguez
Director
Big Brothers Big Sisters of South Texas RGV
1111 W. Nolana, Ste. M
McAllen, TX 78501
956-286-3404

RE: SUPPORT FOR Primrose Village Apartments

Dear Mr. Irvine:

Please accept this letter of support for Primrose Village Apartments is to be developed on the Northeast Corner of Mile 3 ½ Road West (Vo Tech Drive) and Mile 9 Road North (2929 E. Sugar Cane Drive), Weslaco, Hidalgo County, Texas.

Big Brothers Big Sisters is a community organization serving the needs in Hidalgo, Wilacy and Cameron County, Texas. We have tax exempt status and are not a government entity. We are an active member organization providing a number of services to the area in which the site is located. Our primary purpose is the overall betterment of the community as a whole. Attached I have provided material about our organization, its services and membership.

I am available to you should you require additional information or have any questions about our organization. Thank you for your kind attention. We look forward to hearing a positive outcome of this application process for the Primrose Village Apartments development.

Sincerely,

Cassandra Rodriguez
Director



Creating solutions, changing lives.

EASTER SEALS RIO GRANDE VALLEY

Helping people with disabilities gain greater independence

P.O. Box 489
1217 Houston Street
McAllen, TX 78505-0489
(956) 631-9171 • Fax (956) 631-7566

HARLINGEN SATELLITE
2422-C E. Tyler Avenue
Harlingen, TX 78550
(956) 423-9171 • Fax (956) 423-7457

www.easterseals-rgv.org

May 26, 2016

Luis Garza
Primrose Village, LP
P.O. BOX 329
La Feria, Texas 78559

Dear Mr. Garza,

Easter Seals of the Rio Grande Valley is a non-profit organization under the 501(c) (3) of the Internal Revenue Service Code. We are dedicated to serving and providing support to individuals with disabilities in the Rio Grande Valley community, including families in the City of Weslaco.

Easter Seals of the Rio Grande Valley recognizes the need for safe housing throughout the State of Texas and fully supports the efforts of Primrose Village, L.P, to bring decent and affordable housing to the City of Weslaco and the surrounding community.

The future residents of Primrose Village Apartments, to be located at Northeast Corner of Mile 3 1/2 Road West (Vo Tech Drive) and Mile 9 Road North (2929 E. Sugar Cane Drive), Weslaco, Hidalgo County, Texas, will be welcomed within our organization and may seek assistance through the programs that we offer.

Sincerely,

Patricia Rosenlund, Executive Director

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Terri Drefke
Chief Executive Officer

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USDA Farm Service Agency

Jaime Tijerina
Attorney at Law

Lina Cantu Cruz
Edinburg High School

S. David Deanda, Jr.
Lone Star National Bank

Michael Whitacre
University of Texas
Rio Grande Valley

May 26, 2016

Luis Garza
Primrose Village, LP
P.O. BOX 329
La Feria, Texas 78559

Dear Mr. Garza,

The Food Bank of the Rio Grande Valley, Inc. is classified as a non-profit organization under the 501(c) (3) of the Internal Revenue Service Code. We are dedicated to serving and providing assistance to the residents of all communities, but especially the residents of the City of Weslaco.

The Food Bank of the Rio Grande Valley, Inc. recognizes the need for safe housing throughout the State of Texas and fully supports the efforts of Primrose Village, L.P, to bring decent and affordable housing to the City of Weslaco and the surrounding community.

The future residents of Primrose Village Apartments, to be located at Northeast Corner of Mile 3 ½ Road West (Vo Tech Drive) and Mile 9 Road North (2929 E. Sugar Cane Drive), Weslaco, Hidalgo County, Texas, will be welcomed within our organization and may seek assistance through the programs that we offer.

Sincerely,

Terri Drefke
Chief Executive Officer

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion and possible action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds (#17405 Bridge at Cameron, Austin)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for the Bridge at Cameron, sponsored by the Austin Affordable Public Facility Corporation, Inc. was submitted to the Department on February 3, 2017;

WHEREAS, the Direct Loan funds application requesting \$2,590,000 was submitted under the 2017-1 Multifamily Direct Loan Notice of Funding Availability (“2017-1 NOFA”) and there is Multifamily Direct Loan funding available to award the subject application under the General set-aside;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on August 21, 2017, and will expire on January 18, 2018;

WHEREAS, the proposed issuer of the bonds is Austin Affordable Public Facility Corporation, Inc.;

WHEREAS, pursuant to 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the presence of certain characteristics of a proposed development site;

WHEREAS, the Applicant disclosed the presence of such undesirable neighborhood characteristics, specifically that the Development Site is within the attendance zone of a middle school that did not achieve a Met Standard rating based on the 2016 Accountability Ratings by the Texas Education Agency (“TEA”); and

WHEREAS, based on the professional opinion of a school official staff recommends the proposed site be found eligible under 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules;

NOW, therefore, it is hereby

RESOLVED, that the site for Bridge at Cameron is hereby found to be eligible; and

FURTHER RESOLVED, that the issuance of a Determination Notice of \$1,276,816 in 4% Housing Tax Credits and award of \$2,590,000 in TCAP Repayment Funds (“TCAP RF”) from the 2017-1 NOFA under the General set-aside, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the

Department's website for the Bridge at Cameron, is hereby approved as presented to this meeting; and

FURTHER RESOLVED, that 10 TAC §13.11(m) requires the Board to establish a hard closing deadline at the time of award, staff recommends that closing on all sources of funds occur no later than January 18, 2018, and that should closing not occur, the Board authorizes EARAC to approve or deny an extension of the Direct Loan closing deadline subject to an updated previous participation review, if necessary.

BACKGROUND

General Information: Bridge at Cameron is proposed to be located at 9201 Cameron Road in Austin, Travis County and proposes the new construction of 263 units. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income ("AMFI") that must be served. Of the 263 units, 241 will be rent and income restricted at 60% of Area Median Family Income ("AMFI") and the remaining 22 HTC/Direct Loan units will be rent and income restricted at 50% AMFI. The development will serve the general population and the site conforms to the current zoning. The census tract (0018.34) has a median household income of \$53,700, is in the third quartile, and has a poverty rate of 10.80%.

The Direct Loan funds will be composed solely of TCAP Repayment Funds ("TCAP RF") and structured as a construction loan with interest-only payments due during construction, for a term of approximately 30 months. The interest rate for the TCAP RF loan over the construction term will be fixed at the required 3.25% in accordance with 10 TAC §13.8(a) and will be repaid upon conversion to the permanent financing.

Site Analysis: The presence of an undesirable neighborhood characteristic under §10.101(a)(3) requires additional site analysis. Bridge at Cameron will be located within the attendance zone of Dobie Middle School ("Dobie MS") which did not achieve a Met Standard rating based on the 2016 TEA Accountability Ratings. From a historical perspective, the school also had an Improvement Required rating in 2015, achieved a Met Standard rating in 2014, and had an Improvement Required rating in 2013.

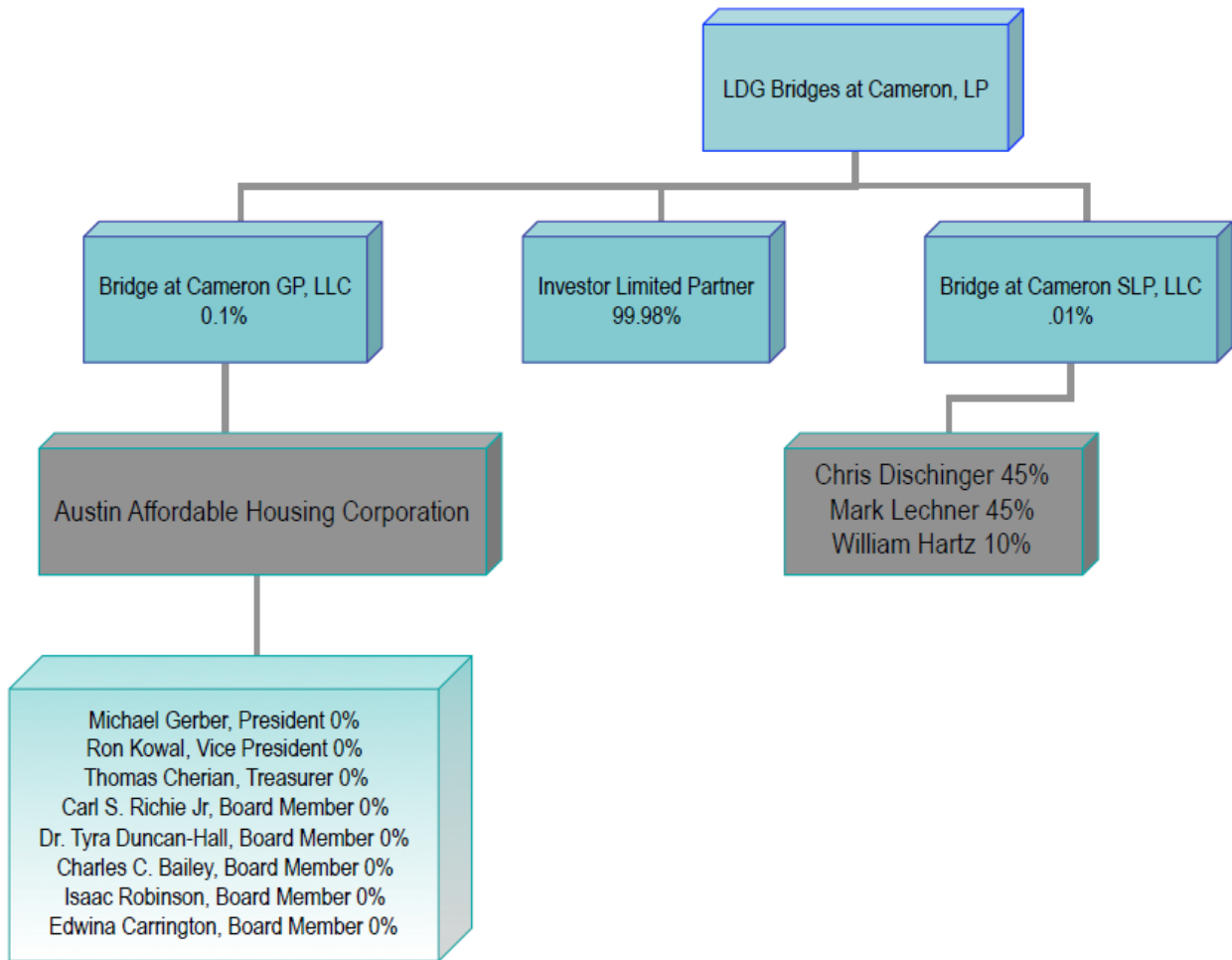
A letter from Rey Garcia, Ed. D, the Executive Director of Operations for Middle Schools for the Austin ISD, a 2015-2016 Campus Improvement Plan ("CIP"), and a Targeted Improvement Plan ("TIP") were submitted to outline the actions required to improve the school's performance. Dr. Garcia summarized areas that have been identified as needing improvement, and emphasized that a lot has gone into supporting those areas. According to the TEA 2016 Accountability Summary Dobie MS missed achieving a Met Standard rating by three points under the target score for Index 4, Postsecondary Readiness. Dr. Garcia indicated that with consideration of how close Dobie MS was to achieving a Met Standard rating in 2016, he believes Dobie MS will achieve a Met Standard by 2019, when Bridge at Cameron is expected to place into service.

Under 10 TAC §10.101(a)(3), there is a consideration for acceptable mitigation regarding the undesirable neighborhood characteristic on the basis that such characteristic is not of such a nature or severity that it should render the development site ineligible. After reviewing the aforementioned facts relating to the school standards for Dobie Middle School, combined with the professional opinion of Dr. Garcia, staff believes it leads to a supported conclusion that the development site should be considered eligible.

Organizational Structure and Previous Participation: The Borrower is LDG Bridges at Cameron, L.P., and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered an Extra Large Category 2 and the previous participation was deemed acceptable by the EARAC without further review or discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice and an award of Direct Loan funds.

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

EXHIBIT A



17405 Bridge at Cameron - Application Summary

REAL ESTATE ANALYSIS DIVISION

October 5, 2017

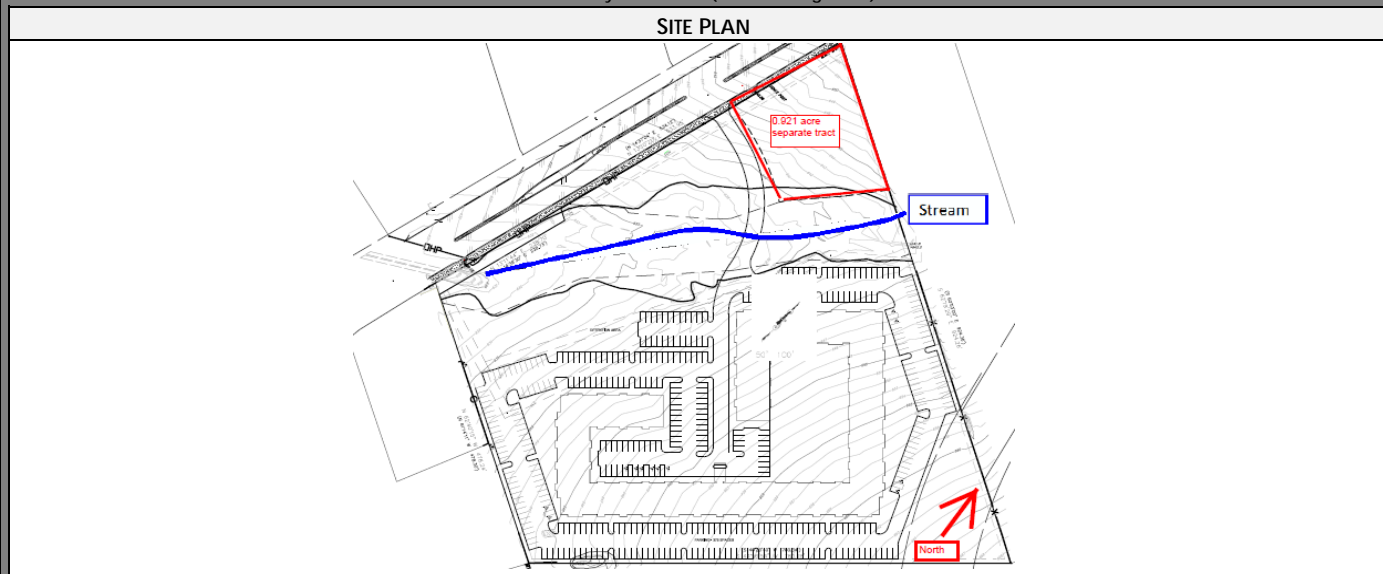
| PROPERTY IDENTIFICATION | | RECOMMENDATION | | | | | |
|-------------------------|-------------------|--------------------------------------|-------------|-------------|-------------|--------------|--------|
| Application # | 17405 | TDHCA Program | | Request | | Recommended | |
| Development | Bridge at Cameron | LIHTC (4% Credit) | | \$1,276,816 | \$1,276,816 | \$4,855/Unit | \$0.91 |
| City / County | Austin / Travis | | Amount | Rate | Amort | Term | Lien |
| Region/Area | 7 / Urban | Multifamily Direct Construction Loan | \$2,590,000 | 3.25% | na | 2 | 2 |
| Population | General | | | | | | |
| Set-Aside | General | | | | | | |
| Activity | New Construction | | | | | | |

| KEY PRINCIPAL / SPONSOR | | |
|---|------------------|-------------|
| LDG Multifamily, LLC- 100% Developer | | |
| Austin Affordable Housing Corp. 0.1% Owner | | |
| Chris Dischinger, Mark Lechner, William Hartz 0.01% Owner | | |
| Chris Dischinger, Mark Lechner-Gurantors | | |
| Related-Parties | Contractor - Yes | Seller - No |



| UNIT DISTRIBUTION | | | INCOME DISTRIBUTION | | |
|-------------------|------------|-------------|---------------------|------------|-------------|
| # Beds | # Units | % Total | Income | # Units | % Total |
| Eff | - | 0% | 30% | - | 0% |
| 1 | 20 | 8% | 40% | - | 0% |
| 2 | 159 | 60% | 50% | 22 | 8% |
| 3 | 84 | 32% | 60% | 241 | 92% |
| 4 | - | 0% | MR | - | 0% |
| TOTAL | 263 | 100% | TOTAL | 263 | 100% |

| PRO FORMA FEASIBILITY INDICATORS | | | | | |
|----------------------------------|--------------|-----------------|-----------------------|--|--|
| Pro Forma Underwritten | | | Applicant's Pro Forma | | |
| Debt Coverage | 1.17 | Expense Ratio | 36.1% | | |
| Breakeven Occ. | 84.0% | Breakeven Rent | \$938 | | |
| Average Rent | \$1,035 | B/E Rent Margin | \$97 | | |
| Property Taxes | Exempt | Exemption/PILOT | 0% | | |
| Total Expense | \$4,227/unit | Controllable | \$3,176/unit | | |



| MARKET FEASIBILITY INDICATORS | | | |
|----------------------------------|---------|----------|-----|
| Gross Capture Rate (10% Maximum) | 3.4% | | |
| Highest Unit Capture Rate | 24% | 2 BR/60% | 146 |
| Dominant Unit Cap. Rate | 24% | 2 BR/60% | 146 |
| Premiums (↑60% Rents) | #DIV/0! | #DIV/0! | |
| Rent Assisted Units | N/A | | |

| DEVELOPMENT COST SUMMARY | | | |
|--------------------------|------------|-------------------|--------------|
| Costs Underwritten | | Applicant's Costs | |
| Avg. Unit Size | 1,057 SF | Density | 23.6/acre |
| Acquisition | | \$11K/unit | \$2,800K |
| Building Cost | \$81.00/SF | \$86K/unit | \$22,518K |
| Hard Cost | | \$102K/unit | \$26,745K |
| Total Cost | | \$185K/unit | \$48,610K |
| Developer Fee | \$5,165K | (5% Deferred) | Paid Year: 8 |
| Contractor Fee | \$3,137K | 30% Boost | Yes |

| DEBT (Must Pay) | | | | | CASH FLOW DEBT / GRANT FUNDS | | | | | EQUITY / DEFERRED FEES | | |
|------------------------------|-------|-------|--------------|------|--------------------------------|------|------|--------|-----|---------------------------------|-----------------------------|--------------|
| Source | Term | Rate | Amount | DCR | Source | Term | Rate | Amount | DCR | Source | Amount | |
| Mason Joseph-FHA 221 (d)(4) | 40/40 | 3.58% | \$33,968,500 | 1.17 | | | | | | R4 | \$11,616,704 | |
| | | | | | | | | | | LDG Multifamily, LLC | \$3,024,987 | |
| | | | | | | | | | | Additional (Excess) Funds Req'd | \$0 | |
| | | | | | | | | | | TOTAL EQUITY SOURCES | \$14,641,691 | |
| | | | | | | | | | | TOTAL DEBT SOURCES | \$33,968,500 | |
| TOTAL DEBT (Must Pay) | | | \$33,968,500 | | CASH FLOW DEBT / GRANTS | | | | \$0 | | TOTAL CAPITALIZATION | \$48,610,191 |

CONDITIONS

- 1 Receipt and acceptance before Direct Loan Closing
 - a: Substantially final construction contract with Schedule of Values.
 - b: Updated term sheets with substantially final terms from all lenders
 - c: Substantially final draft of limited partnership agreement.
 - d: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
 - e: A Wetlands and Jurisdictional Waters of the United States Determination Report with a clear determination of the wetland status of the subject site, indicating whether any mitigation is required.
 - f: HUD application with unit mix that is consistent with this underwriting report.
 - g: Updated car share contract with language requiring prior approval for termination by the Director of Watershed Protection as required by City of Austin land code.
- 2 Receipt and acceptance by Cost Certification:
 - a: Documentation that appropriate noise mitigation has been incorporated into the development to bring the calculated noise value within an acceptable level of HUD guidelines.
 - b: If any portion of the site is determined to be a wetland area, certification that compliance with all federal, state and local wetland mitigation requirements has been met.

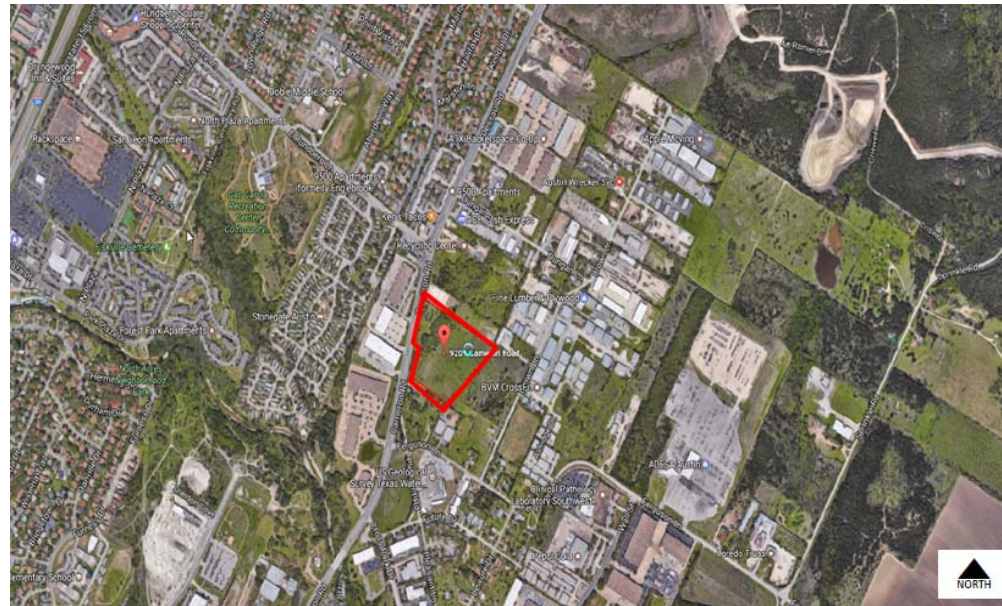
Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

| BOND RESERVATION / ISSUER | |
|---------------------------|-----------------------------|
| Issuer | Austin Affordable PFC, Inc. |
| Expiration Date | 1/18/2018 |
| Bond Amount | \$25,000,000 |
| BRB Priority | Priority 3 |
| Close Date | nd |
| Bond Structure | FHA 221 (d)(4) |

| RISK PROFILE | |
|---|--|
| STRENGTHS/MITIGATING FACTORS | |
| ▫ Experienced Developer | |
| ▫ Location near highways | |
| ▫ Low capture rates | |
| ▫ High affordable occupancies | |
| WEAKNESSES/RISKS | |
| ▫ Land use development parking reductions | |



AERIAL PHOTOGRAPH(S)



1g

BOARD ACTION REQUEST

HOME AND HOMELESS PROGRAMS DIVISION

OCTOBER 12, 2017

Presentation, discussion, and possible action on Conditional Program Year 2017 Emergency Solutions Grants Program Awards

RECOMMENDED ACTION

WHEREAS, the Emergency Solutions Grants (“ESG”) Program is funded by the U.S. Department of Housing and Urban Development (“HUD”);

WHEREAS, the Department released a Notice of Funding Availability (“NOFA”) in January 2017 to identify successful applicants to be awarded funding for Program Years (“PY”) 2017 and if 2018 funds are awarded to the State and there are no performance concerns for 2018;

WHEREAS, the Department expects to receive from HUD approximately \$9,028,982 in PY 2017 and one-time supplemental funding, of which an estimated \$8,667,823 will be awarded to ESG subrecipients and their partners, and \$361,159 will be retained for State administration of the program;

WHEREAS, federal program rules require the Department to commit all funds within 60 days of receipt of an award letter from HUD and the Department has not yet received an award letter from HUD, although the Department has been notified of the commitment from HUD; and

WHEREAS, the Department is proposing awards for PY 2017, conditioned on the receipt of the HUD award letter and funds, and any conditions as proposed by the Executive Award Review Advisory Committee (“EARAC”) and approved at this Governing Board meeting to be able to move forward with the planning and implementation of the 2017 grant as soon as the award letter arrives from HUD;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the award of approximately \$8,667,823 in PY 2017 ESG contracts to the awardees selected through the 2017/2018 ESG NOFA and the local competitions of ESG funding administered on behalf of the Department by the Dallas Metro Homeless Alliance, Tarrant County Homeless Coalition, El Paso Coalition for the Homeless, and Coalition for the Homeless of Houston/Harris County reflected on the Award Log, subject to:

- Resolution of single audit findings by the City of Texarkana prior to the contract start date of November 1, 2017;
- Resolution of multifamily compliance findings by the Bastrop Women’s Center, a partner of Advocacy Outreach, prior to the contract start date of November 1, 2017;

FURTHER RESOLVED, as EARAC has not yet made an award recommendation for The Children’s Center as of the time of Board Book posting; the funds it applied for will be reported on at the meeting;

FURTHER RESOLVED, that with regard to the conditions recommended by EARAC and approved by the Board as conditions of award herein, the Chief of Compliance, with the concurrence of the Executive Director, is hereby authorized and directed to approve minor technical changes, provided that the Chief of Compliance and the Executive Director agree that the conditions, as so changed, will still effectuate the purpose of the Board’s order, and report such changes to the Board for ratification at its next meeting;

FURTHER RESOLVED, if funds become available after the announcement of awards through a supplemental appropriation, return of funds, recapture of funds, or as a result of failure to resolve issues identified above, Subrecipients with partial awards will be increased to amount requested and, if funds over \$50,000 are left after the increase, the funds will be offered to the next highest scoring Applicant that was not originally funded, as provided in the 2017/2018 NOFA; and

FURTHER RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the award of PY 2017 to these awardees, subject to the receipt of PY 2017 funding.

Background

The ESG Program is funded by HUD. The ESG Program’s focus is to assist people to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. ESG funds can be used for the rehabilitation or conversion of buildings for use as emergency shelter for persons experiencing homelessness; the payment of certain expenses related to operating emergency shelters; essential services related to emergency shelters and street outreach for persons experiencing homelessness; and homelessness prevention and rapid re-housing assistance for persons experiencing or at-risk of homelessness.

On January 9, 2017, the Department released a NOFA notifying prospective applicants of the availability of ESG funds for PY 2016. Funds were allocated to the State’s 11 Continuum of Care (“CoC”) regions based on criteria indicated in the NOFA, including the CoC regions’ proportionate share of the State’s homeless population as reported in the annual point in time

count, persons living in poverty, renter cost burden, and 2016 ESG funding. Applicants could apply for funds either through the Department or through the locally-designated competitions, as indicated in the NOFA and further described below. Applications for the Department's portion of the competition were due on July 28, 2017.

The Department received 25 applications requesting more than \$8.9 million for the approximately \$5.1 million available to be awarded in the CoC regions submitting applications to the Department. There were no applicants from the Wichita Falls/Wise, Palo Pinto, Wichita, and Archer Counties CoC, or from the Bryan/College Station/Brazos Valley CoC. For the 25 applications received, recommended awardees were determined based on a standardized scoring instrument that evaluated and scored eligible proposals. All applications were provided a scoring notice and an opportunity to appeal their scores.

On the Department's behalf, CoC Lead Agencies conducted local competitions in four CoCs: Dallas City and County; El Paso City and County; Fort Worth/Arlington/Tarrant County; and City of Houston/Harris County. Applicants in those CoCs did not submit an application to the Department, but submitted an application to the CoC Lead Agency in their regions. The local competitions received 30 applications in total, requesting more than \$9.8 million for the approximately \$3.5 million available to be awarded in CoC regions submitting applications to lead agencies. The local competitions rely on the CoCs Lead Agencies' local expertise to recommend awards through their own application processes based on their knowledge of local needs, priorities, and capacities.

Attachment A reflects all recommended awardees, their original request and the recommended award amount. In most cases, applicants partnered locally to ensure the strongest applications. As such the award list shows an Applicant Name, which is the lead applicant applying for funds and the entity with which the Department will contract; the list also has a field where the partners are identified.

It should be noted that certain partners will receive contracts directly with TDHCA for the Homeless Management Information System ("HMIS") funds. These contracts are a result of HUD's interpretation of an administrative requirement that organizations that use HMIS-comparable databases, which are used for domestic violence and may be used for legal service providers, not receive funds through a Subrecipient that uses an HMIS database.

It should also be noted that award recommendations to the City of Texarkana and Advocacy Outreach are conditioned on resolution of outstanding issues related to monitoring findings or audits as indicated above. If the Bastrop Women's Center does not resolve its finding by November 1st, 2017, Advocacy Outreach will be given 30 calendar days provide a plan to the Department that demonstrates it is able to compensate for the removed partner by providing the services and meeting the targets as described in the submitted Application. Staff is reserving funds but not recommending an award to the Children's Center as issues noted during the Previous Participation Review process were ongoing at the time of Board Book posting. In the event that these issues are not timely resolved before the Board Meeting, the Department is recommending that those funds be held until the next Board meeting.

If ESG funds become available before the earlier of the receipt of the Department's 2018 ESG award letter from HUD or the Board approves 2018 ESG awards, but after the announcement of the 2017 ESG awards through a supplemental appropriation, return of funds, recapture of funds, or as a result of failure to resolve the Previous Participation issues identified above, the 2017 ESG award to the Salvation Army of Temple will be increased up to amount requested and, if funds over \$50,000 are left after the increase, the funds will be offered to the next highest scoring Applicant that was not originally funded, as provided in the 2017/2018 NOFA. Depending on the timing of the receipt, the amount, and the federal year associated with the funds, entities may have to undergo a subsequent Previous Participation Review as further described in 2 CFR §200.331, and 10 TAC §1.302.

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts

| Continuum of Care Number | Continuum of Care (CoC) Location | Application Submissions | Funding Available for 2017 | Funding Requested | Funding Awarded During Competitions | Remaining Balance for Funding Collapse |
|--------------------------|----------------------------------|---|----------------------------|----------------------|-------------------------------------|--|
| TX500 | San Antonio | Directly to the Texas Department of Housing and Community Affairs (TDHCA) | \$636,052 | \$ 1,057,500 | \$ 600,000 | \$ 36,052 |
| TX503 | Austin | Directly to TDHCA | \$571,808 | \$ 569,093 | \$ 569,093 | \$ 2,715 |
| TX600 | Dallas | To the CoC Lead Agency | \$1,219,112 | \$ 5,410,000 | \$ 1,219,112 | \$ - |
| TX601 | Tarrant County | To the CoC Lead Agency | \$608,449 | \$ 605,561 | \$ 608,449 | \$ - |
| TX603 | El Paso | To the CoC Lead Agency | \$286,711 | \$ 1,047,021 | \$ 286,711 | \$ - |
| TX604 | Waco | Directly to TDHCA | \$151,646 | \$ 151,646 | \$ 151,646 | \$ - |
| TX607 | Balance of State | Directly to TDHCA | \$3,134,458 | \$ 6,898,844 | \$ 2,980,344 | \$ 154,114 |
| TX611 | Amarillo | Directly to TDHCA | \$308,381 | \$ 308,381 | \$ 308,381 | \$ - |
| TX624 | Wichita Falls | Directly to TDHCA | \$132,437 | \$ - | \$ - | \$ 132,437 |
| TX700 | Houston | To the CoC Lead Agency | \$1,431,557 | \$ 2,806,631 | \$ 1,431,557 | \$ - |
| TX701 | Bryan College Station | Directly to TDHCA | \$187,212 | \$ - | \$ - | \$ 187,212 |
| Total | | | \$8,667,823 | \$ 18,854,677 | \$8,155,293 | \$ 512,530 |

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts

TX 500 San Antonio Competitive Award Recommendations

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|---|--|-------------|--------------|--------|---|-----------------------------|
| 17500SAMM | San Antonio Metropolitan Ministry, Inc (SAMM) | San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul | San Antonio | \$ 600,000 | 560 | \$ 600,000 | \$ 36,052 |
| 17500FVPS | Family Violence Prevention Services dba The Battered Women and Children's Shelter of Bexar County | n/a | San Antonio | \$ 207,500 | 530 | Not enough to award in CoC Region Competition | n/a |
| 17500SASA | The Salvation Army of San Antonio | n/a | San Antonio | \$ 250,000 | 500 | Not enough to award in CoC Region Competition | n/a |
| Total | | | | \$ 1,057,500 | n/a | \$ 600,000 | \$ 36,052 |

TX 503 Austin Competitive Award Recommendations

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|---|--|--------|------------|--------|-----------------|-----------------------------|
| 17503LW | Youth and Family Alliance dba LifeWorks | The SAFE Alliance (SAFE), Ending Community Homelessness Coalition (ECHO), Front Steps, Inc | Austin | \$ 569,093 | 450 | \$ 569,093 | \$ 2,715 |
| Total | | | | \$ 569,093 | | \$ 569,093 | \$ 2,715 |

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts

TX 600 Dallas Competitive Award Recommendations - Local Competition

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|-----------------------------|--|--------|--------------|--------|-----------------|-----------------------------|
| 17600-10 | Austin Street Center | n/a | Dallas | \$ 250,000 | n/a | \$ 200,964 | \$ 1,018,148 |
| 17600-11 | Bridge Steps | The Salvation Army of Dallas | Dallas | \$ 600,000 | n/a | \$ 200,300 | \$ 817,848 |
| 17600-12 | City House | Alliance Center of Collin County | Dallas | \$ 600,000 | n/a | \$ 200,298 | \$ 617,550 |
| 17600-13 | City Square | n/a | Dallas | \$ 200,000 | n/a | \$ 200,978 | \$ 416,572 |
| 17600-14 | Family Gateway | n/a | Dallas | \$ 250,000 | n/a | \$ 200,964 | \$ 215,608 |
| 17600-15 | Family Place | Legal Aid of NW Texas (may have separate contract for Homeless Management Information System), Promise House | Dallas | \$ 600,000 | n/a | \$ 215,608 | \$ - |
| n/a | Volunteers of America | n/a | Dallas | \$ 225,000 | n/a | \$ - | \$ - |
| n/a | The Source of Hope | n/a | Dallas | \$ 250,000 | n/a | \$ - | \$ - |
| n/a | Shared Housing | Housing Crisis Center, Jewish Family Services, Rainbow Days | Dallas | \$ 285,000 | n/a | \$ - | \$ - |
| n/a | Sharing Life Community Out | n/a | Dallas | \$ 225,000 | n/a | \$ - | \$ - |
| n/a | New Life Individual and Fam | n/a | Dallas | \$ 250,000 | n/a | \$ - | \$ - |
| n/a | Creation of Tomorrow | n/a | Dallas | \$ 250,000 | n/a | \$ - | \$ - |
| n/a | Bosh Jackson's Place | n/a | Dallas | \$ 250,000 | n/a | \$ - | \$ - |
| n/a | Amazing Grace Food Pantry | n/a | Dallas | \$ 200,000 | n/a | \$ - | \$ - |
| n/a | Texas Muslim Women's Four | n/a | Dallas | \$ 225,000 | n/a | \$ - | \$ - |
| n/a | Bridges Safehouse | Transformation Vision Cedar Hill, Hope Mansion, Pathway to Purpose | Dallas | \$ 600,000 | n/a | \$ - | \$ - |
| n/a | Azar Foundation | America Housing Solutions, Agape Provisions Food Bank | Dallas | \$ 150,000 | n/a | \$ - | \$ - |
| Total | | | | \$ 5,410,000 | | \$ 1,219,112 | \$ - |

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts

TX 601 Tarrant County CoC Competitive Award Recommendations - Local Competition

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|------------------------------|--|------------|------------|--------|-----------------|-----------------------------|
| 17601-6 | Safe Haven of Tarrant County | Catholic Charities of Fort Worth, Presbyterian Night Shelter | Fort Worth | \$ 353,350 | n/a | \$ 354,909 | \$ 253,540 |
| 17601-7 | The Salvation Army - Mabec | Center for Transforming Lives, Hands of Hope | Fort Worth | \$ 252,211 | n/a | \$ 253,540 | \$ - |
| Total | | | | \$ 605,561 | | \$ 608,449 | \$ - |

TX 603 El Paso CoC Competitive Award Recommendations - Local Competition

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Funding Available |
|--------------------|--------------------------------|---------------------|---------|--------------|--------|-----------------|-------------------|
| 17603-8 | The Salvation Army - El Paso | n/a | El Paso | \$ 250,000 | 875 | \$ 114,684 | \$ 172,027 |
| 17603-9 | El Paso Human Services Inc | Center for Children | El Paso | \$ 285,350 | 870 | \$ 172,027 | \$ - |
| n/a | Project Vida | n/a | El Paso | \$ 285,350 | 801.25 | \$ - | \$ - |
| n/a | El Paso County | n/a | El Paso | \$ 20,000 | 680 | \$ - | \$ - |
| n/a | Child Crisis Center of El Paso | n/a | El Paso | \$ 206,321 | 585 | \$ - | \$ - |
| Total | | | | \$ 1,047,021 | | \$ 286,711 | \$ - |

TX 604 Waco Competitive Award Recommendations

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|----------------------------|----------|------|------------|--------|-----------------|-----------------------------|
| 17604SAW | The Salvation Army of Waco | n/a | Waco | \$ 151,646 | 580 | \$ 151,646 | \$ - |
| Total | | | | \$ 151,646 | | \$ 151,646 | \$ - |

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts

TX 607 Balance of State Competitive Award Recommendations

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|---------------------------|---|--|----------------|---------------------|---------------|---|------------------------------------|
| 17607COT | City of Texarkana* | Randy Sams' Outreach Shelter, Ark-Tex Council of Governments | Texarkana | \$ 449,786 | 930 | \$ 449,786 | \$ 2,684,672 |
| 17607LFRG | Loaves & Fishes of the Rio Grande Valley, Inc. | Family Crisis Center, La Posada Providencia | Harlingen | \$ 477,986 | 890 | \$ 477,986 | \$ 2,206,686 |
| 17607COD | City of Denton | Christian Community Action, Denton County Friends of the Family, Giving Hope, The Salvation Army of Denton | Denton | \$ 600,000 | 831 | \$ 600,000 | \$ 1,606,686 |
| 17607AO | Advocacy Outreach* | Family Crisis Center (Bastrop Co Women's Shelter), Combined Community Action | Bastrop | \$ 450,000 | 810 | \$ 450,000 | \$ 1,156,686 |
| 17607SAFET | Shelter Agencies for Families in East Texas, Inc. | n/a | Mount Pleasant | \$ 150,000 | 800 | \$ 150,000 | \$ 1,006,686 |
| 17607FOW | Friendship of Women, Inc. | Bishop Enrique San Pedro Ozanam Center, Brownsville Literacy Center, Catholic Charities Rio Grande Valley | Brownsville | \$ 552,572 | 765 | \$ 552,572 | \$ 454,114 |
| 17607SACC | The Salvation Army of Corpus Christi | n/a | Corpus Christi | \$ 150,000 | 750 | \$ 150,000 | \$ 304,114 |
| 17607TCC | The Children's Center, Inc.** | n/a | Galveston | \$ 150,000 | 730 | \$150,000 reserved for potential award | \$ 154,114 |
| 17607MCFS | Mid-Coast Family Services | Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center | Victoria | \$ 450,000 | 730 | Not enough to award in CoC Region Competition | n/a |
| Total*** | | | | \$ 2,980,344 | | \$ 2,980,344 | \$ 154,114 |

*Award contingent on conditions met before November 1, 2017

**Pending potential award recommendation, \$150,000 is reserved from TX-607

***Total requested for TX-607 competition only includes what was funded, but total requests are reflected in the pooled funds below

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts

TX 611 Amarillo Competitive Award Recommendations

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|------------------|---|----------|------------|--------|-----------------|-----------------------------|
| 17611COA | City of Amarillo | The Salvation Army of Amarillo, Guyon Saunders Resource Center, Family Support Services | Amarillo | \$ 308,381 | 373 | \$ 308,381 | \$ - |
| Total | | | | \$ 308,381 | | \$ 308,381 | \$ - |

TX 624 Wichita Falls Competitive Award Recommendations

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|-------------|----------|------|-----------|--------|-----------------|-----------------------------|
| n/a | | | | \$ - | n/a | \$ - | \$ 132,437 |
| Total | | | | \$ - | | \$ - | \$ 132,437 |

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts

TX 700 Houston CoC Competitive Award Recommendations

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|--|--|---------|--------------|--------|--------------------------------------|-----------------------------|
| 17700-3 | Houston Area Community Services (DBA Avenue 360) | Covenant House Texas (Homeless Gay Kids Houston was a partner but their activity was not funded) | Houston | \$ 356,040 | 635 | \$ 200,771 | \$ 1,230,786 |
| 17700-2 | Bridge Over Troubled Water | Bay Area Turning Point | Houston | \$ 600,000 | 571 | \$ 310,470 | \$ 920,316 |
| 17700-5 | The Salvation Army of Houston | SEARCH Homeless Services, Cathedral Health and Outreach Ministries | Houston | \$ 568,091 | 534 | \$ 323,696 | \$ 596,620 |
| 17700-1 | Alliance of Community Assistance Ministries | Humble Area Assistance Ministries, Katy Christian Ministries, Wesley Community Center | Houston | \$ 600,000 | 497 | \$ 286,150 | \$ 310,470 |
| 17700-4 | Coalition for the Homeless | n/a | Houston | \$ 600,000 | 430 | \$ 310,470 | \$ - |
| n/a | The Women's Home | Memorial Assistance Ministries | Houston | \$ 82,500 | 430 | Did not meet threshold requirements. | |
| Total | | | | \$ 2,806,631 | n/a | \$ 1,431,557 | \$ - |

TX 701 Bryan/College Station Competitive Award Recommendations

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|-------------|----------|------|-----------|--------|-----------------|-----------------------------|
| n/a | | | | \$ - | n/a | \$ - | \$ 187,212 |
| Total | | | | \$ - | | \$ - | \$ 187,212 |

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts

Remaining Funding Allocation

| Application Number | Lead Agency | Partners | City | Requested | Scores | Funding Awarded | Remaining Funding Available |
|--------------------|--|---|----------------|--------------|------------------------|------------------------|-----------------------------|
| 17607MCFS | Mid-Coast Family Services | Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center | Victoria | \$ 450,000 | 730 | \$ 450,000 | \$ 62,530 |
| 17607SATPL | The Salvation Army of Temple | Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis | Temple | \$ 450,000 | 715 | \$ 62,530 | \$ - |
| 17607SAB | The Salvation Army of Brazoria County | n/a | Freeport | \$ 150,000 | 710 | \$ - | \$ - |
| 17607COL | City of Lubbock | Lubbock Open Door, Women's Protective Services of Lubbock, Family Promise of Lubbock, The Salvation Army of Lubbock, Alcoholic Recovery Center of Lubbock | Lubbock | \$ 600,000 | 690 | \$ - | \$ - |
| 17607FSST | Family Services of Southeast Texas, Inc | n/a | Beaumont | \$ 150,000 | 670 | \$ - | \$ - |
| 17607SAT | The Salvation Army of Tyler | East Texas Crisis Center, East Texas Cornerstone Assistance Network, The Andrews Center | Tyler | \$ 547,217 | 643 | \$ - | \$ - |
| 17607CCHH | Corpus Christ Hope House, Inc. | n/a | Corpus Christi | \$ 150,000 | 640 | \$ - | \$ - |
| 17607UWGC | United Way of Grayson County | Four Rivers Outreach, Grayson County Women's Crisis Line, The Salvation Army of Sherman | Sherman | \$ 599,783 | 625 | \$ - | \$ - |
| 17607SAG | The Salvation Army of Galveston County | SER - Jobs for Progress of the Texas Gulf Coast | Galveston | \$ 300,000 | 560 | \$ - | \$ - |
| 17607CO | The Gulf Coast Attainable Housing Foundation | The Chosen Ones Outreach Ministries of Galveston, Inc. | Galveston | \$ 300,000 | Application Terminated | Application Terminated | \$ - |
| 17607MDR | Making Dreams Real, Inc. | n/a | | \$ 221,500 | Application Terminated | Application Terminated | \$ - |
| Total | | | | \$ 3,918,500 | | \$ 512,530 | \$ - |

1h

BOARD ACTION REQUEST
HOME AND HOMELESS PROGRAMS DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program (“HOME”) Single Family Programs Homebuyer Assistance (“HBA”) and Tenant-Based Rental Assistance (“TBRA”) Open Cycle Notice of Funding Availability (“NOFA”)

RECOMMENDED ACTION

WHEREAS, through Board action on January 26, 2017, the Texas Department of Housing and Community Affairs made available approximately \$3,000,000 from de-obligated 2015 HOME Single Family funds in an Open Application Cycle NOFA;

WHEREAS, 12 applicants requesting 17 contract awards totaling \$2,857,000 have been awarded funds and \$143,000 remains available to be awarded;

WHEREAS, one additional applicant requesting one contract award of \$23,000 has received a complete review for compliance with program and previous participation requirements;

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) has recommended the approval of the award; and

WHEREAS, following Board approval of the applications presented herein, funding remaining to be awarded under the NOFA will total \$120,000;

NOW, therefore, it is hereby

RESOLVED, that an award of HOME funding from the Single Family Programs HBA and TBRA Open Cycle NOFA totaling \$23,000 is hereby approved in the form presented at this meeting.

BACKGROUND

On December 2, 2016, HUD published an interim final rule making changes with respect to HOME Program commitment and expenditure requirements. Beginning with FY 2015 HOME allocations, HUD is no longer using the cumulative method for measuring compliance with the requirement that Participating Jurisdictions (“PJs”) commit HOME funds within 24 months of obligation. Instead HUD is determining compliance with the deadlines on a grant-specific basis instead of the “cumulative average” approach HUD previously employed. The rule was effective on January 3, 2017.

To ensure that to the extent feasible all HOME funding available from prior year grant funds could be re-committed timely, and in an effort to avoid the potential for a significant amount of funds to

be returned to HUD treasury accounts, staff began pursuing several different strategies as outlined in a prior Board Action Request presented on January 26, 2017. That action resulted in the authorization of an Open Application Cycle NOFA, specifically for HBA and TBRA activities that was later amended on May 25, 2017, to extend the deadline and make the remaining funds available for all HBA and TBRA Applicants. Under the NOFA, the selection of Applicants occurs on a first-come, first-served basis, based on Application receipt date and time. Funds in an amount not to exceed \$100,000 in project funds per application are authorized to be awarded for HBA activities, and funds in an amount not to exceed \$200,000 in project funds per Application are authorized to be awarded for TBRA activities. Applicants can apply for up to three awards total, provided that separate Applications are submitted for each request, and the service areas are mutually exclusive and do not overlap.

EARAC met on October 2, 2017, and recommended approval of the award.

Staff recommends the following administrator receive an award.

Award Recommendation Log

| App # | HOME Applicant | Activity | Award | Region | Area Served |
|--------------|--------------------------|-----------------|-----------------|---------------|--------------------|
| 2017-1015 | Temple Housing Authority | HBA | \$23,000 | 8 | City of Temple |
| | | TOTAL | \$23,000 | | |

1i

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action to approve a Material Amendment to the Housing Tax Credit (“HTC”) Land Use Restriction Agreement (“LURA”) for Las Villas De Merida Apartments (#02009)

RECOMMENDED ACTION

WHEREAS, Las Villas De Merida Apartments (the “Development”) applied for 9% HTC in 2001 and received an award of 9% HTC in 2002 to construct 160 multifamily units in San Antonio, Bexar County;

WHEREAS, the LURA encumbers approximately of 10.01 acres and the Development Owner, through its General Partner (Las Villas de Merida Apartments I, LLC) has requested the Department to release 2.893 acres of the Development site reflected in the legal description in the LURA;

WHEREAS, the decrease in acreage results in a 28.9% decrease in the residential density and, therefore, results in a modification of the residential density of at least five percent under Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(a)(3)(F) and requires Board approval;

WHEREAS, the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(a) to place this request before the Board; and

WHEREAS, the decrease in site acreage and resulting modification to the residential density do not negatively affect the current Development, impact the operations of the property, or change the amount of tax credits awarded;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Las Villas De Merida 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

Las Villas De Merida Apartments applied for 9% HTC in 2001 and received an award of 9% HTC in 2002. The Development consists of 19 residential buildings containing 160 residential units on approximately 10 acres. In a letter dated August 4, 2017, the Development Owner (Las Villas De Merida Apartments, L.P.) through its General Partner (Las Villas de Merida Apartments I, LLC – Fernando S. Godinez, President/CEO), has requested the Department’s approval to release a 2.893-acre portion of the Development site currently encumbered by the HTC LURA.

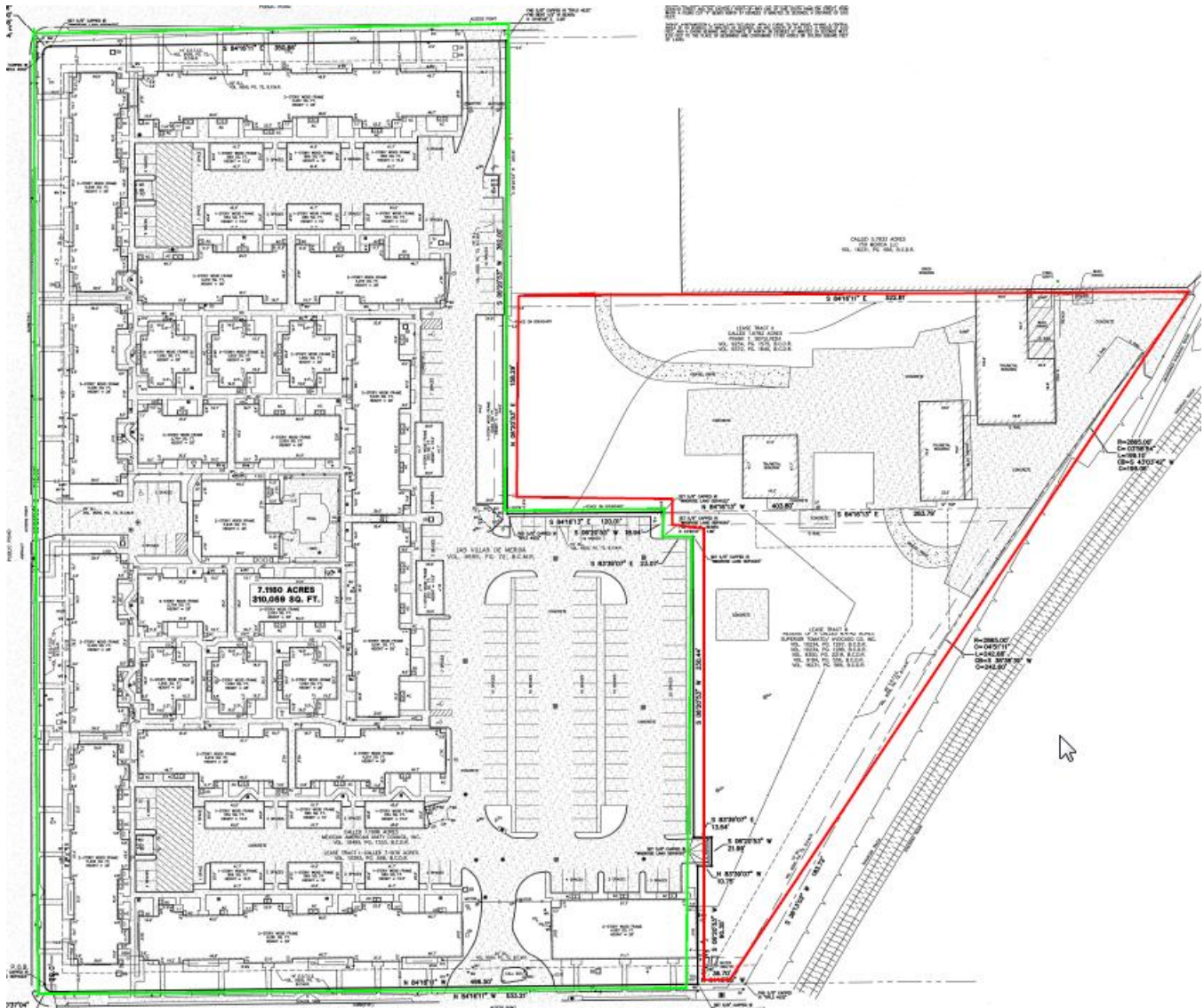
The Development Owner has been faced with numerous financial and physical challenges that have led to a decline in occupancy and an increase in the deferred maintenance due to lack of funds. In an effort to turn this Development around and get it back into compliance, a request was submitted to the Department in May 2016, for approval of a transfer of ownership as a result of the sale of the property. The current syndicator, Alden Torch Financial, LLC, approved the sale of the property as the existing owner has faced many challenges with the Development, including physical and file compliance issues and even loss of tax credits for an entire building of the Development. The proposed buyer is an affiliate entity of The Zieben Group (“Zieben”). The new ownership structure proposed to continue to meet the requirements of the LURA, including material participation by a qualified nonprofit organization. The proposed new co-General Partners will be ZG Real Estate Holdings, Ltd., solely owned by Lee Zieben and UPCDC Texas, Inc., a 501(c)(3) nonprofit organization. A corrective action plan was also submitted with the ownership transfer request in 2016 by the proposed buyer, Zieben, to address the physical condition of the property and provide the Department with a proposed timeline to correct necessary repairs to address noncompliant issues. The Department, based upon the information provided in the ownership transfer request and the buyer’s commitment to turn this Development around and get it back into compliance, approved the transfer on December 6, 2016.

Since that time, staff has been contacted by representatives for the buyer, Zieben, providing updates to the transfer. On January 10, 2017, representatives of the buyer confirmed that closing on the purchase of this Development had not yet occurred but was expected to close on January 31, 2017, citing delays were due to finalization of the purchase and sale agreement. The representative also informed the Department that once the purchase agreement was finalized and executed, the buyer would likely also need to amend the corrective action plan timeline to 18 months versus the 12 months originally proposed to complete all necessary repairs.

Presently, the request to amend the HTC LURA to release a portion of the Development site is to continue working to finalize the sale of this property. According to the request letter and discussions with the buyer’s representatives, the site consists of approximately 10 acres. All of the buildings, parking areas, driveways, and other improvements utilized in connection with the operation of the Development are located on 7.118 acres. The owner’s letter further states that the remaining 2.893 acres of land encumbered by the LURA are not used in any way for the operation of this Development. The Development Owner has title to the unused 2.893 acres by way of a long-term ground lease. In order to pursue the sale of the property, the Development Owner must obtain the fee owners’ approval to transfer the leasehold estate, but has been unsuccessful in obtaining that consent. Zieben has agreed to move forward with purchasing the Development provided the Department can approve a release of the unused portion that cannot be conveyed at this time.

A survey of the Development site is provided below to indicate the portion of the site that would remain encumbered by the Department’s LURA (green boxed area) and the 2.893-acre portion (red boxed area) requested to be released.

Development Site Survey



Staff has reviewed the original application, the underwriting report, and the cost certification submittal and has concluded that the decrease in site acreage would not have affected the application score and does not change the tax credit allocation awarded.

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b)(3). The Development Owner held a public hearing on the matter on August 25, 2017, at 10:00 a.m. at the Development's management office/clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the request to release the 2.893 acres from the HTC LURA. An amendment to the LURA will be prepared with a new legal description for the Development Site upon approval of this request.

Las Villas de Merida Apartments I, LLC
2300 W. Commerce, Suite 200
San Antonio, Texas 78207

August 4, 2017

CERTIFIED MAIL #: 7000 0520 0023 3087 0575

Dee Patience
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 02009 Las Villas de Merida Apartments (the "**Apartment Complex**")

Dear Ms. Patience:

The undersigned is the General Partner (herein so called) of Las Villas de Merida Apartments, L.P., a Texas limited partnership (the "**Partnership**"), the current owner of the Apartment Complex. This letter constitutes a request for a material LURA amendment in order to remove a portion of the land from the encumbrance of the LURA.

Background Information

Currently, the land that is subject to the terms of the LURA consists of approximately 10.01 acres. All of the buildings, parking areas, driveways, and all other improvements utilized in connection with the operation of the Apartment Complex are located on 7.118 acres (the "**Apartment Property**"). The remaining 2.893 acres of land subject to the LURA (the "**Unused Property**") are not used in any way for the operation of the Apartment Complex. The Partnership has title to the Unused Property by way of long-term ground lease. Attached hereto as Exhibit A is a survey showing the boundaries of the Apartment Property highlighted in green and the boundaries of the Unused Property highlighted in red. If an electronic copy of the survey is required, we are happy to provide it.

Release of Portion of Legal Description

The Partnership has entered into a purchase contract with an experienced affordable housing owner (the "**Purchaser**") who has agreed to purchase the Apartment Complex subject to the terms of the LURA. Pursuant to the purchase contract, the Partnership is required to convey to Purchaser the fee estate in the Apartment Property and the leasehold interest in the Unused Property. The Partnership's leasehold interest in the Unused Property is pursuant to ground leases that require the fee owners' approval in connection with a transfer of the leasehold estate. The Partnership has been unable to obtain this consent. Since the Unused Property does not serve the Apartment Complex in any way, the Purchaser has agreed to proceed with the purchase of the Apartment Complex, provided that the Unused Property is removed from the LURA. Therefore, the Partnership respectfully requests that the legal description currently attached to the LURA be deleted and the legal description of the Apartment Property set forth on Exhibit B attached hereto be inserted in lieu thereof:

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the enclosed is a fee in the amount of \$2500. In addition, the General Partner, acting on behalf of the Partnership, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the General Partner, acting on behalf of the Partnership, will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the General Partner, acting on behalf of the Partnership, requests staff recommendation, in support of this request, to be considered at the September 7, 2017 TDHCA Board meeting.

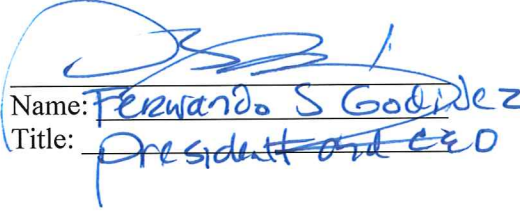
Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

Las Villas de Merida Apartments I, LLC,
a Texas limited liability company

By: Mexican American Unity Council,
a Texas non-profit corporation,
its sole member

By:


Name: Fernando S Godinez
Title: President and CEO

Attachments

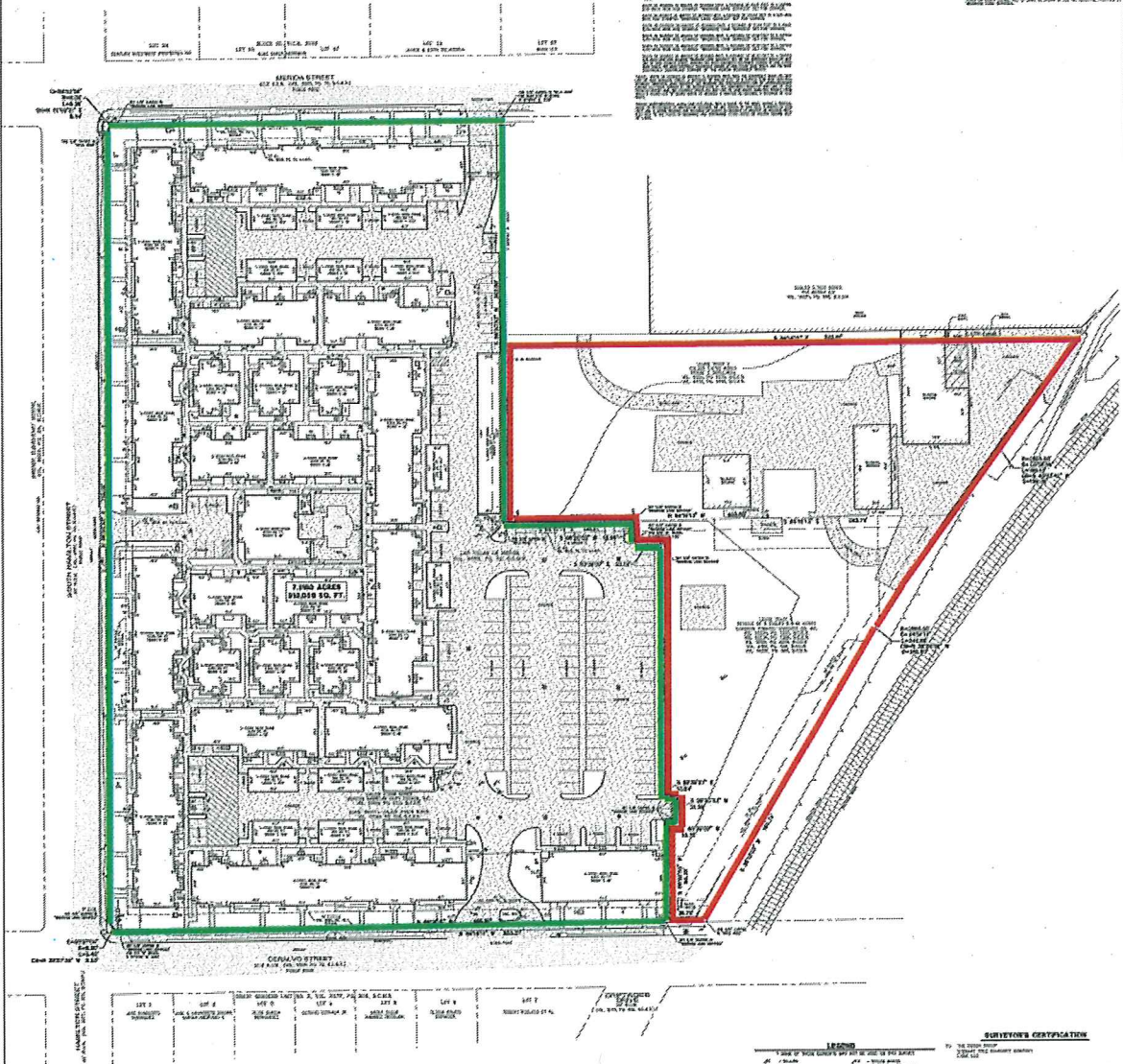
cc: Zieben Group
Reimer & Braunstein LLP
Locke Lord LLP



DESCRIPTION TRACT A
 [Detailed description of Tract A, including lot numbers and area details.]

DESCRIPTION TRACT B
 [Detailed description of Tract B, including lot numbers and area details.]

DESCRIPTION TRACT C
 [Detailed description of Tract C, including lot numbers and area details.]



FIRM
 FLOOD INSURANCE INFORMATION
 FEDERAL EMERGENCY MANAGEMENT AGENCY
 4845 LICKING POND ROAD
 FORT BELLEVILLE, MISSOURI 63033
 (616) 224-6666
 WWW.FIRM.GOV

GENERAL NOTES

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. THE SHOWN DIMENSIONS ARE TO THE CENTER OF THE ROAD.
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SCHEDULE 'B' NOTES

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
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LEGEND

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| 6. [Symbol] | 6. [Symbol] | 6. [Symbol] | 6. [Symbol] |
| 7. [Symbol] | 7. [Symbol] | 7. [Symbol] | 7. [Symbol] |
| 8. [Symbol] | 8. [Symbol] | 8. [Symbol] | 8. [Symbol] |
| 9. [Symbol] | 9. [Symbol] | 9. [Symbol] | 9. [Symbol] |
| 10. [Symbol] | 10. [Symbol] | 10. [Symbol] | 10. [Symbol] |

SURVEYOR'S CERTIFICATION

I, the undersigned, being a duly licensed Surveyor in the State of Arizona, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner of the land described herein.

WINDROSE
 LAND SURVEYING & PLANNING
 1000 N. CENTRAL AVENUE, SUITE 100
 PHOENIX, ARIZONA 85004
 (602) 254-1111
 WWW.WINDROSELANDSURVEYING.COM

DESCRIPTION

A TRACT OR PARCEL CONTAINING 7.1180 ACRES OR 310,059 SQUARE FEET OF LAND BEING ALL OF A CALLED 7.1996 ACRE TRACT OF LAND CONVEYED TO MEXICAN AMERICAN UNITY COUNCIL, INC., AS RECORDED IN VOL. 10499, PG. 1333, BEXAR COUNTY DEED RECORDS (B.C.D.R.) BEING CUT OF LOT 53, BLOCK 39, OF N.C.B. 3698, AND BEING PART OF LAS VILLAS DE MERIDA, AS RECORDED IN VOL. 9555, PG. 72, OF THE BEXAR COUNTY MAP RECORDS (B.C.M.R.) SITUATED IN THE SAN ANTONIO TOWN TRACT, ABSTRACT NO. 20, BEXAR COUNTY, TEXAS, SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83):

BEGINNING AT A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET AT THE NORTHWESTERLY END OF A CURVED CUT-BACK CORNER AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF CERALVO STREET (57.8 FEET WIDE) AS RECORDED IN VOL. 9555, PG. 72, B.C.M.R. AND THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH HAMILTON STREET (60 FEET WIDE) AS RECORDED IN VOL. 9555, PG. 72, B.C.M.R.;

THENCE, NORTH 06 DEGREES 20 MINUTES 53 SECONDS EAST, WITH THE EASTERLY RIGHT-OF-WAY LINE OF SAID SOUTH HAMILTON STREET, A DISTANCE OF 712.00 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "RPLS 4532" FOUND AT THE SOUTHWESTERLY END OF A CURVED CUT-BACK CORNER AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF SAID SOUTH HAMILTON STREET AND THE SOUTHERLY RIGHT-OF-WAY LINE OF MERIDA STREET (57.8 FEET WIDE) AS RECORDED IN VOL. 9555, PG. 72, B.C.M.R.;

THENCE, NORTHEASTERLY, ALONG SAID CUT-BACK, WITH A CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 89 DEGREES 22 MINUTES 56 SECONDS, AN ARC LENGTH OF 9.36 FEET, A RADIUS OF 6.00 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 51 DEGREES 02 MINUTES 21 SECONDS EAST, 8.44 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET AT THE NORTHERLY END OF SAID CUT-BACK;

THENCE, SOUTH 84 DEGREES 16 MINUTES 11 SECONDS EAST, WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID MERIDA STREET, A DISTANCE OF 350.66 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "RPLS 4532" FOUND ON THE WESTERLY LINE OF A CALLED 5.7833 ACRE TRACT OF LAND CONVEYED TO 750 MERIDA LLC, AS RECORDED IN VOL. 16231, PG. 566, B.C.D.R., AND MARKING THE MOST NORTHERLY NORTHEAST CORNER OF SAID 7.1996 ACRE TRACT AND THE HEREIN DESCRIBED TRACT, FROM WHICH A BENT 1/2-INCH IRON ROD FOUND MARKING THE NORTHWEST CORNER OF SAID 5.7833 ACRE TRACT BEARS NORTH 10 DEGREES 48 MINUTES 49 SECONDS EAST, A DISTANCE OF 2.28 FEET;

THENCE, WITH THE COMMON LINE OF SAID 5.7833 ACRE TRACT, AND SAID 7.1996 ACRE TRACT, AS FOLLOWS:

SOUTH 06 DEGREES 20 MINUTES 53 SECONDS WEST, A DISTANCE OF 362.00 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "RPLS 4532" FOUND FOR CORNER;

SOUTH 84 DEGREES 16 MINUTES 13 SECONDS EAST, A DISTANCE OF 120.01 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR CORNER;

SOUTH 06 DEGREES 20 MINUTES 53 SECONDS WEST, A DISTANCE OF 18.94 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR CORNER, FROM WHICH A FOUND 3/8-INCH IRON ROD BEARS NORTH 43 DEGREES 40 MINUTES 21 SECONDS EAST, A DISTANCE OF 1.80 FEET;

SOUTH 83 DEGREES 39 MINUTES 07 SECONDS EAST, A DISTANCE OF 23.07 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR CORNER;

SOUTH 06 DEGREES 20 MINUTES 53 SECONDS WEST, A DISTANCE OF 230.44 FEET TO A 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR CORNER;

SOUTH 83 DEGREES 39 MINUTES 07 SECONDS EAST, A DISTANCE OF 13.64 FEET TO A POINT 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR CORNER;

SOUTH 06 DEGREES 20 MINUTES 53 SECONDS WEST, A DISTANCE OF 21.99 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR CORNER;

NORTH 83 DEGREES 39 MINUTES 07 SECONDS WEST, A DISTANCE OF 10.75 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR CORNER;

SOUTH 06 DEGREES 20 MINUTES 53 SECONDS WEST, A DISTANCE OF 90.35 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID CERALVO STREET, MARKING THE MOST SOUTHERLY SOUTHWEST CORNER OF SAID 5.7833 ACRE TRACT, THE MOST SOUTHERLY SOUTHEAST CORNER OF SAID 7.1996 ACRE TRACT, AND THE MOST SOUTHERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 84 DEGREES 16 MINUTES 11 SECONDS WEST, WITH THE NORTHERLY RIGHT-OF-WAY LINE OF SAID CERALVO STREET, A DISTANCE OF 496.50 FEET TO A CAPPED 5/8-INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE SOUTHEASTERLY END OF AFOREMENTIONED CURVED CUT-BACK CORNER AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF SAID CERALVO STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF SAID SOUTH HAMILTON STREET, FROM WHICH A FOUND CUT "X" BEARS NORTH 57 DEGREES 11 MINUTES 32 SECONDS, A DISTANCE OF 0.53 FEET;

THENCE, NORTHWESTERLY, ALONG SAID CUT-BACK, WITH A CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 90 DEGREES 37 MINUTES 04 SECONDS, AN ARC LENGTH OF 9.49 FEET, A RADIUS OF 6.00 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 38 DEGREES 57 MINUTES 38 SECONDS WEST, 8.53 FEET TO THE PLACE OF BEGINNING AND CONTAINING 7.1180 ACRES OR 310,059 SQUARE FEET OF LAND.

Las Villas de Merida Apartments, L.P.,
2300 W. Commerce, Suite 200
San Antonio, Texas 78207

July 26, 2017

Dear Resident:

Las Villas de Merida Apartments (the "**Community**") is owned by Las Villas de Merida Apartments L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

In addition to the land on which the Community is located, the Owner owns a leasehold interest in adjacent land which is encumbered by a rental restriction agreement (the "**LURA**"). The adjacent land does not serve the Community in any way, so Owner is asking the Department to remove the adjacent land from the restrictions of the LURA.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **August 25, 2017** at **10:00** a.m.

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

We appreciate that Las Villas de Merida Apartments is your home and we invite you to attend and give your input on this proposal.


Thank you for choosing Las Villas de Merida Apartments as your home.

Sincerely,

Las Villas de Merida Apartments, L.P.,
a Texas limited partnership

By: Las Villas de Merida Apartments I, LLC,
a Texas limited liability company,
Its General Partner

By:


Name: Fernando S. Godinez
Title: President and CEO

Las Villas de Merida Apartments, L.P.,
2300 W. Commerce, Suite 200
San Antonio, Texas 78207

July 26, 2017

Mayor Ron Nirenburg
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78205

Dear Mayor Nirenburg:

Las Villas de Merida Apartments (the "**Community**") is owned by Las Villas de Merida Apartments L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**")

In addition to the land on which the Community is located, the Owner owns a leasehold interest in adjacent land which is encumbered by a rental restriction agreement (the "**LURA**"). The adjacent land does not serve the Community in any way, so Owner is asking the Department to remove the adjacent land from the restrictions of the LURA.

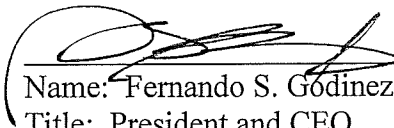
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We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Las Villas de Merida Apartments, L.P.
a Texas limited partnership

By: Las Villas de Merida Apartments I, LLC,
a Texas limited liability company,
Its General Partner

By: 
Name: Fernando S. Godínez
Title: President and CEO

Las Villas de Merida Apartments, L.P.
2300 W. Commerce, Suite 200
San Antonio, Texas 78207

July 26, 2017

TCH IV, LLC
c/o Alden Torch Financial LLC
15260 Ventura Boulevard, Suite 600
Los Angeles, California 91403

To Whom It May Concern:

Las Villas de Merida Apartments (the "**Community**") is owned by Las Villas de Merida Apartments L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**")

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In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner's other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **August 25, 2017** at **10:00 a.m.**

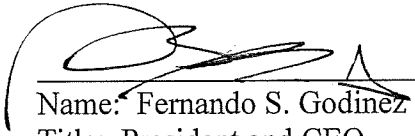
We invite you to attend and give your input on this proposal.

Sincerely,

Las Villas de Merida Apartments, L.P.
a Texas limited partnership

By: Las Villas de Merida Apartments I, LLC,
a Texas limited liability company,
Its General Partner

By:


Name: Fernando S. Godinez
Title: President and CEO

Las Villas de Merida Apartments, L.P.
2300 W. Commerce, Suite 200
San Antonio, Texas 78207

July 26, 2017

AMTAX Holding 2011-YYY, LLC
c/o Alden Torch Financial LLC
15260 Ventura Boulevard, Suite 600
Los Angeles, California 91403

To Whom It May Concern:

Las Villas de Merida Apartments (the "**Community**") is owned by Las Villas de Merida Apartments L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**")

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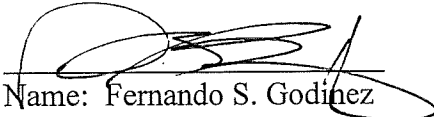
We invite you to attend and give your input on this proposal.

Sincerely,

Las Villas de Merida Apartments, L.P.
a Texas limited partnership

By: Las Villas de Merida Apartments I, LLC,
a Texas limited liability company,
Its General Partner

By:


Name: Fernando S. Godínez
Title: President and CEO

Las Villas de Merida Apartments, L.P.,
2300 W. Commerce, Suite 200
San Antonio, Texas 78207

July 26, 2017

Representative Justin Rodriguez
6502 Bandera Road, Suite 104
San Antonio, Texas 78283

Dear Representative Rodriguez:

Las Villas de Merida Apartments (the "**Community**") is owned by Las Villas de Merida Apartments L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**")

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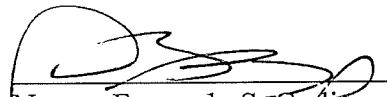
We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Las Villas de Merida Apartments, L.P.
a Texas limited partnership

By: Las Villas de Merida Apartments I, LLC,
a Texas limited liability company,
Its General Partner

By:


Name: Fernando S. Godínez
Title: President and CEO

Las Villas de Merida Apartments, L.P.
2300 W. Commerce, Suite 200
San Antonio, Texas 78207

July 26, 2017

Senator José Menéndez
6502 Bandera Road, Suite 104
San Antonio, Texas 78283

Dear Senator Menéndez:

Las Villas de Merida Apartments (the "**Community**") is owned by Las Villas de Merida Apartments L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**")

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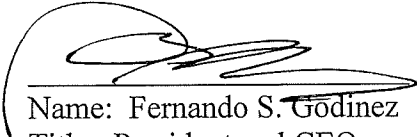
We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Las Villas de Merida Apartments, L.P.
a Texas limited partnership

By: Las Villas de Merida Apartments I, LLC,
a Texas limited liability company,
Its General Partner

By:


Name: Fernando S. Godinez
Title: President and CEO

Las Villas de Merida Apartments, L.P.,
2300 W. Commerce, Suite 200
San Antonio, Texas 78207

July 26, 2017

Shirley Gonzales, Councilwoman
City Hall Office
P.O. Box 839966
San Antonio, TX 78283

Dear Councilwoman Gonzales:

Las Villas de Merida Apartments (the "**Community**") is owned by Las Villas de Merida Apartments L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**")

In addition to the land on which the Community is located, the Owner owns a leasehold interest in adjacent land which is encumbered by a rental restriction agreement (the "**LURA**"). The adjacent land does not serve the Community in any way, so Owner is asking the Department to remove the adjacent land from the restrictions of the LURA.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on August 25, 2017 at 10:00 a.m.

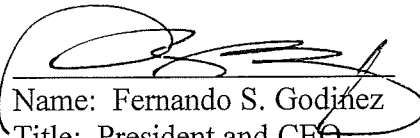
We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Las Villas de Merida Apartments, L.P.
a Texas limited partnership

By: Las Villas de Merida Apartments I, LLC,
a Texas limited liability company,
Its General Partner

By:


Name: Fernando S. Godínez
Title: President and CEO

Las Villas de Merida

8/25/17 Resident Meeting to discuss LURA amendment to remove portion of land.

Meeting Notes:

Start time: 10:15am

10 residents were present (see attached sign in sheet).

Residents were given a few minutes to enjoy refreshments before the meeting officially started.

Copies of the "Exhibit A" map were passed around to the residents and the letter, submitted to TDHCA requesting an amendment to the land used by the property, was explained to everyone present.

Several residents expressed concerns regarding how this would affect parking but they were reassured that the back parking lot, in front of Building 16, would not be affected by the proposed change to the LURA since that was included in the Apartment property listed in the letter.

No other questions were asked regarding the proposed changes.

End time: 10:47am

Las Villas de Merida
Meeting Date: 08/25/2017
Resident Sign-in

| Name | Unit # | Phone # | Email |
|--------------------------|--------|---------|-------|
| Amiriel Dizon | | | |
| Amanda Piña | | | |
| Chris | | | |
| Raymond Abrego | | | |
| Robert Perez | | | |
| Bianette Rodriguez | | | |
| Priscilla Mainez | | | |
| SONIA VELAZ | | | |
| Frances Luna | | | |
| Diane Luna | | | |
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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action to approve a Material Amendment to the Housing Tax Credit (“HTC”) Land Use Restriction Agreement (“LURA”) for Fallbrook Ranch Apartments (HTC #02080)

RECOMMENDED ACTION

WHEREAS, Fallbrook Ranch Apartments (the “Development”) received a 9% HTC award in 2002 to acquire 196 multifamily units in Houston, Harris County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (“ROFR”) to purchase the Development and for having a Historically Underutilized Business (“HUB”), namely Investors Management Corp., participate in the ownership of the Development;

WHEREAS, the LURA for the Development requires a two-year ROFR period and requires that throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall hold an ownership interest, and must maintain regular, continuous, and substantial participation in the development and operation of the Development;

WHEREAS, the Development is within the Compliance Period, as defined in the LURA;

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

WHEREAS, removal of a HUB requirement from the LURA is a non-material amendment under 10 TAC §10.405(b)(1), and amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2);

WHEREAS, the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing at which no negative public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Fallbrook Ranch 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 Development was approved in 2002 for a 9% HTC award to acquire 196 multifamily units in Houston, Harris County. In a letter dated August 9, 2017, Fallbrook Ranch, Ltd. (the “Development Owner”) through its HUB General Partner (Investors Affordable Housing Group IV, LLC, Darlene Smith Guidry, Manager) requested approval to amend the LURA related to the ROFR provision and to eliminate the requirement for a HUB to hold an ownership interest and to maintain regular, continuous, and substantial participation in the development and operation of the Development in order to facilitate a proposed sale of the property.

The additional use restrictions in the current LURA require, among other things, an extended 55 year Compliance Period, material participation by a HUB throughout the Compliance Period and a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization if at any time after the fifteenth year of the Compliance Period the owner decides to sell the property.

The request letter states that the Development Owner desires to pursue a proposed sale of the property. Therefore, the HUB General Partner is requesting approval to remove the HUB requirement and has stated that it is acting of its own volition in making this request, and that the HUB’s participation regarding the Development has been substantive and meaningful and will continue to be until the sale is effectuated. The HUB General Partner intends to remain as General Partner of this Development until the anticipated sale is closed and ownership is transferred to a new owner, subject to the Department’s review and approval of said transfer.

In 2015, the Texas Legislature passed HB 3576 which amended Tex. Gov’t Code §2306.6725 to allow for a 180-day ROFR period and §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department’s 2017 Uniform Multifamily Rules, Subchapter E, §10.407 implemented administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under the Department’s rule at Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on August 7, 2017, at 9:30 a.m. at the Development’s management office/clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the LURA amendment as presented herein.



Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED

Date Submitted: 8/14/2017

Amendment Requested: *LURA Amendment,*

Has the change been implemented? *No*

Award Stage: *Compliance Period (After 8609s)*

NOTE: Material Application or LURA Amendment requests must be received 45 days before the Board Meeting.

Contact your Asset Manager if you are unsure what type of Amendment to request: <https://www.tdhca.state.tx.us/asset-management/contacts.htm>

DEVELOPMENT INFORMATION

Dev. Name: Fallbrook Ranch

File No. / CMTS No.: 02080 /

CONTACT INFORMATION

Request Submitted By: Rebecca Rizo / Cynthia Bast

Phone #/Email: (512) 305-4781 /512/305-4707

SECTION 1: COVER LETTER

A cover letter ***MUST*** be submitted with your request. Review your cover letter to ensure it includes:

- The change(s) requested
- The reason the change is necessary
- The good cause for the change
- An explanation of whether the amendment was reasonably foreseeable or preventable at the time of Application

SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You ***MUST*** provide information about any and all changes made from the time of Application (or as last approved by the Department) in your request, including any items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Development Financing Exhibits – if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets (or executed Loan documents and LPA, if the loan has closed) must be submitted
- Signed Statement of No Financial Impact – if no sources, terms, conditions, or amount of financing will be impacted or changed by your amendment request, the Owner must sign and submit a statement to this effect
- Revised Application Exhibits/Documents Reflecting or Supporting All Requested Changes – revised site plans, surveys, Building and Unit Configuration exhibit, etc.
- Material Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, \$3,500 for third or more. (Applicable to Non-Material Amendments only if changes have been implemented prior to Amendment approval) – *N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)*

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Subchapter E, §10.405(a)(3)*):

- | | | |
|---|---|---|
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Scope of tenant services | <input type="checkbox"/> Exclusion of reqs in Subchapters B & C |
| <input type="checkbox"/> Number of units* | <input type="checkbox"/> Reduction of 3%+ in unit sq ft | <input type="checkbox"/> Other |
| <input type="checkbox"/> Bedroom mix | <input type="checkbox"/> Reduction of 3%+ common area | |
| <input type="checkbox"/> Architectural design | <input type="checkbox"/> Residential density (5%+ change) | |

If “Number of units” is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

- Written confirmation from the lender *and* syndicator that the development is infeasible without the adjustment in units
- Evidence supporting the need for the adjustment in units

NOTE: **The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).*

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, *§10.405(b)(2)*):

- | | | |
|--|--|--------------------------------|
| <input type="checkbox"/> Reductions in the number of LI units | <input type="checkbox"/> Change in Target Population | |
| <input type="checkbox"/> Changes to income or rent restrictions | <input type="checkbox"/> Removal of Non-profit | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Change in ROFR period or other ROFR provisions | | |

The following additional items are attached for consideration or will be forthcoming:

- Draft Notice of Public Hearing* Evidence of public hearing*

NOTE: **Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.*

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Identify all non-material changes that have been or will be made (Contact your Asset Manager if you are unsure of whether your request is non-material):

- Amendment is requesting a change in Developer(s) or Guarantor(s) and Previous Participation forms are attached.

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Identify non-material amendments requested to the LURA:

Short Summary Regarding LURA Changes

SECTION 4C: NOTIFICATION ITEM SUMMARY

Identify any notification items from the time of application:

Short Summary Regarding LURA Changes

FALLBROOK RANCH, LTD.
5325 Katy Freeway, Suite 1
Houston, Texas 77007-2287

August 9, 2017

VIA HAND DELIVERY

Lucy Trevino
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 02080; Fallbrook Ranch (the "**Property**")

Dear Lucy:

The undersigned is the General Partner (herein so called) of Fallbrook Ranch, Ltd., a Texas limited partnership (the "**Partnership**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to: (1) remove the ongoing requirement for participation by a historically underutilized business (a "**HUB**") and (2) modify the two-year Right of First Refusal ("**ROFR**") period.

Request for HUB Restriction Removal

The General Partner was originally formed with joint ownership by Hettig Development Group III, Ltd. ("**Hettig**") and Investors Management Corporation ("**IMC**"), the latter of which is designated as a HUB and maintains a strong business relationship with Hettig. The Partnership is planning a disposition as the end of the Compliance Period approached. A potential purchaser, which is a non-profit organization, has been identified and is expected to purchase the Partnership interests, subject to LURA requirements. The purpose of this request is to help the Partnership prepare for the proposed transfer of Partnership interests.

The LURA for this Property requires ownership participation by a HUB. Section 10.406(f) of the Rules recognizes that a LURA can be amended or remove the ongoing HUB participation requirement. The General Partner requests that TDHCA remove the HUB requirement from its LURA to facilitate a proposed disposition of the Partnership interests, which will be transferred to a non-profit organization. In accordance with the Rules, the General Partner certifies to TDHCA as follows:

(1) IMC, as the selling HUB, acted of its own volition in making this request and was not removed from its position.

(2) IMC's participation as the HUB with regard to the Property is substantive and meaningful, and will continue to be so until the transfer of interest is effectuated and approved by TDHCA.

Request to Amend the ROFR Period

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(F) of the Rules allows for a LURA amendment in order to conform a ROFR period to the period described in Section 2306.6726. Therefore the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period, also permitting a proposed transfer of Partnership interests.

LURA Amendment

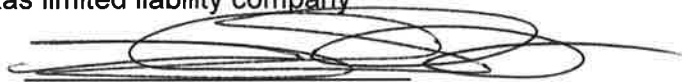
In accordance with Section 10.405(b) of the Rules, the Partnership, is delivering a fee in the amount of \$2500. In addition, the Partnership, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the Partnership, will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership, requests staff recommendation, in support of this request, to be considered at the October 12, 2017 TDHCA Board meeting.

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

Sincerely,

Investors Affordable Housing Group IV, LLC,
a Texas limited liability company

By:



Darlene Smith Guidry, Manager

FALLBROOK RANCH, LTD.
5325 Katy Freeway, Suite 1
Houston, Texas 77007-2287

July 31, 2017

Dear Resident:

Fallbrook Ranch (the "**Community**") is owned by Fallbrook Ranch, Ltd.. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

The Owner is currently structured to include Investors Affordable Housing Group IV, LLC, a Texas limited liability company ("**General Partner**"), as the general partner. The General Partner was originally formed with joint ownership by Hettig Development Group III, Ltd. ("**Hettig**") and Investors Management Corporation ("**IMC**"), the latter of which is designated as a State of Texas certified Historically Underutilized Business ("**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner desires to have this provision removed from its contract to facilitate a proposed disposition of Partnership interests and, therefore, is requesting the Department's approval to remove the ongoing requirement for HUB participation from its contract.

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

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community's management office/clubhouse on **August 7, 2017 at 9:30 a.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their October 12, 2017 meeting.

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

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

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

We appreciate that Fallbrook Ranch is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Fallbrook Ranch as your home.

Sincerely,

FALLBROOK RANCH, LTD.,
a Texas limited partnership

By: Investors Affordable Housing Group IV, LLC,
a Texas limited liability company,
its general partner

By:



Darlene Smith Guidry, Manager

FALLBROOK RANCH, LTD.
5325 Katy Freeway, Suite 1
Houston, Texas 77007-2287

July 31, 2017

Hudson Housing Capital
630 Fifth Avenue, 28th Floor
New York, NY 10111

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

Sincerely,

FALLBROOK RANCH, LTD.,
a Texas limited partnership

By: Investors Affordable Housing Group IV, LLC,
a Texas limited liability company,
its general partner

By:



Darlene Smith Guidry, Manager

FALLBROOK RANCH, LTD.
5325 Katy Freeway, Suite 1
Houston, Texas 77007-2287

July 31, 2017

Walker & Dunlop, LLC
P.O. Box 90498
Chicago, IL 60698-0498

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

Sincerely,

FALLBROOK RANCH, LTD.,
a Texas limited partnership

By: Investors Affordable Housing Group IV, LLC,
a Texas limited liability company,
its general partner

By: 
Darlene Smith Guidry, Manager

Fallbrook Ranch

Public Hearing

August 7, 2017

The meeting commenced at 9:30 a.m. Ruth Rodriguez, Unit 13202, was in attendance. Ms. Rodriguez questioned the proposed changes and whether it would affected her lease. The proposed changes were explained to Ms. Rodriguez and she was assured the changes would not affect her lease.

The meeting ended at 10:30 a.m.

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action to approve a Material Amendment to the Housing Tax Credit (“HTC”) Land Use Restriction Agreement (“LURA”) for The Enclave (HTC #05022)

RECOMMENDED ACTION

WHEREAS, The Enclave (the “Development”) received a 9% HTC award in 2005 to construct 40 multifamily units in Houston, Harris County;

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

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

WHEREAS, the Development Owner requests to amend the LURA for the Development to incorporate changes made to Tex. Gov’t Code §2306.6725 and §2306.6726;

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2) and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing at which no negative public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for The Enclave 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 Enclave received an award of 9% HTC in 2005 for the new construction of 40 multifamily units in Houston, Harris County. In a letter dated August 9, 2017, the Development Owner (The Enclave, Ltd.) through its General Partner (IVE Enclave, LLC, Isaac Matthews, Manager) requested approval to amend the LURA related to the ROFR provision.

The additional use restrictions in the current LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization if at any time after the fifteenth year of the Compliance Period the owner decides to sell the property.

The General Partner requests to amend the LURA to replace the two-year ROFR period with a 180-day ROFR period. The property is currently in the eleventh year of the Compliance Period.

In 2015, the Texas Legislature passed HB 3576 which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2017 Uniform Multifamily Rules, Subchapter E, §10.407 implemented administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on August 7, 2017, at 11:30 a.m. at the Development's management office/clubhouse. No negative public comment was received regarding the requested amendment.

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



Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED

Date Submitted: 8/14/2017

Amendment Requested: *LURA Amendment,*

Has the change been implemented? *No*

Award Stage: *Compliance Period (After 8609s)*

NOTE: Material Application or LURA Amendment requests must be received 45 days before the Board Meeting.

Contact your Asset Manager if you are unsure what type of Amendment to request: <https://www.tdhca.state.tx.us/asset-management/contacts.htm>

DEVELOPMENT INFORMATION

Dev. Name: The Enclave

File No. / CMTS No.:05022 & 08009 /

CONTACT INFORMATION

Request Submitted By: Rebecca Rizo / Cynthia Bast

Phone #/Email: (512) 305-4781 /512/305-4707

SECTION 1: COVER LETTER

A cover letter ***MUST*** be submitted with your request. Review your cover letter to ensure it includes:

- The change(s) requested
- The reason the change is necessary
- The good cause for the change
- An explanation of whether the amendment was reasonably foreseeable or preventable at the time of Application

SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You ***MUST*** provide information about any and all changes made from the time of Application (or as last approved by the Department) in your request, including any items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Development Financing Exhibits – if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets (or executed Loan documents and LPA, if the loan has closed) must be submitted
- Signed Statement of No Financial Impact – if no sources, terms, conditions, or amount of financing will be impacted or changed by your amendment request, the Owner must sign and submit a statement to this effect
- Revised Application Exhibits/Documents Reflecting or Supporting All Requested Changes – revised site plans, surveys, Building and Unit Configuration exhibit, etc.
- Material Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, \$3,500 for third or more. (Applicable to Non-Material Amendments only if changes have been implemented prior to Amendment approval) – *N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)*

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Subchapter E, §10.405(a)(3)*):

- | | | |
|---|---|---|
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Scope of tenant services | <input type="checkbox"/> Exclusion of reqs in Subchapters B & C |
| <input type="checkbox"/> Number of units* | <input type="checkbox"/> Reduction of 3%+ in unit sq ft | <input type="checkbox"/> Other |
| <input type="checkbox"/> Bedroom mix | <input type="checkbox"/> Reduction of 3%+ common area | |
| <input type="checkbox"/> Architectural design | <input type="checkbox"/> Residential density (5%+ change) | |

If “Number of units” is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

- Written confirmation from the lender *and* syndicator that the development is infeasible without the adjustment in units
- Evidence supporting the need for the adjustment in units

NOTE: **The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).*

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, *§10.405(b)(2)*):

- | | | |
|--|--|--------------------------------|
| <input type="checkbox"/> Reductions in the number of LI units | <input type="checkbox"/> Change in Target Population | |
| <input type="checkbox"/> Changes to income or rent restrictions | <input type="checkbox"/> Removal of Non-profit | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Change in ROFR period or other ROFR provisions | | |

The following additional items are attached for consideration or will be forthcoming:

- Draft Notice of Public Hearing* Evidence of public hearing*

NOTE: **Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.*

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Identify all non-material changes that have been or will be made (Contact your Asset Manager if you are unsure of whether your request is non-material):

- Amendment is requesting a change in Developer(s) or Guarantor(s) and Previous Participation forms are attached.

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Identify non-material amendments requested to the LURA:

Short Summary Regarding LURA Changes

SECTION 4C: NOTIFICATION ITEM SUMMARY

Identify any notification items from the time of application:

Short Summary Regarding LURA Changes

THE ENCLAVE, LTD.
5325 Katy Freeway, Suite 1
Houston, Texas 77007-2287

August 9, 2017

VIA HAND DELIVERY

Lucy Trevino
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 05022 & 08009; The Enclave (the "**Property**")

Dear Lucy:

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

Request to Amend the ROFR Period

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

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the Partnership, is delivering a fee in the amount of \$2500. In addition, the Partnership, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the Partnership, will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership, requests staff recommendation, in support of this request, to be considered at the October 12, 2017 TDHCA Board meeting.

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

Sincerely,

IVE Enclave, LLC
a Texas limited liability company

By: 
Isaac Matthews, Manager

THE ENCLAVE, LTD.
5325 Katy Freeway, Suite 1
Houston, Texas 77007-2287

July 31, 2017

Dear Resident:

The Enclave (the "**Community**") is owned by The Enclave, Ltd.. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

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

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

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Asset Management Division
221 East 11th Street
Austin, Texas 78701

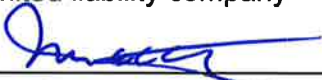
We appreciate that The Enclave is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing The Enclave as your home.

Sincerely,

THE ENCLAVE, LTD.,
a Texas limited partnership

By: IVE Enclave, LLC
a Texas limited liability company

By: 
Isaac Matthews, Manager

THE ENCLAVE, LTD.
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July 31, 2017

Hudson Housing Capital
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New York, NY 10111

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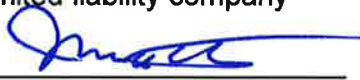
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THE ENCLAVE, LTD.,
a Texas limited partnership

By: IVE Enclave, LLC
a Texas limited liability company

By: 
Isaac Matthews, Manager

THE ENCLAVE, LTD.
5325 Katy Freeway, Suite 1
Houston, Texas 77007-2287

July 31, 2017

Bank of America, N.A.
FL1-400-06-13
101 E. Kennedy Boulevard
6th Floor
Tampa, Florida 33602

The Enclave (the "**Community**") is owned by The Enclave, Ltd.. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

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

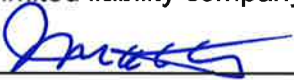
In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing will take place at the Community's management office/clubhouse on **August 7, 2017 at 11:30 a.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their October 12, 2017 meeting.

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

Sincerely,

THE ENCLAVE, LTD.,
a Texas limited partnership

By: IVE Enclave, LLC
a Texas limited liability company

By: 
Isaac Matthews, Manager

The Enclave

Public Hearing

August 7, 2017

11:30 a.m

The meeting commenced at 11:30 a.m. Tenant Drusilla Majors was in attendance. Ms. Majors wanted clarification about the proposed changes and whether it would affected her lease. The proposed changes were explained to Ms. Majors and she was assured the changes would not affect her lease.

The meeting ended at 12:10 p.m.

1j

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit (“HTC”) Application for The Heights Apartments (HTC #15173)

RECOMMENDED ACTION

WHEREAS, The Heights Apartments (the “Development”) received an award of 9% Housing Tax Credits in 2015 to construct 128 multifamily units in the City of Edinburg, Hidalgo County;

WHEREAS, the Development Owner is now requesting approval to amend the Application to decrease the Development site acreage from 13.77 acres to 12.162 acres as a result of Right of Way (“ROW”) requirements by the City of Edinburg and the Hidalgo County Drainage District #1;

WHEREAS, the decrease in site acreage results in a 11.7% decrease in residential density and, therefore, results in a modification of the residential density of at least five percent under Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(a)(4)(F) and requires Board approval;

WHEREAS, the Development Owner has complied with the amendment requirements in 10 TAC §10.405(a) to place this request before the Board; and

WHEREAS, the decrease in site acreage and resulting modification to the residential density do not negatively affect the Development, impact the viability of the transaction, or change the amount of tax credits awarded;

NOW, therefore, it is hereby

RESOLVED, that the material application amendment for The Heights is approved as presented to this meeting and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

The Heights was approved during the 2015 9% Housing Tax Credit cycle to construct 128 new multifamily units in Edinburg. In a letter dated August 8, 2017, Wisconsin Street Housing, LP (the “Development Owner”) through its General Partner (Wisconsin Street Housing GP, LLC – Sara Reidy, Managing Member) has requested approval to amend the Application relating to the Development Site acreage from 13.77 acres to 12.162 acres.

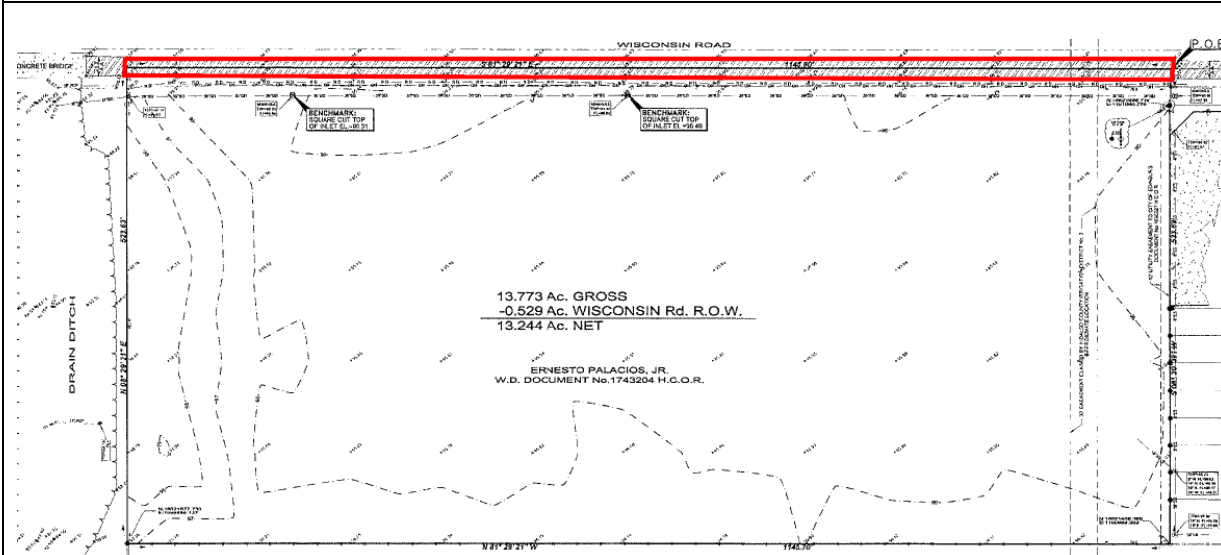
According to the request, Ms. Reidy explains that during the plat development phase additional right-of-way along Wisconsin Road as well as an additional 50-foot right-of-way along the west property line was required by the City of Edinburg and the Hidalgo County Drainage District #1. A letter from the surveyors, Melden & Hunt Inc., was provided to confirm the required change to the Development site. Ms. Reidy states that the required additional right-of-way was not known at the time of Application and confirms that there is no financial impact to the Development as a result of the reduction in acreage. A comparison of the survey and site plan provided in the Application and the recorded plat and site plan now at amendment is provided on the following page.

Staff has reviewed the original Application, Underwriting Report, and the current survey and concluded that the material amendment would not have changed the scoring of the Application and does not negatively impact the tax credit allocation awarded.

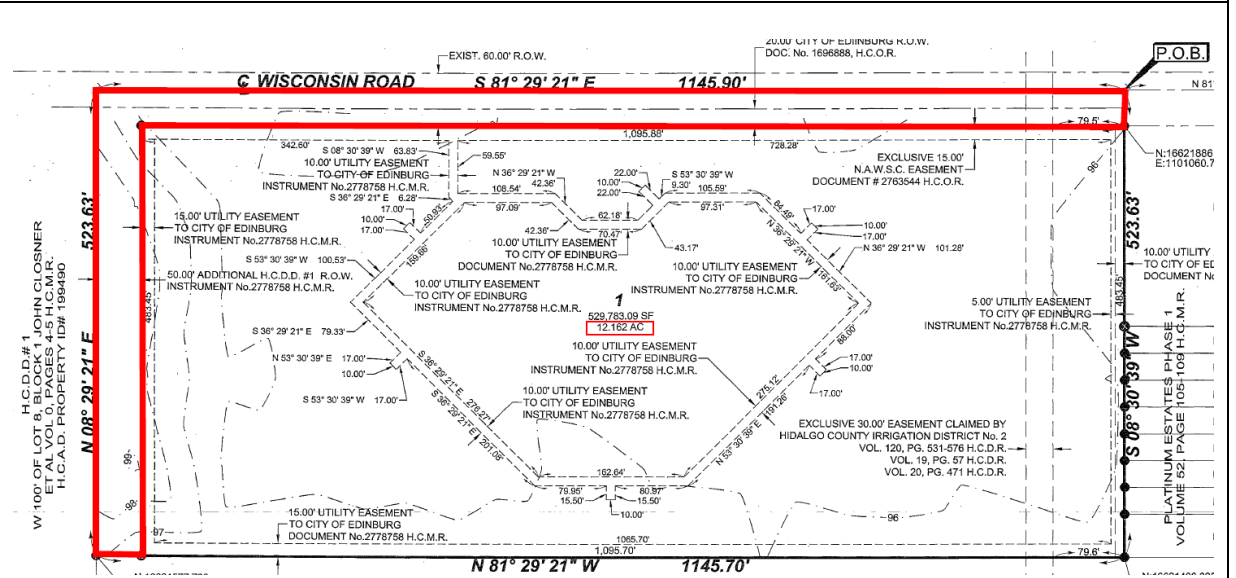
Staff recommends approval of the material application amendment for The Heights Apartments as presented herein.

The Heights Apartments (HTC #15173)

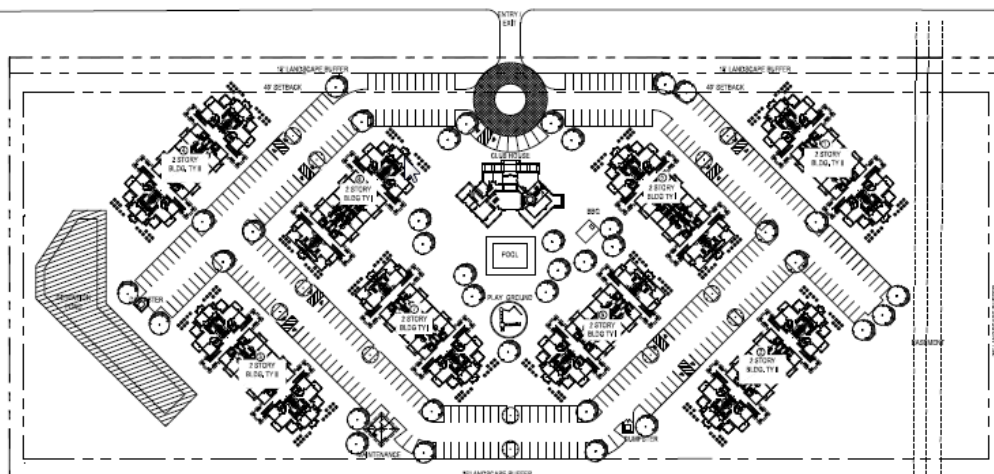
Survey & Site Plan at Application



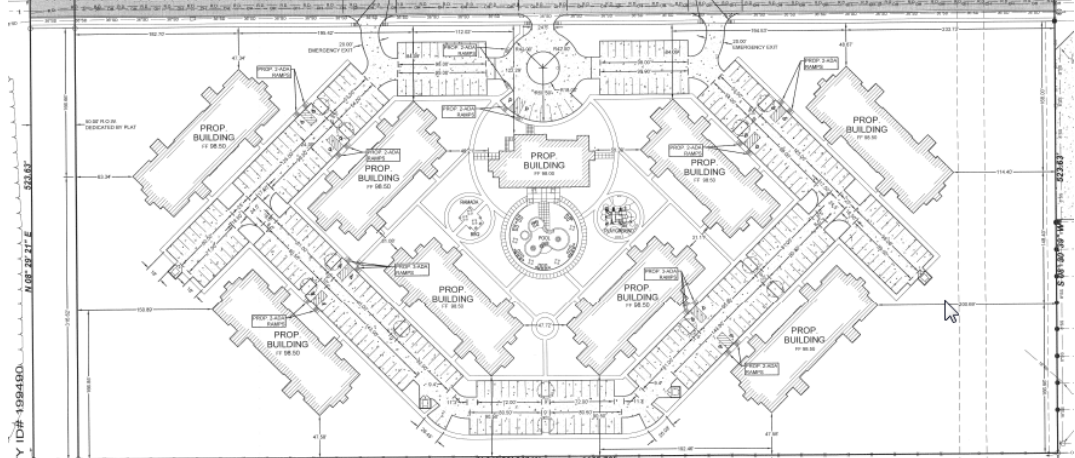
Recorded Plat & Site Plan at Amendment



WISCONSIN ROAD



WISCONSIN ROAD





Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED

Date Submitted: 8/17/2017 Amendment Requested: *Application Amendment*
Has the change been implemented? *Yes* Award Stage: *Under Construction or at 10% Test*

NOTE: Material Application or LURA Amendment requests must be received 45 days before the Board Meeting.

Contact your Asset Manager if you are unsure what type of Amendment to request: <https://www.tdhca.state.tx.us/asset-management/contacts.htm>

DEVELOPMENT INFORMATION

Dev. Name: The Heights File No. / CMTS No.: 15173 /5125

CONTACT INFORMATION

Request Submitted By: Sara Reidy Phone #/Email: (214) 941-0089 /sreidy@ess-email.com

SECTION 1: COVER LETTER

A cover letter **MUST** be submitted with your request. Review your cover letter to ensure it includes:

- The change(s) requested
- The reason the change is necessary
- The good cause for the change
- An explanation of whether the amendment was reasonably foreseeable or preventable at the time of Application

SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You **MUST** provide information about any and all changes made from the time of Application (or as last approved by the Department) in your request, including any items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Development Financing Exhibits – if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets (or executed Loan documents and LPA, if the loan has closed) must be submitted
- Signed Statement of No Financial Impact – if no sources, terms, conditions, or amount of financing will be impacted or changed by your amendment request, the Owner must sign and submit a statement to this effect
- Revised Application Exhibits/Documents Reflecting or Supporting All Requested Changes – revised site plans, surveys, Building and Unit Configuration exhibit, etc.
- Material Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, \$3,500 for third or more. (Applicable to Non-Material Amendments only if changes have been implemented prior to Amendment approval) – *N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)*

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Subchapter E, §10.405(a)(3)*):

- | | | |
|---|--|---|
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Scope of tenant services | <input type="checkbox"/> Exclusion of reqs in Subchapters B & C |
| <input type="checkbox"/> Number of units* | <input type="checkbox"/> Reduction of 3%+ in unit sq ft | <input type="checkbox"/> Other |
| <input type="checkbox"/> Bedroom mix | <input type="checkbox"/> Reduction of 3%+ common area | |
| <input type="checkbox"/> Architectural design | <input checked="" type="checkbox"/> Residential density (5%+ change) | |

If “Number of units” is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

- Written confirmation from the lender *and* syndicator that the development is infeasible without the adjustment in units
- Evidence supporting the need for the adjustment in units

NOTE: **The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).*

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, *§10.405(b)(2)*):

- | | | |
|---|--|--------------------------------|
| <input type="checkbox"/> Reductions in the number of LI units | <input type="checkbox"/> Change in Target Population | |
| <input type="checkbox"/> Changes to income or rent restrictions | <input type="checkbox"/> Removal of Non-profit | <input type="checkbox"/> Other |
| <input type="checkbox"/> Change in ROFR period or other ROFR provisions | | |

The following additional items are attached for consideration or will be forthcoming:

- Draft Notice of Public Hearing* Evidence of public hearing*

NOTE: **Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.*

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Identify all non-material changes that have been or will be made (Contact your Asset Manager if you are unsure of whether your request is non-material):

Short Summary Regarding Application Changes

- Amendment is requesting a change in Developer(s) or Guarantor(s) and Previous Participation forms are attached.

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Identify non-material amendments requested to the LURA:

Short Summary Regarding LURA Changes

SECTION 4C: NOTIFICATION ITEM SUMMARY

Identify any notification items from the time of application:

Short Summary Regarding LURA Changes

Wisconsin Street Housing, L.P.

VIA EMAIL

August 8, 2017

Michelle Mickens
Asset Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: The Heights #15173 – Application Amendment Request

Dear Ms. Mickens:

This letter serves as our formal notification and request to amend the site acreage for The Heights Apartments, TDHCA #15173, from 13.773 acres to 12.162 acres. The residential density increased from 9.29 units per acre to 10.52 units per acre which represents a 13.25% increase in density.

As described in detail in the Melden & Hunt letter dated August 8, 2017, the difference in site acreage occurred during the plat development phase whereby the City of Edinburg and Hidalgo County Drainage District #1 (HCDD) staff required additional right-of-way along Wisconsin Road and an additional fifty (50) feet of right-of-way along the west property line not previously known at the time of application. (see Attachment 1).

As a community of 128 units, The Heights remains a low-density development with approximately 10.52 units to the acre. In addition, the minimal reduction in acreage did not significantly modify the architectural design of the Development as represented in our application. (see Attachment 2).

We certify there is no financial impact to the development due to the reduction of acreage.

We respectfully request this amendment request be considered for approval by the TDHCA board at its September or October 2017 board meeting. Please contact me at 214-941-0089 should you have any questions or require additional information related to this request.

Thank you in advance for your kind and timely review.

Sincerely,



Sara Reidy
Executive Vice President, Casa Linda Development Corporation
Managing Member of the General Partner, Wisconsin Street Housing GP, LLC

attachments



August 8, 2017

Michelle Mickens
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: The Heights Subdivision – Reduction in Acreage

Dear Ms. Mickens:

This letter serves to address the acreage difference on The Heights Subdivision development site in Edinburg, Hidalgo County, Texas. Pre-development acreage was shown as 13.773 acres, leaving 1.057 acres for the existing Wisconsin Road Right-of-Way. This left a total net of 12.716 acres.

During the plat development phase, discussion with the City of Edinburg and Hidalgo County Drainage District #1 staff ensued a dedication of an additional 50-foot right-of-way along the west property line to Hidalgo County Drainage District #1. Therefore, the subdivided acreage is now 12.162 acres, Lot 1 The Heights Subdivision.

| The Heights Subdivision | Acreage |
|--------------------------------|---------|
| Original Contract | 13.773 |
| Existing Wisconsin Rd. R.O.W. | 1.057 |
| | ----- |
| Acreage per Survey Application | 12.716 |
| HCDD#1 R.O.W. | 0.554 |
| | ----- |
| Acreage Per Plat | 12.162 |

If you have any questions or need any additional clarification, please do not hesitate to contact me at (956)500-2734.

Sincerely,
MELDEN & HUNT, INC.

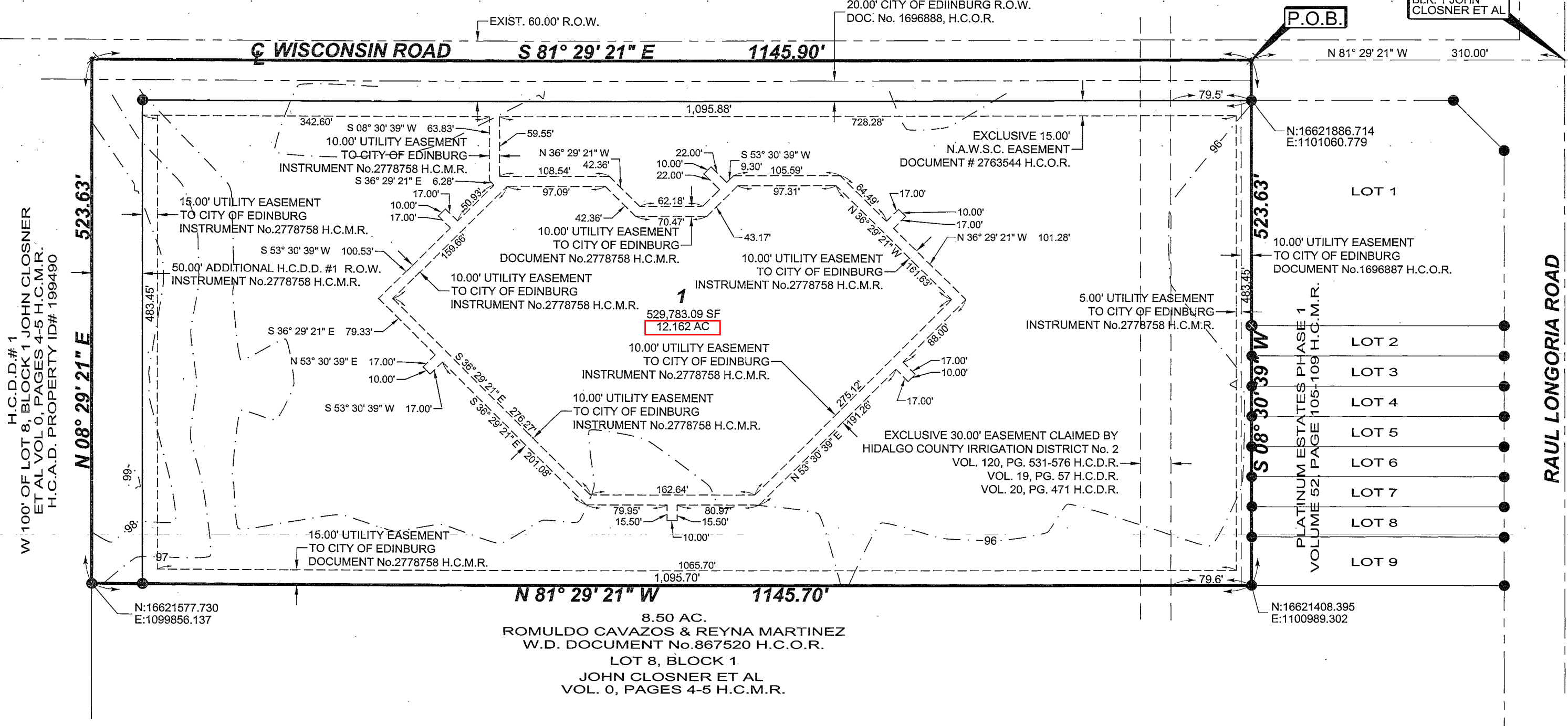
Mario Reyna, P.E.
Vice-President

Attachment 1 - Recorded Plat

LOT 5 BLK 1 JOHN CLOSER
VOL. 0, PAGE 4-5 H.C.M.R.

P.O.C.
COR.
LOT 8
BLK 1 JOHN
CLOSER ET AL

SCALE: 1" = 100'



LEGEND
● FOUND NO. 4 REBAR
● FOUND "X" MARK ON CONCRETE
● FOUND PK NAIL
N.E. COR. - NORTHEAST CORNER
SF - SQUARE FEET
R.O.W. - RIGHT OF WAY
H.C.M.R. - HIDALGO COUNTY MAP RECORDS
H.C.O.R. - HIDALGO COUNTY OFFICIAL RECORDS
H.C.D.D. - HIDALGO COUNTY DRAINAGE DISTRICT
H.C.A.D. - HIDALGO COUNTY APPRAISAL DISTRICT
W.D. - WARRANTY DEED
P.O.B. - POINT OF BEGINNING
P.O.C. - POINT OF COMMENCING
N.A.W.S.C. - NORTH ALAMO WATER SUPPLY COMPANY
AC - ACRES
CL - CENTERLINE

AMENDED MINOR PLAT OF THE HEIGHTS SUBDIVISION

BEING A RESUBDIVISION OF 13.773 ACRES
BEING ALL OF THE HEIGHTS SUBDIVISION
AS PER PLAT RECORDED UNDER INSTRUMENT
NUMBER 2778758, H.C.M.R.
CITY OF EDINBURG
HIDALGO COUNTY, TEXAS

METES AND BOUNDS DESCRIPTION

A TRACT OF LAND CONTAINING 13.773 ACRES (599,975.421 SQUARE FEET) SITUATED IN THE CITY OF EDINBURG, HIDALGO COUNTY, TEXAS, BEING ALL OF THE HEIGHTS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED UNDER INSTRUMENT NUMBER 2778758, HIDALGO COUNTY MAP RECORDS, WHICH SAID 13.773-ACRE TRACT WAS CONVEYED TO WISCONSIN STREET HOUSING, LP, BY VIRTUE OF A WARRANTY DEED RECORDED UNDER DOCUMENT NUMBER 2724387, HIDALGO COUNTY OFFICIAL RECORDS, SAID 13.773 ACRES (599,975.421 SQUARE FEET) ALSO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

- BEGINNING AT A NAIL FOUND ON THE NORTHEAST CORNER OF SAID THE HEIGHTS SUBDIVISION FOR THE NORTHEAST CORNER OF THIS TRACT;
1. THENCE, S 08° 30' 39" W ALONG THE EAST LINE OF SAID THE HEIGHTS SUBDIVISION AND THE WEST LINE OF PLATINUM ESTATES PHASE I SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 82, PAGES 105-108, HIDALGO COUNTY MAP RECORDS, AT A DISTANCE OF 40.00 FEET PASS A NO. 4 REBAR FOUND ON THE SOUTH RIGHT-OF-WAY LINE OF WISCONSIN ROAD, AT A DISTANCE OF 268.00 FEET PASS AN "X" MARK ON CONCRETE FOUND, AT A DISTANCE OF 268.00 FEET PASS A NO. 4 REBAR FOUND, AT A DISTANCE OF 325.00 FEET PASS A NO. 4 REBAR FOUND, AT A DISTANCE OF 355.00 FEET PASS A NO. 4 REBAR FOUND, AT A DISTANCE OF 385.00 FEET PASS A NO. 4 REBAR FOUND, AT A DISTANCE OF 415.00 FEET PASS A NO. 4 REBAR FOUND, AT A DISTANCE OF 445.00 FEET PASS A NO. 4 REBAR FOUND, AT A DISTANCE OF 475.00 FEET PASS A NO. 4 REBAR FOUND, CONTINUING A TOTAL DISTANCE OF 523.63 FEET TO A NO. 4 REBAR FOUND (NORTHINGS: 18621408.395, EASTINGS: 1100989.302) ON THE SOUTHEAST CORNER OF SAID LOT 9, OF SAID PLATINUM ESTATES PHASE I SUBDIVISION, AND ON THE NORTH LINE OF A CERTAIN 8.50-ACRE TRACT OF LAND CONVEYED TO ROMULDO CAVAZOS & REYNA MARTINEZ BY VIRTUE OF A WARRANTY DEED RECORDED UNDER DOCUMENT NUMBER 867520, HIDALGO COUNTY OFFICIAL RECORDS, FOR THE SOUTHEAST CORNER OF THIS TRACT;
2. THENCE, N 81° 29' 21" W ALONG THE SOUTH LINE OF SAID THE HEIGHTS SUBDIVISION AND THE NORTH LINE OF SAID CERTAIN 8.50-ACRE TRACT OF LAND CONVEYED TO ROMULDO CAVAZOS & REYNA MARTINEZ, AT A DISTANCE 1095.70 FEET PASS A NO. 4 REBAR FOUND ALONG THE EAST LINE OF A 150.00 FOOT R.O.W. ALSO KNOWN AS LATERAL PSJA, CONTINUING A TOTAL DISTANCE OF 1,145.70 FEET TO A NO. 4 REBAR FOUND (NORTHINGS: 18621577.730, EASTINGS: 1099896.137) ON THE SOUTHWEST CORNER OF SAID THE HEIGHTS SUBDIVISION AND THE NORTHWEST CORNER OF SAID CERTAIN TRACT OF LAND CONVEYED TO ROMULDO CAVAZOS & REYNA MARTINEZ, FOR THE SOUTHWEST CORNER OF THIS TRACT;
3. THENCE, N 08° 29' 21" E ALONG THE WEST LINE OF SAID THE HEIGHTS SUBDIVISION AND WITHIN A 150.0' H.C.D.D.#1 DRAIN DITCH RIGHT-OF-WAY ALSO KNOWN AS LATERAL PSJA, A DISTANCE OF 523.63 FEET TO A NAIL FOUND ON THE NORTHWEST CORNER OF SAID THE HEIGHTS SUBDIVISION, FOR THE NORTHWEST CORNER OF THIS TRACT;
4. THENCE, S 81° 29' 21" E ALONG THE NORTH LINE OF SAID THE HEIGHTS SUBDIVISION AND WITHIN THE RIGHT-OF-WAY OF WISCONSIN ROAD, A DISTANCE OF 1,145.90 FEET TO THE POINT OF BEGINNING, AND CONTAINING 13.773 ACRES (599,975.421 SQUARE FEET) OF WHICH 1.057 ACRES (46,835.688 SQUARE FEET) LIES WITHIN THE RIGHT-OF-WAY OF WISCONSIN ROAD AND 0.554 OF ONE ACRE (24,171.502 SQUARE FEET) LIES WITHIN THE RIGHT-OF-WAY OF A SAID H.C.D.D.#1 DRAIN DITCH, LEAVING A NET OF 12.162 ACRES (529,738.826 SQUARE FEET) OF LAND, MORE OR LESS.

APPROVED BY DRAINAGE DISTRICT:
HIDALGO COUNTY DRAINAGE DISTRICT NO.1 HEREBY CERTIFIES THAT THE DRAINAGE PLANS FOR THIS SUBDIVISION COMPLY WITH THE MINIMUM STANDARDS OF THE DISTRICT ADOPTED UNDER TEXAS WATER CODE 49.211 (C). THE DISTRICT HAS NOT REVIEWED AND DOES NOT CERTIFY THAT THE DRAINAGE STRUCTURES DESCRIBED ARE APPROPRIATE FOR THE SPECIFIC SUBDIVISION BASED ON GENERALLY ACCEPTED ENGINEERING CRITERIA. IT IS THE RESPONSIBILITY OF THE DEVELOPER AND HIS ENGINEER TO MAKE THESE DETERMINATIONS.

HIDALGO COUNTY DRAINAGE DISTRICT NO.1
RAUL E. SESIN, P.E., C.F.M.
GENERAL MANAGER
DATE: 07/31/17

GENERAL PLAT NOTES & RESTRICTIONS

- 1. FLOOD ZONE STATEMENT: THIS PROPERTY LIES WITHIN ZONE "B".
ZONE "B" IS DESCRIBED AS:
AREAS BETWEEN LIMITS OF THE 100-YEAR FLOOD AND 500-YEAR FLOOD; OR CERTAIN AREAS SUBJECT TO 100-YEAR FLOODING WITH AVERAGE DEPTHS LESS THAN ONE(1) FOOT OR WHERE THE CONTRIBUTING DRAINAGE AREA IS LESS THAN ONE SQUARE MILE; OR AREAS PROTECTED BY LEVEES FROM THE BASE FLOOD.
COMMUNITY-PANEL NUMBER: 480334 0425 C
MAP REVISED: NOVEMBER 16, 1982
2. MINIMUM FINISH FLOOR NOTE:
18" ABOVE TOP OF CURB MEASURED AT FRONT OF LOT.
FRONT: 20 FEET
3. BUILDING SETBACKS NOTE:
MINIMUM BUILDING SETBACK LINES SHALL BE AS FOLLOWS OR MATCH GREATER EASEMENTS:
FRONT: 20 FEET
SIDE: 6 FEET OR GREATER FOR EASEMENT
REAR: 20 FEET OR GREATER FOR EASEMENT
SIDE CORNER: 10 FEET OR GREATER FOR EASEMENT
4. BENCH MARK NOTE:
SQUARE CUT ON INLET LOCATED ALONG THE SOUTH SIDE OF WISCONSIN ROAD 182 FEET WEST OF THE WEST PROPERTY LINE.
ELEVATION= 96.31
SQUARE CUT ON INLET LOCATED ALONG THE SOUTH SIDE OF WISCONSIN ROAD 550 FEET WEST OF THE WEST PROPERTY LINE.
ELEVATION= 95.49
5. DRAINAGE NOTE:
IN ACCORDANCE WITH THE HIDALGO COUNTY DRAINAGE DISTRICT NO.1 AND HIDALGO COUNTY DRAINAGE REQUIREMENTS, THIS DEVELOPMENT IS REQUIRED TO DETAIN A TOTAL OF 44,792 C.F. (1.028 AC.-FT.) OF STORM WATER RUNOFF DRAINAGE ACCORDANCE WITH THE LOCAL REQUIREMENTS WILL BE ACCOMPLISHED AS STATED IN THE DRAINAGE REPORT.
6. NO PERMANENT STRUCTURES SHALL BE ALLOWED WITHIN UTILITY EASEMENTS, GAS EASEMENTS, IRRIGATION EASEMENTS, LOT LINES.
7. FIVE (5) FOOT SIDEWALK IS REQUIRED ALONG WISCONSIN ROAD DURING SUBDIVISION CONSTRUCTION.
8. ALL CONSTRUCTION SHALL COMPLY WITH STORMWATER POLLUTION PREVENTION PLAN (SWPP) REQUIREMENTS.
9. PROPERTY OWNER IS RESPONSIBLE FOR MAINTENANCE OF ACCESS EASEMENTS.
10. SET NO. 4 IRON REBAR ON ALL LOT CORNERS.
11. DETENTION AREAS SHALL BE MAINTAINED BY THE LOT OWNER(S) AND SHALL BE PROVIDED ACCORDING TO THE APPROVED DRAINAGE REPORT.
12. SITE PLAN MUST BE REVIEWED AND APPROVED BY THE CITY OF EDINBURG PRIOR TO THE ISSUANCE OF BUILDING PERMITS FOR RESIDENTIAL OR COMMERCIAL DEVELOPMENTS.
13. ADDITIONAL FIRE HYDRANTS MAY BE REQUIRED AT BUILDING PERMIT STAGE FOR THIS DEVELOPMENT.
14. ALL COMMON ACCESS, PARKING AND LANDSCAPING AREAS WILL BE MAINTAINED BY THE LOT OWNERS.
15. THE OWNERS OF THE LOT SERVED BY THE PRIVATE ACCESS, ALLEYS, AND ACCESS EASEMENTS WITHIN THIS PLAT AGREE TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS ANY GOVERNMENTAL ENTITY FOR DAMAGES TO THE PRIVATE ACCESS, ALLEYS AND ACCESS EASEMENTS OCCASIONED BY THE REASONABLE USE THEREOF BY THE GOVERNMENTAL ENTITY FOR DAMAGES ARISING FROM THE CONDITION OF THE PRIVATE ACCESS, ALLEYS OR PRIVATE ACCESS EASEMENTS. THE MAINTENANCE OF SIGNS SHALL NOT BE THE RESPONSIBILITY OF THE CITY OF EDINBURG.

STATE OF TEXAS
COUNTY OF HIDALGO

I, THE UNDERSIGNED, OWNER OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS AMENDED MINOR PLAT OF THE HEIGHTS SUBDIVISION AN ADDITION TO THE CITY OF EDINBURG, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED.

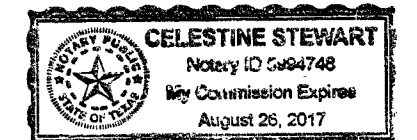
Notary Signature: [Signature]
DATE: 5/19/2017
WISCONSIN STREET HOUSING, LP
BY WISCONSIN STREET HOUSING GP, LLC
CASA LINDA DEVELOPMENT CORPORATION
530 W VICTORIA ST.
GARDENA, CA 90248

STATE OF TEXAS
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED [Signature] KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 19 DAY OF May, 2017

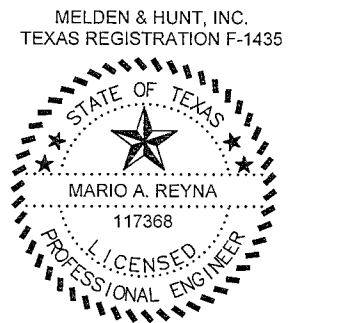
Notary Signature: [Signature]
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES: 8-26-17



STATE OF TEXAS
COUNTY OF HIDALGO

I, THE UNDERSIGNED, MARIO A. REYNA, A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAT.

DATED THIS THE 19 DAY OF May, 2017
Notary Signature: [Signature]
MARIO A. REYNA, PROFESSIONAL ENGINEER NO. 117368
STATE OF TEXAS
DATE PREPARED: 5/16/2017
ENGINEERING JOB NO. 15030.00



STATE OF TEXAS
COUNTY OF HIDALGO

I, FRED L. KURTH, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE FROM AN ACTUAL SURVEY MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON, AND THAT THERE ARE NO APPARENT DISCREPANCIES, CONFLICTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE UTILITY LINES OR ROADS IN PLACE, EXCEPT AS SHOWN ON THE ACCOMPANYING PLAT, AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY SUPERVISION IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE COUNTY OF HIDALGO, TEXAS.

DATED THIS THE 18 DAY OF May, 2017
Notary Signature: [Signature]
FRED L. KURTH, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4750
STATE OF TEXAS
DATE SURVEYED: 02-11-15
SURVEYING JOB NO. 15030.08



RIGHT OF WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED, OWNERS OF THE PROPERTY SHOWN ON THIS PLAT, THEIR SUCCESSORS, ASSIGNS, AND TRANSFERREES (HEREINAFTER CALLED "GRANTOR") WHETHER ONE OR MORE PERSONS ARE NAMED), IN CONSIDERATION OF ONE DOLLAR (\$1.00) AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY NORTH ALAMO WATER SUPPLY CORPORATION (HEREINAFTER CALLED "GRANTEE"), THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, DOES HEREBY GRANT, BARGAIN, SELL, TRANSFER AND CONVEY TO SAID GRANTEE, ITS SUCCESSORS AND ASSIGNS, AN EXCLUSIVE PERPETUAL EASEMENT WITH THE RIGHT TO ERECT, CONSTRUCT, INSTALL AND LAY AND THEREAFTER USE, OPERATE, INSPECT, REPAIR, MAINTAIN, REPLACE AND REMOVE WATER DISTRIBUTION LINES AND APPURTENANCES OVER AND ACROSS THE LANDS SHOWN ON THIS PLAT, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS OVER GRANTOR'S ADJACENT LANDS FOR THE PURPOSE FOR WHICH THE ABOVE-MENTIONED RIGHTS ARE GRANTED. THE EASEMENT HEREBY GRANTED SHALL NOT EXCEED 15' IN WIDTH, AND GRANTEE IS HEREBY AUTHORIZED TO DESIGNATE THE COURSE OF THE EASEMENT HEREBY CONVEYED EXCEPT THAT WHEN THE PIPELINE(S) IS/ARE INSTALLED, THE EASEMENT HEREBY GRANTED SHALL BE LIMITED TO A STRIP OF LAND 15' IN WIDTH, THE CENTER LINE THEREOF BEING THE PIPELINE INSTALLED.

IN THE EVENT THE EASEMENT HEREBY GRANTED ABUTS ON A PUBLIC ROAD AND THE CITY, COUNTY OR STATE HEREAFTER WIDENS OR RELOCATES THE PUBLIC ROAD SO AS TO REQUIRE THE RELOCATION OF THIS WATER LINE AS INSTALLED, GRANTEE HEREBY GRANTS TO GRANTEE AN ADDITIONAL EASEMENT OVER AND ACROSS THE LAND SHOWN ON THIS PLAT FOR THE PURPOSE OF LATERALLY RELOCATING SAID WATER LINE AS MAY BE NECESSARY TO CLEAR THE ROAD IMPROVEMENTS, WHICH EASEMENT HEREBY GRANTED SHALL BE LIMITED TO A STRIP OF LAND 15' IN WIDTH, THE CENTER LINE THEREOF BEING THE PIPELINE AS RELOCATED.

THE CONSIDERATION RECITED HEREIN SHALL CONSTITUTE PAYMENT IN FULL FOR ALL DAMAGES SUSTAINED BY GRANTEE BY REASON OF THE INSTALLATION, MAINTENANCE, REPAIR, REPLACEMENT AND RELOCATION OF THE STRUCTURES REFERRED TO HEREIN. THIS AGREEMENT TOGETHER WITH OTHER PROVISIONS OF THIS GRANT SHALL CONSTITUTE AN EASEMENT FOR THE BENEFIT OF THE GRANTEE, ITS SUCCESSORS, AND ASSIGNS. THE GRANTEE COVENANTS THAT IT IS THE OWNER OF THE ABOVE DESCRIBED LANDS AND THAT SAID LANDS ARE FREE AND CLEAR OF ALL ENCUMBRANCES AND LIENS, EXCEPT THE FOLLOWING:

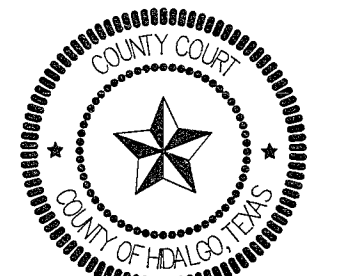
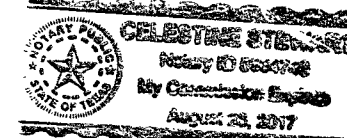
THE EASEMENT CONVEYED HEREIN WAS OBTAINED OR IMPROVED THROUGH FEDERAL FINANCIAL ASSISTANCE. THIS EASEMENT IS SUBJECT TO THE PROVISIONS OF THE TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND THE REGULATIONS ISSUED PURSUANT THERETO FOR SO LONG AS THE EASEMENT CONTINUES TO BE USED FOR THE SAME OR SIMILAR PURPOSE FOR WHICH FINANCIAL ASSISTANCE WAS EXTENDED OR FOR SO LONG AS THE GRANTEE OWNS IT, WHICHEVER IS LONGER.

IN WITNESS WHEREOF, THE SAID GRANTEE HAS EXECUTED THIS INSTRUMENT THE 19 DAY OF May, 2017
Notary Signature: [Signature]
GRANTEE'S SIGNATURE

THE STATE OF TEXAS
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED [Signature] KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE (SHE) (THEY) EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 19 DAY OF May, 2017
Notary Signature: [Signature]
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES: 8-26-2017



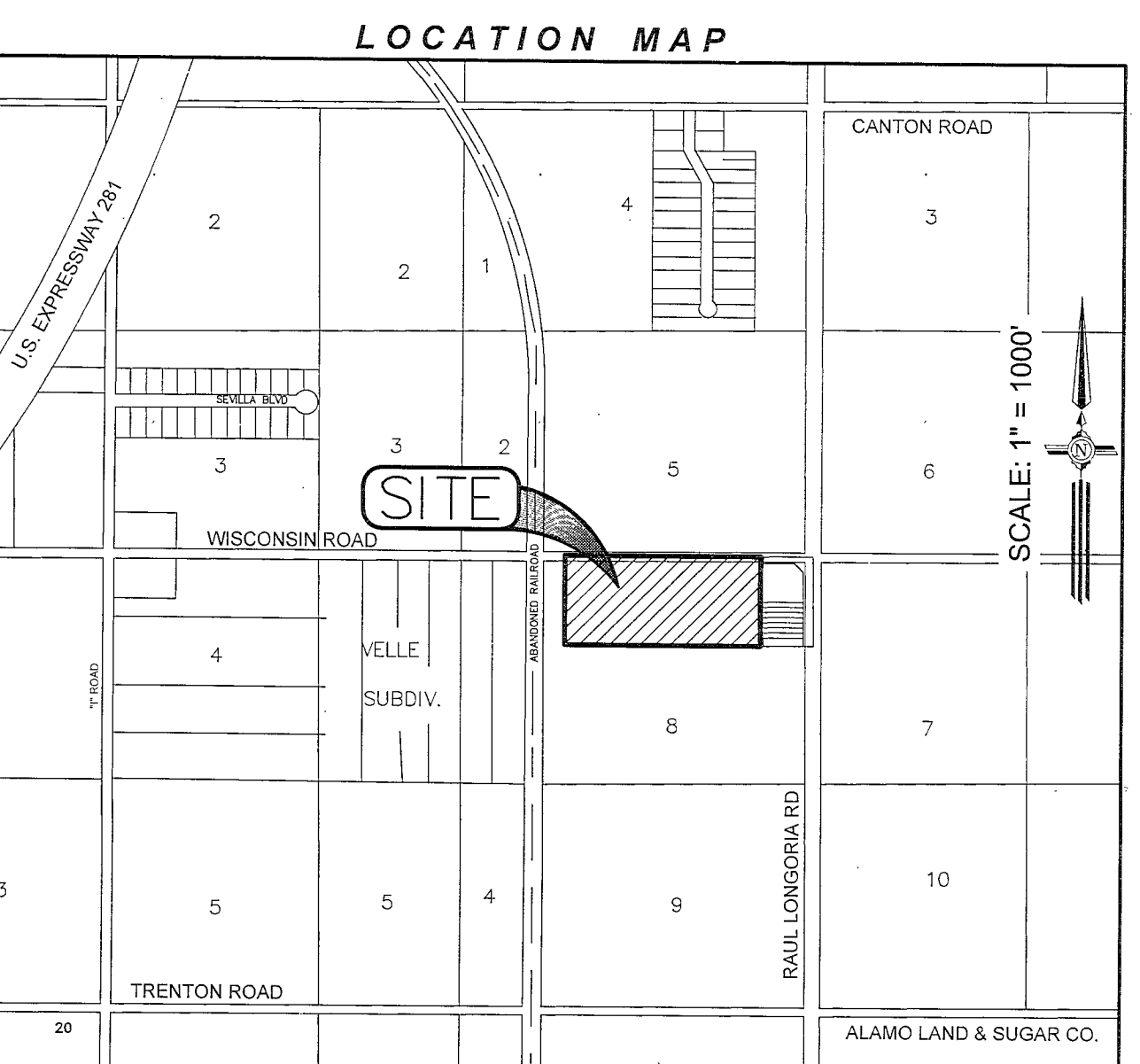
FILED FOR RECORD IN
HIDALGO COUNTY
ARTURO GUJARDO, JR.
HIDALGO COUNTY CLERK

ON: 8/1/17 AT 1:17 AM/PM
INSTRUMENT NUMBER: 2824657
OF THE MAP RECORDS OF HIDALGO COUNTY, TEXAS

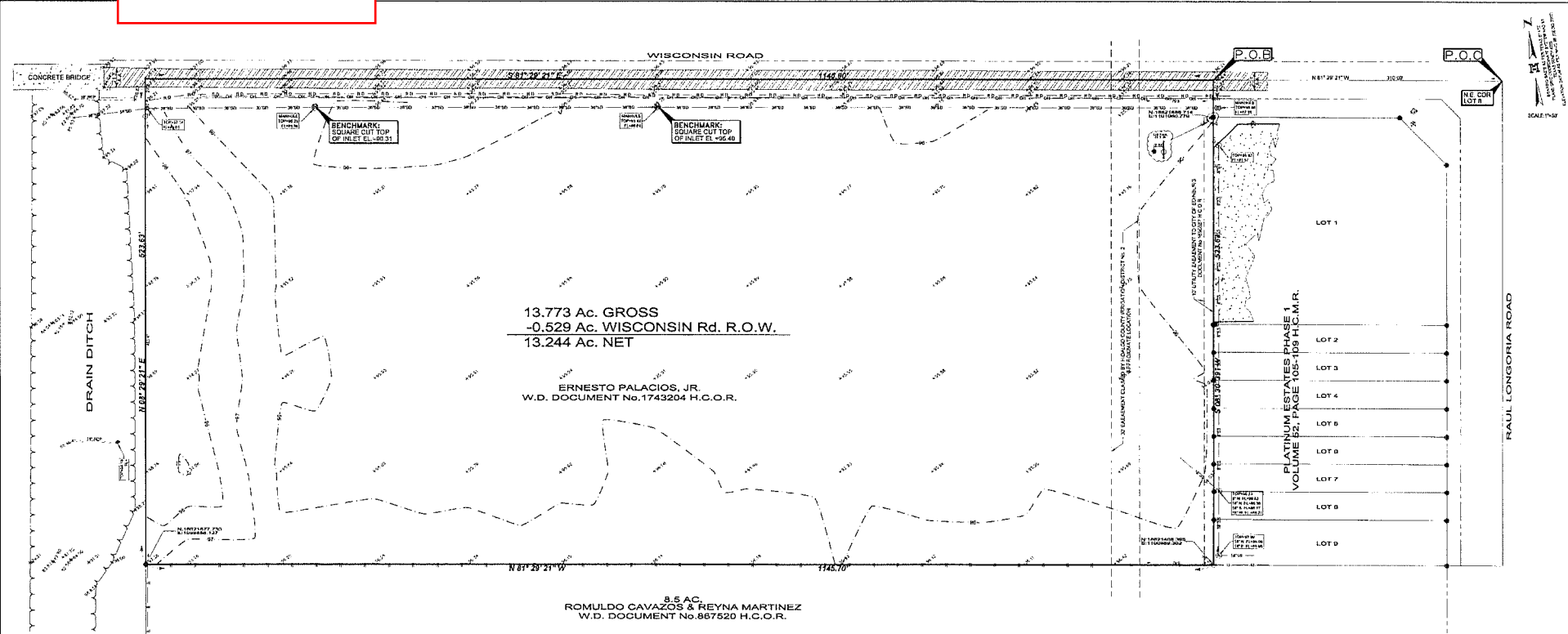
BY: [Signature] DEPUTY

DRAWN BY: EM DATE 05-04-2017
SURVEYED, CHECKED: JLB DATE 5-18-17
FINAL CHECK: GL DATE 5-19-17

MBE FIRM # F-1435
MELDEN & HUNT INC.
CONSULTANTS • ENGINEERS • SURVEYORS
115 W. McINTYRE EDINBURG, TX 78541
PH: (956) 381-1981 FAX: (956) 487-8256
227 N. F.M. 3167 RIO GRANDE CITY, TX 78452
PH: (956) 487-8256 FAX: (956) 488-8551
ESTABLISHED 1947 www.meldenandhunt.com



Survey Submitted
With Application



13.773 Ac. GROSS
-0.529 Ac. WISCONSIN Rd. R.O.W.
13.244 Ac. NET

ERNESTO PALACIOS, JR.
W.D. DOCUMENT No.1743204 H.C.O.R.

8.5 AC.
ROMULO CAVAZOS & REYNA MARTINEZ
W.D. DOCUMENT No.867520 H.C.O.R.

**PLAT SHOWING
13.773 ACRES
[599,975.4 SQ. FT.] OUT OF
LOT 8, BLOCK 1
JOHN CLOSNER ET AL
VOLUME 0, PAGES 4-5 H.C.M.R.
HIDALGO COUNTY, TEXAS**

FLOOD ZONE
ZONE "B"
AREAS BETWEEN LIMITS OF THE 100-YEAR FLOOD AND 500-YEAR FLOOD; OR CERTAIN AREAS SUBJECT TO 100-YEAR FLOODING WITH AVERAGE DEPTH LESS THAN ONE(1) FOOT ON WHERE THE DRAINAGE AREA IS LESS THAN ONE SQUARE MILE; OR AREAS PROTECTED BY LEVEES FROM THE BASE FLOOD.

COMMUNITY-PANEL NUMBER: 480234 0425 C
MAP REVISED: NOVEMBER 10, 1992

SUBJECT TO:
1. EASEMENT TO CITY OF EDINBURG FOR A WATER PIPELINE DOCUMENT No.108000 H.C.O.R.
2. EASEMENT TO MAGIC VALLEY ELECTRIC COOPERATIVE FOR ELECTRIC TRANSMISSION LINES VOL. 1812, PG. 430 H.C.O.R.

- LEGEND**
- FOUND IN FIELD
 - FOUND 7" MARK OR CONCRETE
 - 8" DIA. IRON WITH PLASTIC CAP STAMPED MILDEN & HUNT
 - SET SQUARE CUT
 - POWER POLE
 - LIGHT POLE
 - CUT WIRE
 - SIGN
 - FIVE HYDRANT
 - FLOOD VALVE
 - WATER VALVE
 - SANITARY SEWER MANHOLE
 - STORM SEWER MANHOLE
 - FIELD MARK
 - TRANSFER
 - 1" x 1" x 1" IRON PIPE
 - 2" x 2" x 2" IRON PIPE
 - 4" x 4" x 4" IRON PIPE
 - 6" x 6" x 6" IRON PIPE
 - 8" x 8" x 8" IRON PIPE
 - 10" x 10" x 10" IRON PIPE
 - 12" x 12" x 12" IRON PIPE
 - 14" x 14" x 14" IRON PIPE
 - 16" x 16" x 16" IRON PIPE
 - 18" x 18" x 18" IRON PIPE
 - 20" x 20" x 20" IRON PIPE
 - 22" x 22" x 22" IRON PIPE
 - 24" x 24" x 24" IRON PIPE
 - 26" x 26" x 26" IRON PIPE
 - 28" x 28" x 28" IRON PIPE
 - 30" x 30" x 30" IRON PIPE
 - 32" x 32" x 32" IRON PIPE
 - 34" x 34" x 34" IRON PIPE
 - 36" x 36" x 36" IRON PIPE
 - 38" x 38" x 38" IRON PIPE
 - 40" x 40" x 40" IRON PIPE
 - 42" x 42" x 42" IRON PIPE
 - 44" x 44" x 44" IRON PIPE
 - 46" x 46" x 46" IRON PIPE
 - 48" x 48" x 48" IRON PIPE
 - 50" x 50" x 50" IRON PIPE

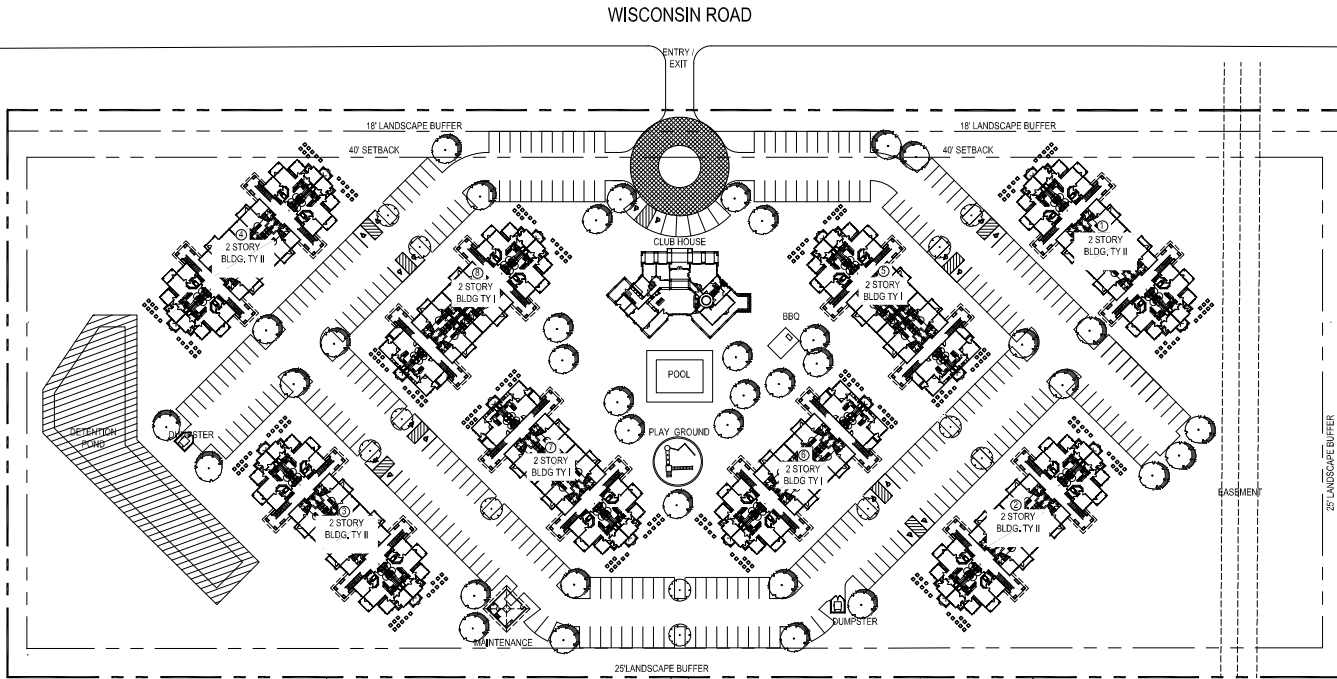
THE UNDERSIGNED HEREBY CERTIFIES THAT THIS SURVEY AS DESCRIBED HEREON, WAS MADE ON THE GROUND ON 02/05/2015 UNDER MY DIRECTION, THAT THE ONLY IMPROVEMENTS ON THE GROUND ARE AS SHOWN, THAT THERE ARE NO VISIBLE ENCROACHMENTS, VISIBLE OVERLAPPING, APPARENT CONFLICTS, OR VISIBLE EASEMENTS, EXCEPT AS SHOWN HEREON.



FRED L. KURTH, RPLS No. 4750 DATE: _____

| | | | | |
|------------------|-----------|--|------|----|
| JOB No. | 15030.08 | REVISION | DATE | BY |
| DRAWING DATE: | 2/12/2015 | | | |
| DRAWN BY: | J.C. | | | |
| File Name: | 15030.08 | | | |
| T-068, PG. 11-12 | | | | |
| | | MILDEN & HUNT INC. CONSULTANTS / ENGINEERS / SURVEYORS 110 N. MAIN ST. #222 N. Ft. W. 1187 EDINBURG, TX 76021 800-898-2222 P.O. BOX 381-0681 P.O. BOX 381-0681 FAX: (817) 381-1830 FAX: (817) 408-0581 www.mildenandhunt.com | | |

Attachment 2 -
Site Plan Submitted
With Application



| THE HEIGHTS APARTMENTS | | | | | | HIDALGO COUNTY, TX | 2015015 |
|---------------------------|-----------|--------------|------------|----------------|----------------|--------------------|---------|
| UNIT TABULATION - 2 STORY | | | | | | | 2/25/15 |
| UNIT NAME | UNIT TYPE | NET AREA(SF) | UNIT COUNT | PERCENTAGE | TOTAL AREA | % BREAKDOWN | |
| A1 | 1br/1ba | 725 | 16 | 12.50% | 11,600 | 13% | |
| B1 | 2br/2ba | 900 | 64 | 50.00% | 57,600 | 50% | |
| C1 | 3br/2ba | 1,110 | 48 | 37.50% | 53,280 | 38% | |
| TOTALS | | | 128 | 100.00% | 122,480 | | |

UNIT AVERAGE NET SF : 957

* NET AREA IS COMPUTED TO INCLUDE SQUARE FOOTAGE FROM EXTERIOR FACE OF ALL EXTERIOR FRAME WALLS THAT ENCLOSE A/C SPACE. IT DOES NOT INCLUDE PATIOS, BALCONIES, PATIO/BALCONY STORAGE.

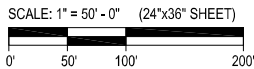
| PROJECT DATA | | |
|-----------------------|-----------------|-----------------|
| UNIT AVERAGE NET SF : | | 957 S.F. |
| ACREAGE: | | 13.77 ACRES |
| DENSITY: | | 9.30 UNITS/ACRE |
| PARKING: | | |
| REQUIRED | | 236 SPACES |
| PROVIDED | | 239 SPACES |
| | SURFACE PARKING | 239 SPACES |
| | | 2.3 SPACES/UNIT |

NOTES

- THIS SITE PLAN, AS SHOWN, WAS PREPARED TO ADHERE TO ALL APPLICABLE ZONING, SITE DEVELOPMENT AND BUILDING CODE ORDINANCES.
- FLOOD_ZONE
ZONE "B" 480334 0425 C
MAP REVISED: NOVEMBER 16, 1982

| PARKING CALCULATION | | |
|---------------------|-------------|------------|
| UNIT TYPE | N° OF UNITS | REQUIRED |
| 1br/1ba | 16 | 24 |
| 2br/2ba | 64 | 128 |
| 3br/2ba | 48 | 144 |
| TOTAL REQ. | 128 | 296 |
| TOTAL PROVIDED | | 299 |

| BUILDING CALCULATIONS | | | | | | | | |
|-----------------------|-----------|-----------|-----------|-----------|-------------|----------------|--------------------|----------------|
| BUILDING NO. | BLDG TYPE | 1br/1ba | 2tr/2ba | 3br/2ba | N° OF UNITS | UNIT AREA | BALCONIES/BREEZWAY | TOTAL |
| 1 | I | 4 | 8 | 4 | 16 | 14,540 | 2,481 | 17,C21 |
| 2 | I | 4 | 8 | 4 | 16 | 14,540 | 2,481 | 17,C21 |
| 3 | I | 4 | 8 | 4 | 16 | 14,540 | 2,481 | 17,C21 |
| 4 | I | 4 | 8 | 4 | 16 | 14,540 | 2,481 | 17,C21 |
| 5 | II | 0 | 8 | 8 | 16 | 16,030 | 4,639 | 20,719 |
| 6 | II | 0 | 8 | 8 | 16 | 16,030 | 4,639 | 20,719 |
| 7 | II | 0 | 8 | 8 | 16 | 16,030 | 4,639 | 20,719 |
| 8 | II | 0 | 8 | 8 | 16 | 16,030 | 4,639 | 20,719 |
| TOTAL | | 16 | 64 | 48 | 128 | 122,480 | 28,480 | 150,960 |
| CLUB HOUSE | | | | | | 3,613 | 2,113 | 5,731 |
| MAINTENANCE | | | | | | | 576 | 576 |
| TOTAL | | | | | | 126,093 | 31,174 | 157,267 |



ARCHITECTURAL SITEPLAN

A 201

THE HEIGHTS APARTMENTS
WISCONSIN STREET HOUSING

Feb 25, 2015 HIDALGO COUNTY, TEXAS. HPA#15016



HUMPHREYS & PARTNERS ARCHITECTS L.P.

5339 Alpha Road, Suite 300 Dallas, TX 75240 (972) 701-9636 (972) 701-9639

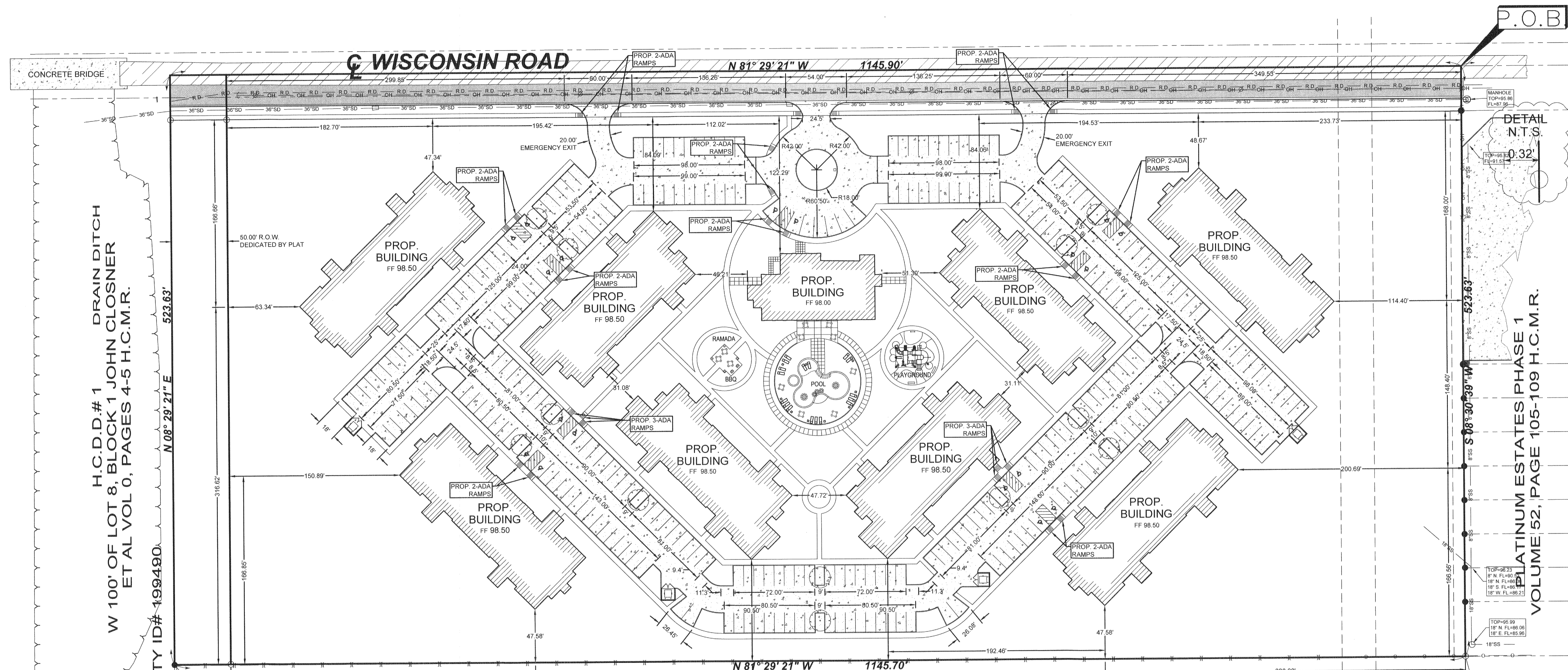
www.humphreys.com marketing@humphreys.com

DALLAS CHICAGO NEW YORK NEWPORT BEACH NEW ORLEANS ORLANDO SAN RAMON SCOTTSDALE

© 2015 by HUMPHREYS & PARTNERS ARCHITECTS, L.P. The arrangements depicted herein are the sole property of Humphreys & Partners Architects, L.P. and may not be reproduced in any form without its written permission. Architectural conceptual site plans are for feasibility purpose only. Revisions may occur due to further investigation from regulatory authorities and building code analysis. Dimensions shown are of a strategic intent only. Refer to surveys and civil drawings for technical information and measurements.

Attachment 2 -
Civil Site Plan with Street and
HCDD ROW noted

LOT 5 BLK 1 JOHN CLOSER
VOL. 0, PAGE 4-5 H.C.M.R.



SCALE: 1"=50'
P.O.B.
DETAIL N.T.S.
0.32'

H.C.D.D.# 1
W 100' OF LOT 8, BLOCK 1 JOHN CLOSER
ET AL VOL 0, PAGES 4-5 H.C.M.R.

PROPERTY ID# 199480

N:16621577.730
E:1099856.137

N:16621408.395
E:1100989.302

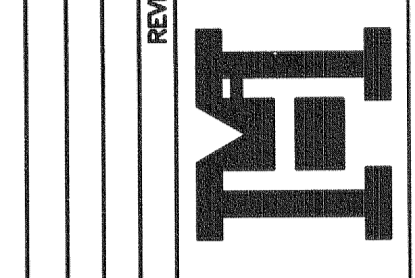
8.5 AC.
ROMULDO CAVAZOS & REYNA MARTINEZ
W.D. DOCUMENT No.867520 H.C.O.R.
LOT 8, BLOCK 1
JOHN CLOSER ET AL
VOL. 0, PAGES 4-5 H.C.M.R.

PLATINUM ESTATES PHASE 1
VOLUME 52, PAGE 105-109 H.C.M.R.

- LEGEND**
- FOUND No. 4 REBAR
 - SET No. 4 REBAR WITH PLASTIC CAP STAMPED MELDEN & HUNT
 - ⊙ SET SQUARE CUT
 - ⊕ POWER POLE
 - ⊗ LIGHT POLE
 - ⊘ GUY WIRE
 - ⊙ SIGN
 - ⊙ FIRE HYDRANT
 - ⊙ FLUSH VALVE
 - ⊙ WATER VALVE
 - ⊙ SANITARY SEWER MANHOLE
 - ⊙ STORM SEWER MANHOLE
 - ⊙ FIELD DRAIN
 - ⊙ TRANSFORMER
 - HOOD WIRE FENCE
 - METAL FENCE
 - 36" STORM SEWER LINE
 - 8" S.S. 2" SANITARY SEWER LINE
 - 18" S.S. 18" SANITARY SEWER LINE
 - OH OVERHEAD POWER LINE
 - R.D. ROAD DITCH
 - ASPHALT AREA
 - CONCRETE AREA
 - A-A - EDGE OF ASPHALT TO EDGE OF ASPHALT
 - N.E. COR. - NORTHEAST CORNER
 - Sq. Ft. - SQUARE FEET
 - R.O.W. - RIGHT OF WAY
 - H.C.M.R. - HIDALGO COUNTY MAP RECORDS
 - H.C.O.R. - HIDALGO COUNTY OFFICIAL RECORDS
 - W.D. - WARRANTY DEED
 - N.T.S. - NOT TO SCALE

JOB No.
15030.04

BY: [Signature]
DATE: [Date]
REVISION: [Table]
MELDEN & HUNT INC.
CONSULTANTS ENGINEERS ARCHITECTS
1115 W. 11TH ST. SUITE 100
DENVER, CO 80202
PH: (303) 733-1111
FAX: (303) 733-1112
WWW.MELDENANDHUNT.COM
ESTABLISHED 1947



ENG. TECH. ENR.
PROJECT ENR.
T-BOOK 988, PG. 11-12
1. RELEASE DATE:
2. RELEASE DATE:
3. RELEASE DATE:
SCALE:

MELDEN & HUNT, INC.
TEXAS REGISTRATION F-1435
STATE OF TEXAS
MARIO A. REYNA
117368
LICENSED PROFESSIONAL ENGINEER
THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY MARIO A. REYNA, P.E. 117368
ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE LAW

THE HEIGHTS
SUBDIVISION
HIDALGO COUNTY, TEXAS

**DIMENSIONAL CONTROL
SITE PLAN**

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit (“HTC”) Application for Avanti East (aka Sierra Vista) (HTC #16380)

RECOMMENDED ACTION

WHEREAS, Avanti East (the “Development”) received an award of 9% HTCs in 2016 to construct 108 units in Edinburg, Hidalgo County;

WHEREAS, the Development Owner, MDS Housing Owassa Development, Ltd. (Enrique Flores, IV) has requested approval for changes to the Development site acreage such that it decreases from 5.797 acres to 5.436 acres, resulting in a modification to the residential density of 9.9%, as well as other non-material changes to the Application;

WHEREAS, Board approval is required for a modification of the residential density of at least 5% under Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(a)(4)(F), and the Development Owner has complied with the amendment requirements in 10 TAC §10.405(a) to place this request before the Board; and

WHEREAS, the decrease in site acreage and resulting modification to the residential density do not negatively impact the viability of the transaction or change the amount of tax credits awarded;

NOW, therefore, it is hereby

RESOLVED, that the material application amendment for Avanti East (aka Sierra Vista) 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 Board action.

BACKGROUND

Avanti East (aka Sierra Vista) was approved for a 9% HTC allocation during the 2016 competitive cycle to construct 108 multifamily units in Edinburg, Hidalgo County.

In a letter dated June 29, 2017, Enrique Flores IV on behalf of the Development Owner, requested approval for several changes to the Application. Mr. Flores’ letter states that prior to purchasing of the site, Hidalgo County planned to widen Owassa Road and require a right of way (“ROW”) to be dedicated when the property was platted. The survey provided in the Application reflected the

expected highway right of way and acreage of 5.979 acres. However, once the property was platted, the dedication of the right of way took place and reduced the site acreage to the current 5.436 acres. The request letter also explains that preliminary due diligence for the Application cycle included a site plan used for purposes of the tax credit application. However, once it became apparent the application would be successful in receiving an award, additional due diligence was performed including meetings with the City of Edinburg Fire Marshal, which resulted in the requirement of an additional secondary point of ingress/egress. As a result of the final dedication of right of way and the additional point of entry required by the Fire Marshal, the site plan was changed slightly to accommodate these requirements. Mr. Flores confirms that the reduction of the land did not impact the design of the site, number of units or buildings and has no adverse implications on future tenants.

Finally, Mr. Flores explains that the clubhouse floor plan provided in the Application was a plan utilized in previous projects; however, upon receiving an award of HTC the owner worked to design a more efficient and family friendly layout. Specifically, Mr. Flores explains that a number of the previous dedicated spaces within the clubhouse (reception area, supportive services/classroom, business center and activities room) which were only used occasionally were combined into one large multi-purpose area which still serve similar functions. A comparison of the Development as proposed at Application and now at amendment is provided below:

| Material Alterations as defined in Texas Government Code §2306.6712 and 10 TAC §10.405(a)(4) | |
|---|---|
| <p>Development Site: 5.979 acres Units: 108 Density: 18.1 units/acre Residential Buildings: 5 Common Area Square Footage: 3,104 sf Net Rentable Square Footage: 117,040 sf</p> <p>MATRIX 2 A UNITS / 8 C UNITS 2 B UNITS / 12 C UNITS</p> | <p>Development Site: 5.436 acres Units: 108 Density: 19.9 units/acre (+9.99% increase) Residential Buildings: 5 Common Area Square Footage: 3,980 sf Net Rentable Square Footage: 117,040 sf</p> |

Staff has reviewed the original application and underwriting report and concluded that the changes related to the Application would not have changed the scoring of the Application and do not negatively impact the tax credit allocation awarded. The need for the proposed modifications was neither reasonably foreseeable nor preventable by the Development Owner at the time the Application was submitted.

Staff recommends approval of the requested material Application amendment for Avanti East (aka Sierra Vista) as presented herein.

MDS HOUSING OWASSA, LTD

June 29, 2017

Texas Department of Housing and Community Affairs
Multifamily Division
221 East 11th Street
Austin, Texas 78701
Attention: Michelle Mickens

RE: Avanti East (f.k.a. Sierra Vista) – Application Amendment for TDHCA #16380

Dear Ms. Mickens,

Please accept this letter as our formal request to amend the site plan, clubhouse layout, and site acreage for TDHCA #16380 - Avanti East (formerly Sierra Vista).

During our due diligence for the application cycle a preliminary site feasibility study was performed. This analysis was used to create the initial site plan which was included in the tax credit application (Exhibit A). Once it became apparent the development would receive an award of credits additional due diligence was performed including meetings with the City of Edinburg Fire Marshal who required a secondary point of ingress/egress. Using the updated information, the site was reconfigured to allow for secondary access along Owassa Road (Exhibit B). Please note the building plans, unit plans, unit mix, NRA, rent mix, etc. have not been modified in any way.

Included in the application was the clubhouse floorplan from previous projects (Exhibit C). Once it became apparent the development would receive an award of credits a more efficient and family friendly layout was designed to better serve the residents of Avanti East. A number of the previous dedicated spaces (reception area, supportive services / classroom, business center & activities room) which were only used occasionally were combined into one large multipurpose area which still serve similar functions, such as an internet cafe, activities/game room, entry lounge and a large multipurpose room for our resident supportive services all while incorporating a larger fitness center. The revised clubhouse layout is attached as Exhibit D.

Prior to our purchasing the site, Hidalgo County planned to widen Owassa Road and required right of way (“ROW”) be dedicated when the property was platted. During the

initial application, a surveyor was engaged and completed the boundary survey indicating 5.979 acres (Exhibit E). While the survey did indicate a Highway Right of Way Easement, the strip of land was still part of the site being acquired. It was not until the property was platted that the dedication took place, thereby reducing the site acreage to 5.436 acres (Exhibit F). The required ROW dedication was beyond the control of the Owner but necessary to meet its access and site plan requirements for the City of Edinburg. The ROW dedication was anticipated at the time of the application and noted on the Applicant's site plan as a line of dedicated ROW. The reduction of land did not impact the design of the site, number of units or buildings and has no adverse implications on future tenants.

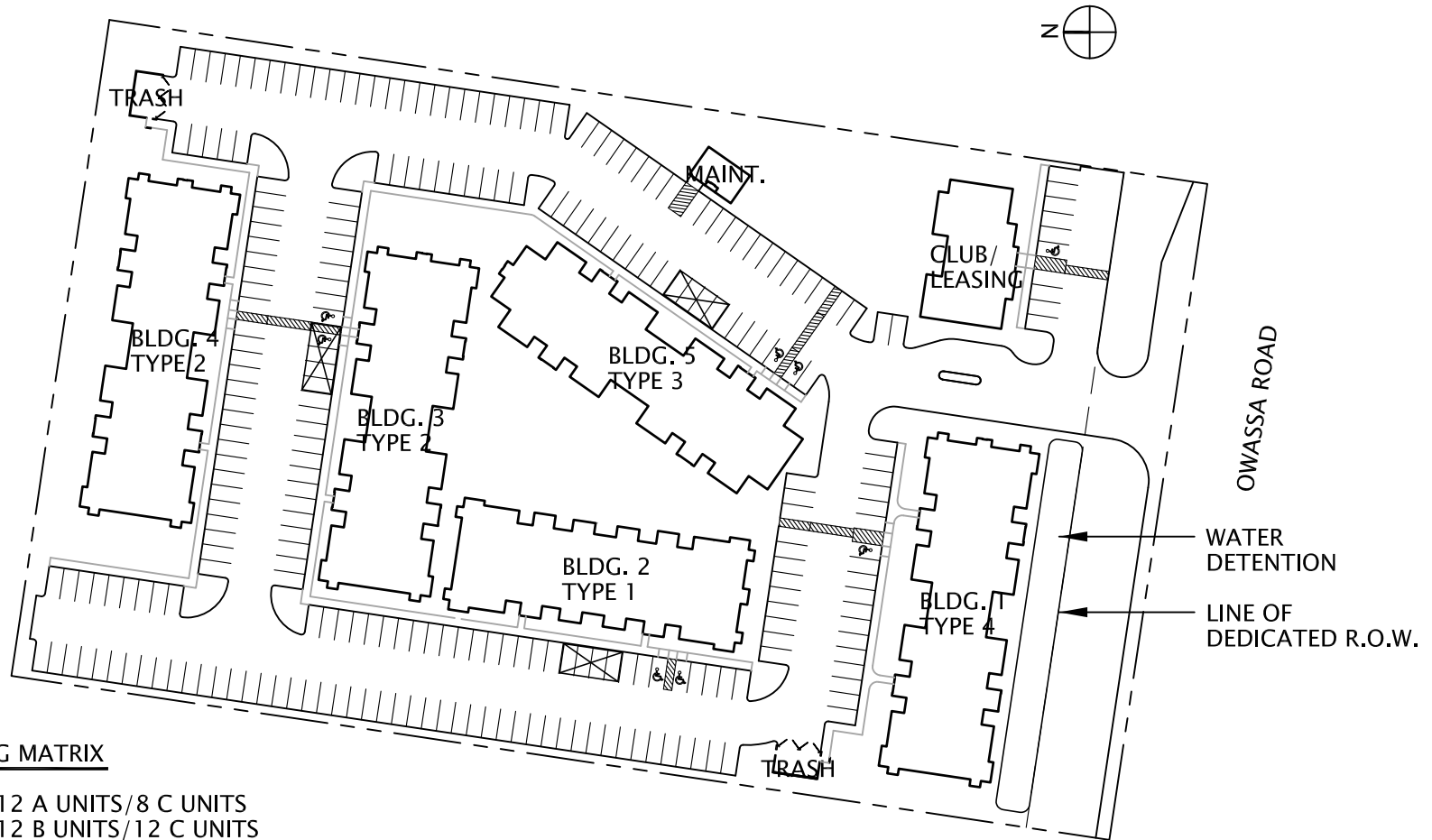
Should you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,



Enrique Flores, IV
Authorized Representative of MDS Housing Owassa, Ltd.
8500 Shoal Creek Blvd
Building 4, Suite 208
Austin, Texas 78757
(512) 914-0953 Phone
(512) 900-2860 Fax
hflores@madhousedevelopment.net

Exhibit A



BUILDING MATRIX

TYPE 1 12 A UNITS/8 C UNITS
 TYPE 2 12 B UNITS/12 C UNITS
 TYPE 3 24 B UNITS
 TYPE 4 8 B UNITS/8 C UNITS

PARKING REQUIREMENTS

12 A UNITS @ 1.5/UNIT = 18
 56 B UNITS @ 2/UNIT = 112
 40 C UNITS @ 3/UNIT = 120
 TOTAL REQUIRED 250
 TOTAL PROVIDED 262

HC PARKING REQUIREMENTS

TOTAL REQUIRED: 7
 TOTAL PROVIDED: 7
 VAN ACCESSIBLE SPACES PROVIDED: 2

OWNER COMMITS TO PROVIDING SITE AMENITIES TO SATISFY THE REQUIREMENTS OF THE 2016 QAP.

ENTIRE SITE IS WITHIN ZONE B OF F.I.A. FLOOD INSURANCE RATE MAP OF COMMUNITY #480344, PANEL #0425C EFFECTIVE 11/16/82

RAINWATER DETENTION WILL BE UNDERGROUND.

NDA

SIERRA VISTA APARTMENTS

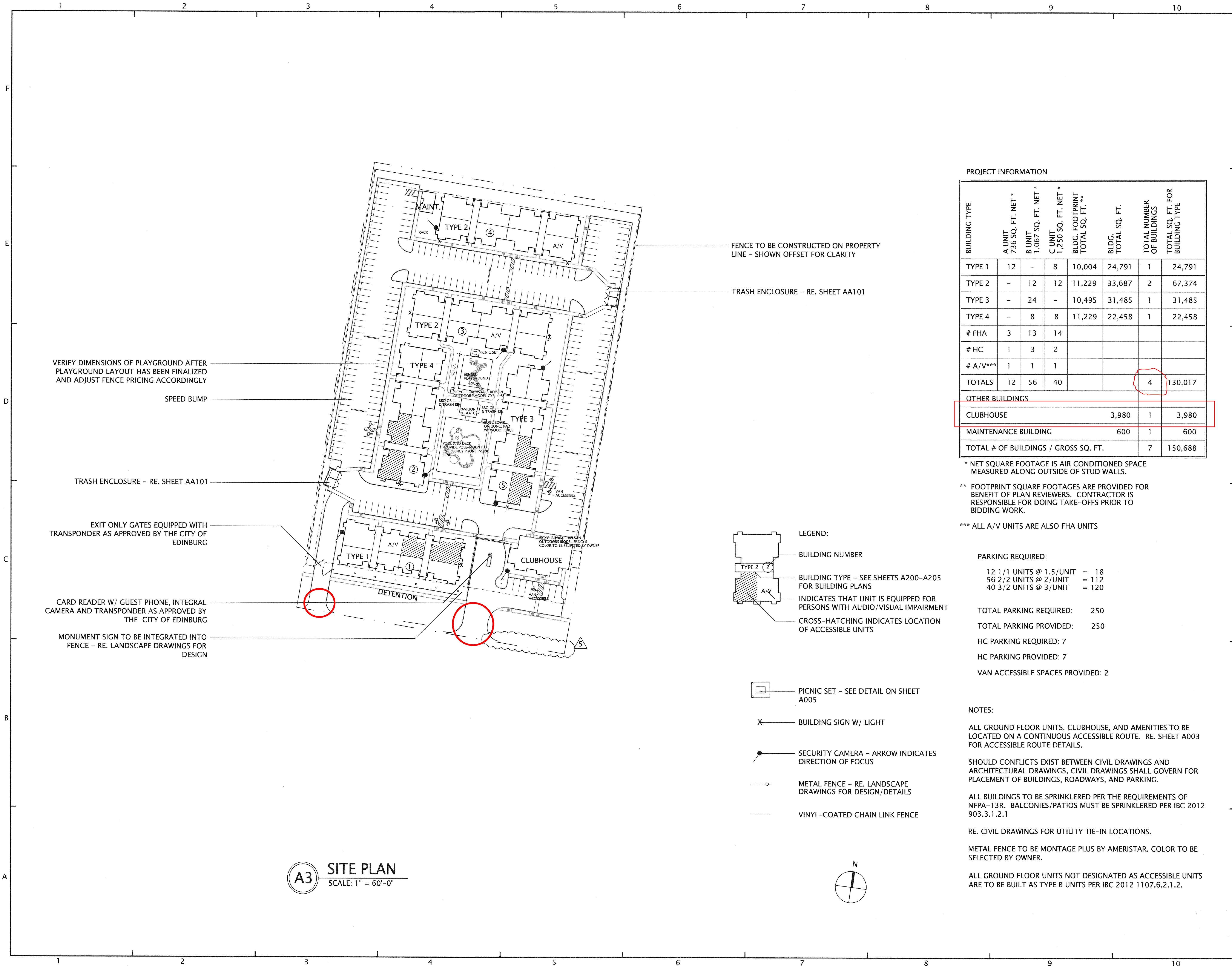
02/16

E1

SITE PLAN - 5.979 ACRES

SCALE: 1" = 100'

Exhibit B



A3 SITE PLAN
SCALE: 1" = 60'-0"

- LEGEND:**
- BUILDING NUMBER
 - BUILDING TYPE - SEE SHEETS A200-A205 FOR BUILDING PLANS
 - INDICATES THAT UNIT IS EQUIPPED FOR PERSONS WITH AUDIO/VISUAL IMPAIRMENT
 - CROSS-HATCHING INDICATES LOCATION OF ACCESSIBLE UNITS

- PICNIC SET - SEE DETAIL ON SHEET A005
- BUILDING SIGN W/ LIGHT
- SECURITY CAMERA - ARROW INDICATES DIRECTION OF FOCUS
- METAL FENCE - RE. LANDSCAPE DRAWINGS FOR DESIGN/DETAILS
- VINYL-COATED CHAIN LINK FENCE

PROJECT INFORMATION

| BUILDING TYPE | A UNIT 736 SQ. FT. NET * | B UNIT 1,067 SQ. FT. NET * | C UNIT 1,250 SQ. FT. NET * | BLDG. FOOTPRINT TOTAL SQ. FT. ** | BLDG. TOTAL SQ. FT. | TOTAL NUMBER OF BUILDINGS | TOTAL SQ. FT. FOR BUILDING TYPE |
|---------------|-----------------------------|-------------------------------|-------------------------------|-------------------------------------|------------------------|------------------------------|------------------------------------|
| TYPE 1 | 12 | - | 8 | 10,004 | 24,791 | 1 | 24,791 |
| TYPE 2 | - | 12 | 12 | 11,229 | 33,687 | 2 | 67,374 |
| TYPE 3 | - | 24 | - | 10,495 | 31,485 | 1 | 31,485 |
| TYPE 4 | - | 8 | 8 | 11,229 | 22,458 | 1 | 22,458 |
| # FHA | 3 | 13 | 14 | | | | |
| # HC | 1 | 3 | 2 | | | | |
| # A/V*** | 1 | 1 | 1 | | | | |
| TOTALS | 12 | 56 | 40 | | | 4 | 130,017 |

OTHER BUILDINGS

| | | | | | | | |
|---|--|--|--|--|-------|----------|----------------|
| CLUBHOUSE | | | | | 3,980 | 1 | 3,980 |
| MAINTENANCE BUILDING | | | | | 600 | 1 | 600 |
| TOTAL # OF BUILDINGS / GROSS SQ. FT. | | | | | | 7 | 150,688 |

* NET SQUARE FOOTAGE IS AIR CONDITIONED SPACE MEASURED ALONG OUTSIDE OF STUD WALLS.

** FOOTPRINT SQUARE FOOTAGES ARE PROVIDED FOR BENEFIT OF PLAN REVIEWERS. CONTRACTOR IS RESPONSIBLE FOR DOING TAKE-OFFS PRIOR TO BIDDING WORK.

*** ALL A/V UNITS ARE ALSO FHA UNITS

PARKING REQUIRED:

12 1/1 UNITS @ 1.5/UNIT = 18
 56 2/2 UNITS @ 2/UNIT = 112
 40 3/2 UNITS @ 3/UNIT = 120

TOTAL PARKING REQUIRED: 250
 TOTAL PARKING PROVIDED: 250
 HC PARKING REQUIRED: 7
 HC PARKING PROVIDED: 7
 VAN ACCESSIBLE SPACES PROVIDED: 2

NOTES:

- ALL GROUND FLOOR UNITS, CLUBHOUSE, AND AMENITIES TO BE LOCATED ON A CONTINUOUS ACCESSIBLE ROUTE. RE. SHEET A003 FOR ACCESSIBLE ROUTE DETAILS.
- SHOULD CONFLICTS EXIST BETWEEN CIVIL DRAWINGS AND ARCHITECTURAL DRAWINGS, CIVIL DRAWINGS SHALL GOVERN FOR PLACEMENT OF BUILDINGS, ROADWAYS, AND PARKING.
- ALL BUILDINGS TO BE SPRINKLERED PER THE REQUIREMENTS OF NFPA-13R. BALCONIES/PATIOS MUST BE SPRINKLERED PER IBC 2012 903.3.1.2.1
- RE. CIVIL DRAWINGS FOR UTILITY TIE-IN LOCATIONS.
- METAL FENCE TO BE MONTAGE PLUS BY AMERISTAR. COLOR TO BE SELECTED BY OWNER.
- ALL GROUND FLOOR UNITS NOT DESIGNATED AS ACCESSIBLE UNITS ARE TO BE BUILT AS TYPE B UNITS PER IBC 2012 1107.6.2.1.2.

northfield design associates, Inc.
 1524 SOUTH IH35, SUITE 233 AUSTIN, TX 78704
 512/302-1458 v dsmith@nda-austin.com

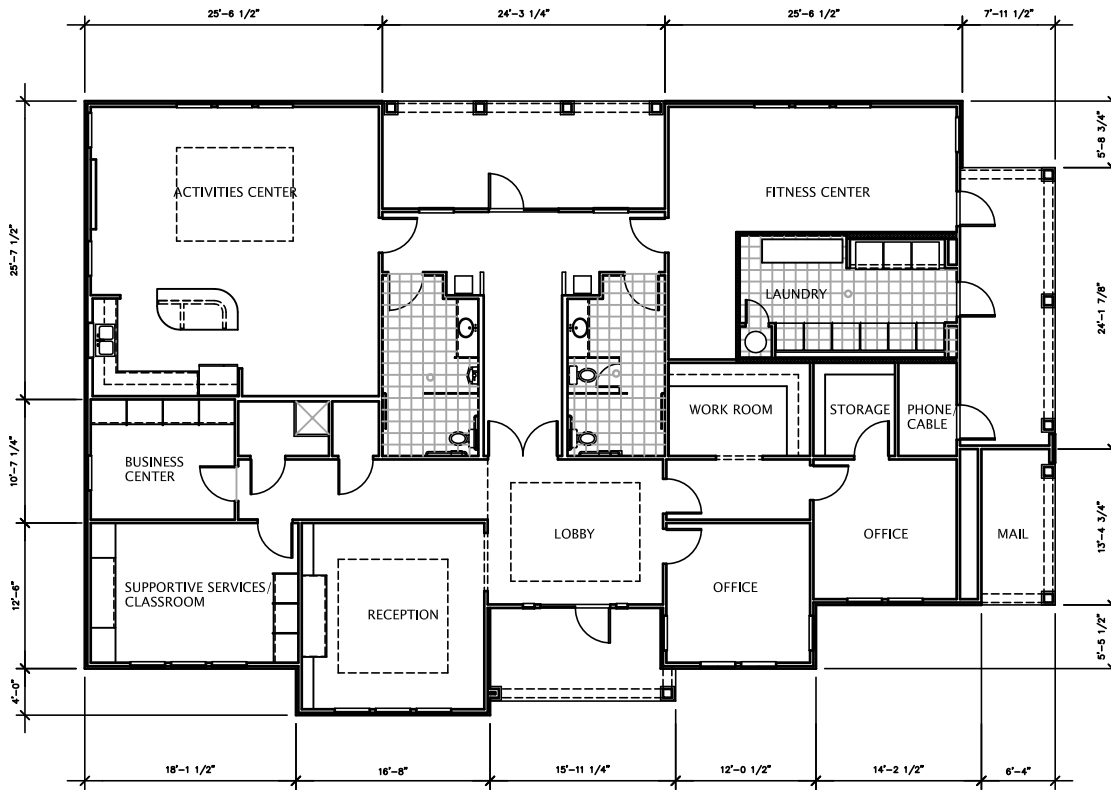
THESE DRAWINGS AND THEIR CONTENTS REMAIN THE PROPERTY OF NORTHFIELD DESIGN ASSOC. INC. AND MAY NOT BE USED FOR ANY PURPOSE EXCEPT THE CONSTRUCTION OF THE PROPERTY DESCRIBED HEREIN WITHOUT WRITTEN CONSENT FROM NORTHFIELD DESIGN ASSOCIATES, INC. ELECTRONIC COPIES OF DRAWINGS ARE ISSUED TO CONSULTANTS FOR COORDINATION ONLY. ARCHITECT ASSUMES NO RESPONSIBILITY FOR DRAWINGS WHEN USED OR MODIFIED BY OTHERS.

| Issue | Date | Description |
|-------|----------|------------------|
| 1 | 10/28/16 | ISSUE FOR PERMIT |
| 2 | 11/11/16 | ADDENDUM #1 |
| 5 | 03/14/17 | ADDENDUM #3 |

ARCHITECT'S SEAL AND SIGNATURE: *[Signature]*
 DATE OF AFFIRMATION: 03/14/17

AVANTI EAST APARTMENTS
MDS HOUSING OWASSA, LTD.
AUSTIN, TEXAS
NDA PROJECT # 2016-03
A002 ARCHITECTURAL SITE PLAN

Exhibit C



NDA

SIERRA VISTA

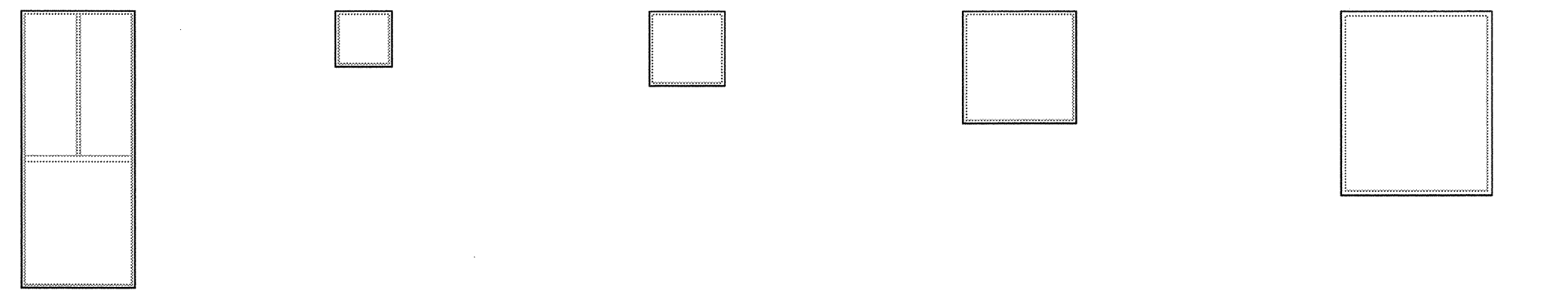
02/16

E13

CLUBHOUSE PLAN - 3,347 SQ. FT. NET

SCALE: 1/16"=1'-0"

Exhibit D



WINDOW TYPE 1
3° 7" SINGLE HUNG EXTERIOR, VINYL

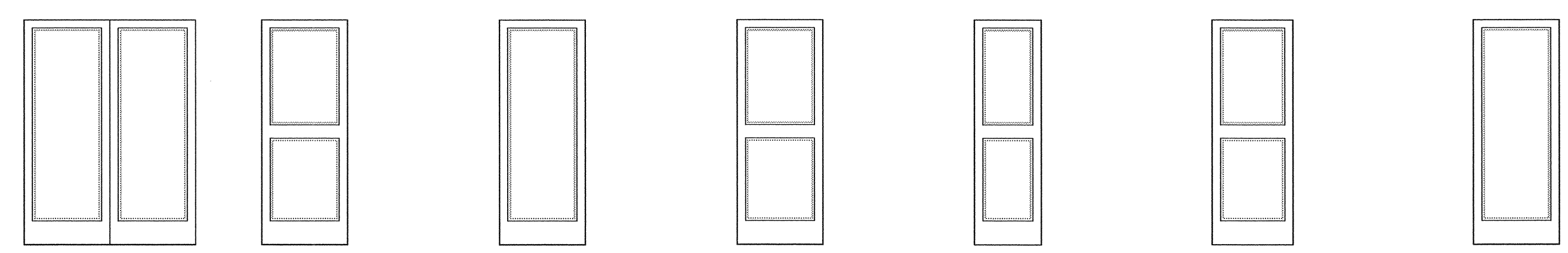
WINDOW TYPE 2
1° 1" FIXED GLASS EXTERIOR, VINYL

WINDOW TYPE 3
2° 2" FIXED GLASS EXTERIOR, VINYL

WINDOW TYPE 4
3° 3" FIXED GLASS EXTERIOR, VINYL

WINDOW TYPE 5
4° 5" FIXED GLASS INTERIOR, ALUMINUM

WINDOW NOTES:
FRAMES TO BE BRONZE COLOR.
GLASS IN WINDOW TYPE 1 & 9 TO BE TEMPERED.
EXTERIOR WINDOWS TO HAVE U VALUE OF .65 MAX. AND SHGC OF .30 MAX.
WINDOW TYPE 5 AT LAUNDRY ROOM SHALL MAINTAIN ONE-HOUR RATED WALL ASSEMBLY



DOOR TYPE 1
PR. 3° 8" FULL LIGHT METAL DOOR, PTD.

DOOR TYPE 2
3° 8" TWO-PANEL WOOD DOOR, PTD.

DOOR TYPE 3
3° 8" FULL LIGHT WOOD DOOR, PTD.

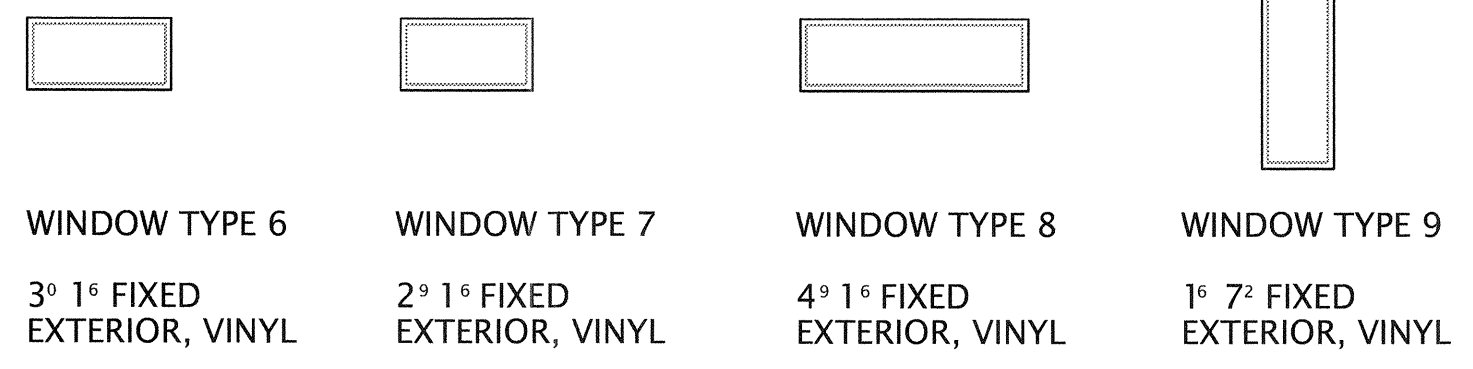
DOOR TYPE 4
3° 8" TWO-PANEL METAL DOOR, PTD.

DOOR TYPE 5
2° 8" TWO-PANEL WOOD DOOR, PTD.

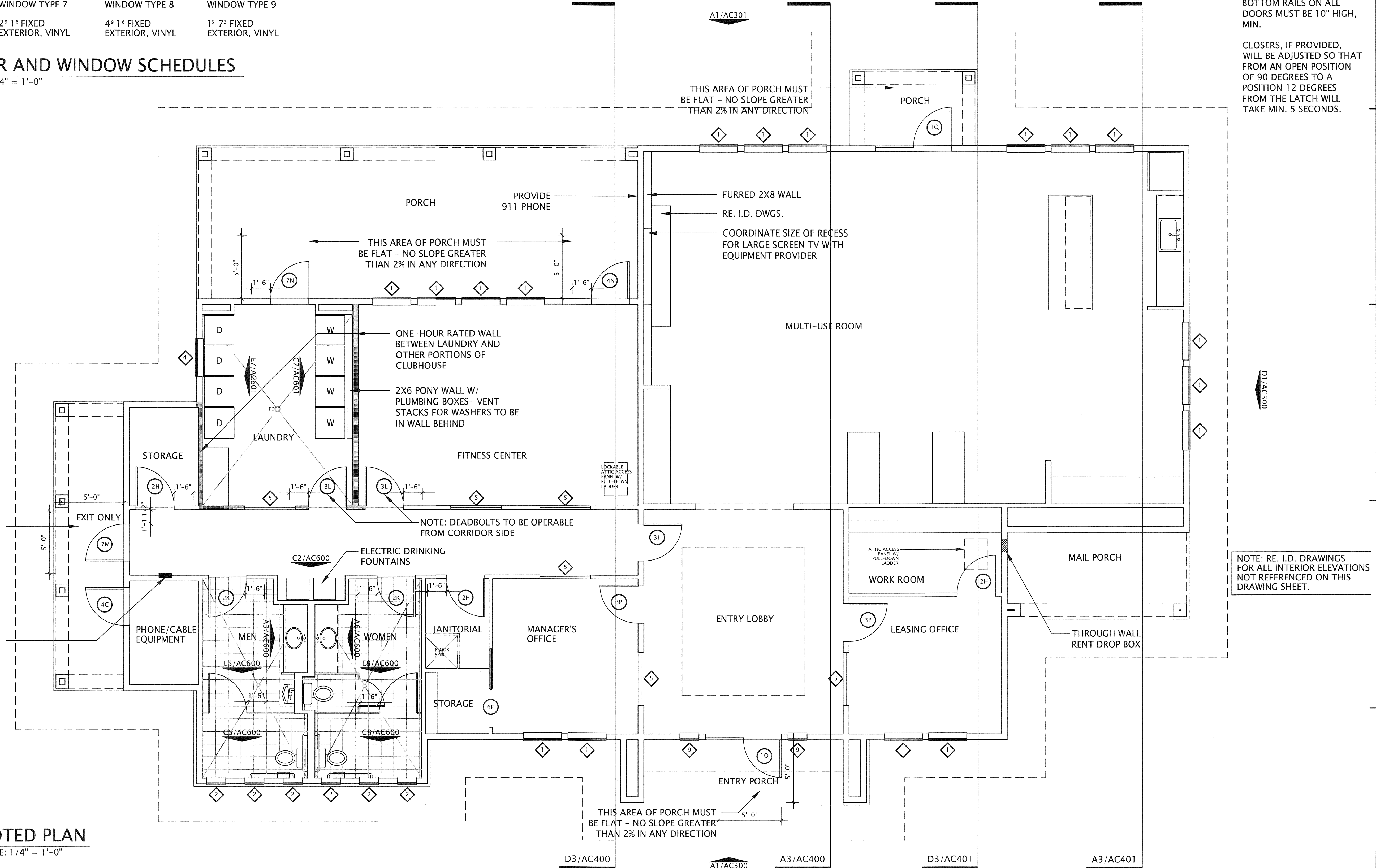
DOOR TYPE 6
3° 8" TWO-PANEL POCKET DOOR, PTD.

DOOR TYPE 7
3° 8" FULL LIGHT METAL DOOR, PTD.

DOOR NOTES:
RE. A001 FOR HARDWARE
ALL GLASS IN DOORS TO BE TEMPERED.
BOTTOM RAILS ON ALL DOORS MUST BE 10" HIGH, MIN.
CLOSERS, IF PROVIDED, WILL BE ADJUSTED SO THAT FROM AN OPEN POSITION OF 90 DEGREES TO A POSITION 12 DEGREES FROM THE LATCH WILL TAKE MIN. 5 SECONDS.



E1 DOOR AND WINDOW SCHEDULES
SCALE: 1/4" = 1'-0"

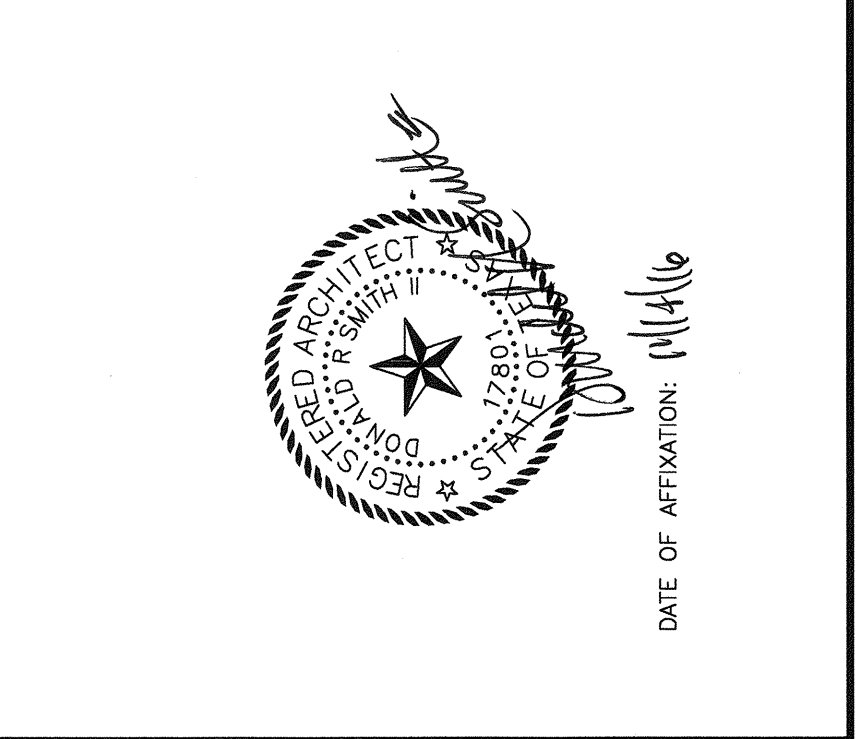


A1 NOTED PLAN
SCALE: 1/4" = 1'-0"

northfield design associates, Inc.
1524 SOUTH IH35, SUITE 233 AUSTIN, TX 78704
512/302-1458 v dsmith@nda-austin.com

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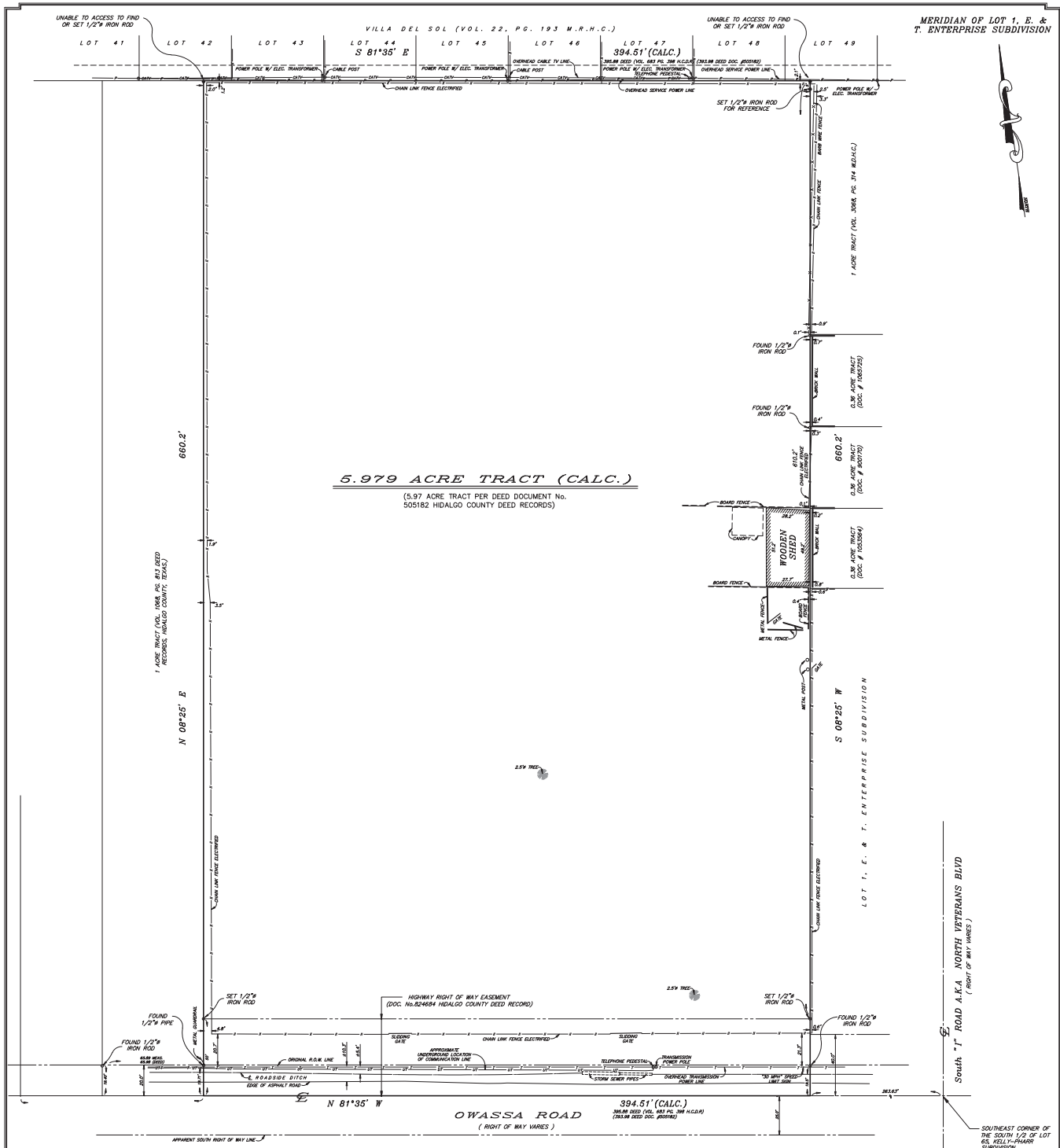
| Issue | Date | Description |
|-------|----------|------------------|
| 1 | 10/28/16 | ISSUE FOR PERMIT |
| 2 | 11/11/16 | ADDENDUM #1 |



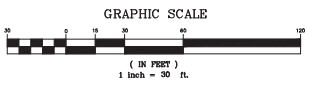
AVANTI EAST APARTMENTS
MDS HOUSING OWASSA, LTD.
AUSTIN, TEXAS
NDA PROJECT # 2016-03

AC101 CLUBHOUSE NOTED PLAN AND DOOR/WINDOW SCH.

Exhibit E



5.979 ACRE TRACT (CALC.)
 (5.97 ACRE TRACT PER DEED DOCUMENT No. 505182 HIDALGO COUNTY DEED RECORDS)



- NOTES:
1. FIELD MONUMENTATION FOUND ALONG THE NORTH RIGHT-OF-WAY LINE OF OWASSA RD. FOR BASIS OF BEARING.
 2. THIS PROPERTY LIES IN ZONES "B" AS PER THE F.I.A. FLOOD INSURANCE RATE MAP OF COMMUNITY NO. 480334, PANEL NO. 0423 C, EFFECTIVE NOVEMBER 16, 1982.
 3. ALL IRON RODS SET HAVE A YELLOW PLASTIC ID CAP STAMPED "VASQUEZ CO RPLS 5239".
 4. THIS SURVEY IS THE PROPRIETARY WORK PRODUCT OF VASQUEZ SURVEYING, INC. USE OF THIS SURVEY OTHER THAN THE ENTITY FOR WHICH IT WAS SURVEYED FOR, IS STRICTLY PROHIBITED. REPRODUCTION OF THIS DOCUMENT WITHOUT THE WRITTEN CONSENT OF VASQUEZ SURVEYING, INC. WILL BE SUBJECT TO CLAIMS AND DAMAGES.

SURVEY OF

THAT CERTAIN TRACT OF LAND CALCULATED TO CONTAIN 5.979 ACRES, MORE LESS, OUT OF THE SOUTH 1/2 OF LOT SIXTY-FIVE (65), KELLY-PHARR SUBDIVISION, HIDALGO COUNTY, TEXAS, AS PER MAP OR PLAT THEREOF RECORDED IN VOLUME 3, PAGES 133-134, DEED RECORDS, HIDALGO COUNTY, TEXAS, SAID TRACT BEING A PORTION OF THE LAND DESCRIBED IN DEED TO RAUL AYALA RECORDED IN DOCUMENT No. 505182 OFFICIAL PUBLIC RECORDS, HIDALGO COUNTY, TEXAS, REFERENCE TO WHICH IS HEREBY MADE FOR ALL PURPOSES, AND BEING FURTHER DESCRIBED AS:

ALL OF THE LAND DESCRIBED IN SAID DEED IN DOCUMENT No. 505182 OFFICIAL PUBLIC RECORDS, HIDALGO COUNTY, TEXAS, SAVE AND EXCEPT THERE FROM ANY PORTION LYING WITHIN ANY AREA CONVEYED FOR OR OCCUPIED BY OWASSA ROAD, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

1. 20 FOOT STRIP REFERENCE AS WITHIN OWASSA ROAD IN THE DEED TO RAUL AYALA RECORDED IN DOCUMENT No. 505182 OFFICIAL PUBLIC RECORDS, HIDALGO COUNTY, TEXAS;
2. 50 FOOT STRIP DESCRIBED IN HIGHWAY RIGHT OF WAY EASEMENT TO THE COUNTY OF HIDALGO RECORDED IN DOCUMENT No. 824684 OFFICIAL PUBLIC RECORDS, HIDALGO COUNTY, TEXAS.

REVISED ON FEBRUARY 18, 2016 TO CHANGE BEARINGS SHOWN ON DRAWING.

The undersigned hereby certifies that the survey described herein was made on the ground on October 27, 2015, 2016 that the only improvements on the ground are as shown; that there are no visible inconsistencies, visible over-sightings, apparent conflicts, or visible omissions except as shown herein. THIS CERTIFICATION IS ONLY VALID WITH AN ORIGINAL SIGNATURE AND A PHOTO COPY OF THIS PLAT ON HANDMADE OR REPRODUCED.



SURVEYED BY:
 Madhouse Development Services, Inc. a Texas Corporation

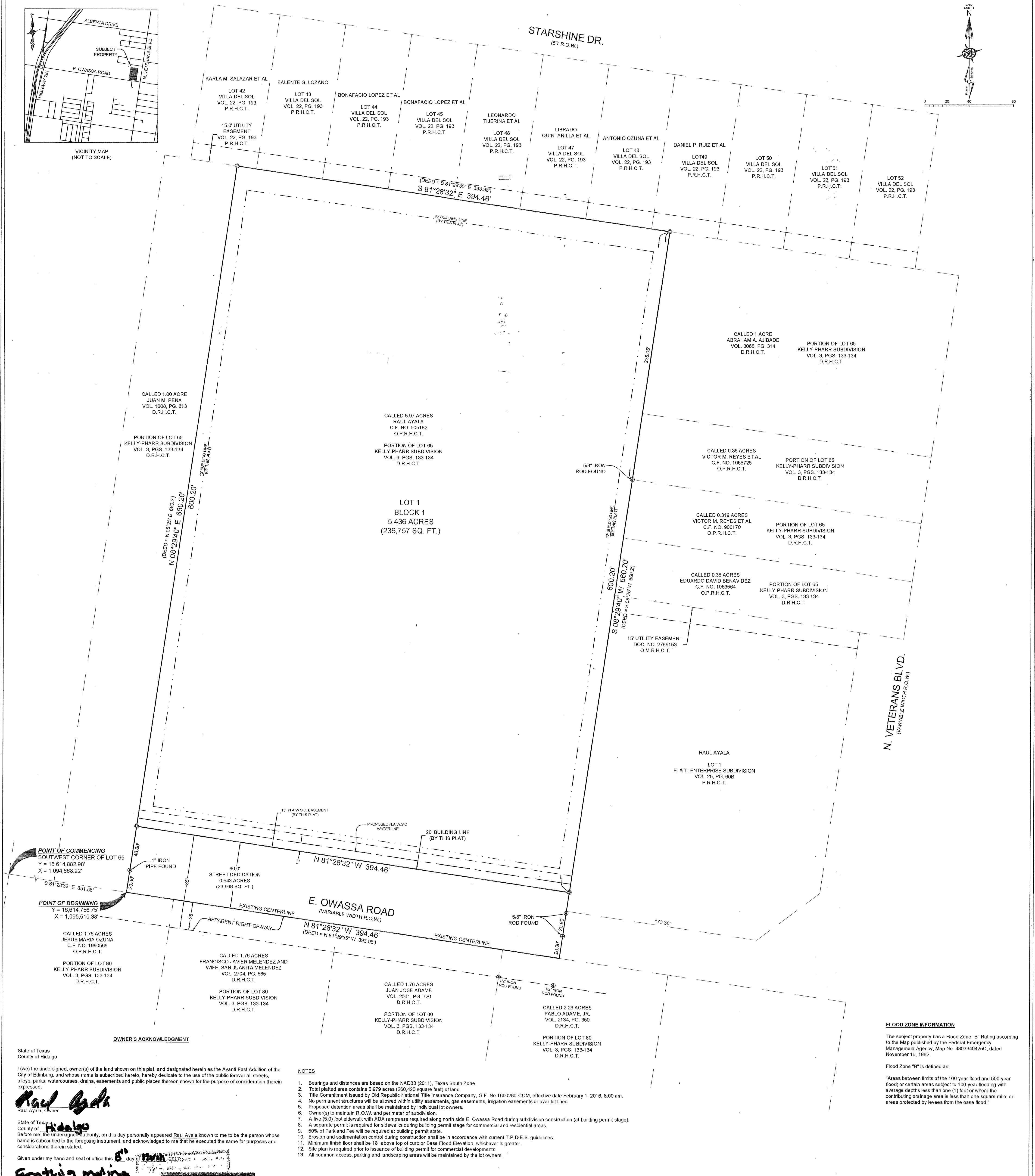
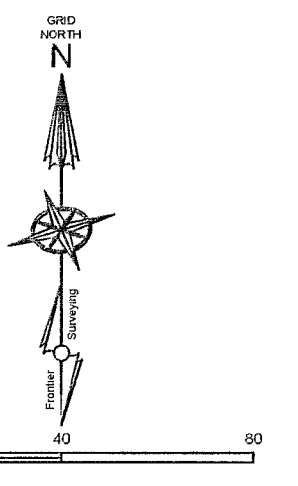
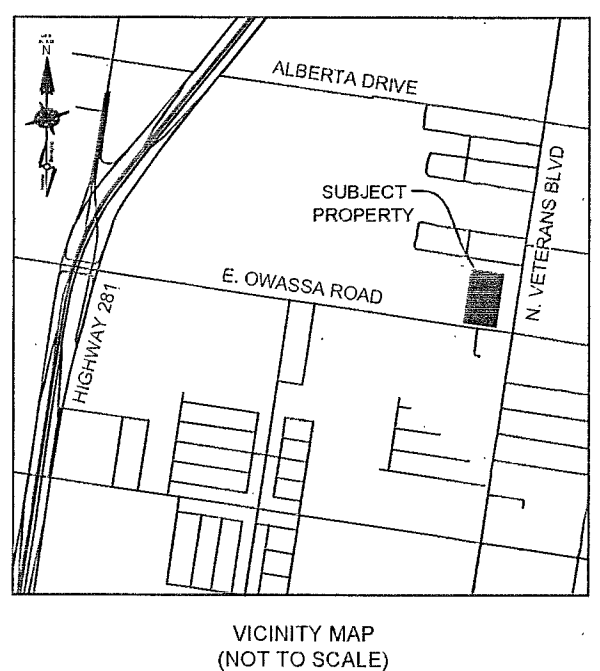
THE DIMENSIONS SHOWN ON THE BUILDING FOOTPRINT HAVE BEEN FORWARDED TO THE NEAREST TENTH OF A FOOT. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.

FIRM NO. 10094100

VASQUEZ SURVEYING, INC.

4000 BOCA CHICA BLVD.
 BROWNSVILLE, TEXAS 77801 Call: (956) 496-9880
 Phone: (956) 541-8828 Fax: (956) 544-4177
 e.F. No. 1002026-1004 209 No. 10-3859

Exhibit F



OWNER'S ACKNOWLEDGMENT

I (we) the undersigned, owner(s) of the land shown on this plat, and designated herein as the Avanti East Addition of the City of Edinburg, and whose name is subscribed hereto, hereby dedicate to the use of the public forever all streets, alleys, parks, watercourses, drains, easements and public places thereon shown for the purpose of consideration therein expressed.

Raul Ayala
Raul Ayala, Owner

State of Texas
County of Hidalgo

Before me, the undersigned authority, on this day personally appeared *Raul Ayala* known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for purposes and considerations therein stated.

Given under my hand and seal of office this 8th day of March, 2017.

Concepcion Medina
Concepcion Medina
Notary Public
Hidalgo County, Texas

NOTES

- Bearings and distances are based on the NAD83 (2011), Texas South Zone.
- Total platted area contains 5.979 acres (250,425 square feet) of land.
- Title Commitment issued by Old Republic National Title Insurance Company, G.F. No. 1600280-COM, effective date February 1, 2016, 8:00 am.
- No permanent structures will be allowed within utility easements, gas easements, irrigation easements or over lot lines.
- Proposed detention areas shall be maintained by individual lot owners.
- Owner(s) to maintain R.O.W. and perimeter of subdivision.
- A five (5.0) foot sidewalk with ADA ramps are required along north side E. Owassa Road during subdivision construction (at building permit stage).
- A separate permit is required for sidewalks during building permit stage for commercial and residential areas.
- 50% of Paritland Fee will be required at building permit stage.
- Erosion and sedimentation control during construction shall be in accordance with current T.P.D.E.S. guidelines.
- Minimum finish floor shall be 18" above top of curb or Base Flood Elevation, whichever is greater.
- Site plan is required prior to issuance of building permit for commercial developments.
- All common access, parking and landscaping areas will be maintained by the lot owners.

METES AND BOUNDS DESCRIPTION

BEING a 5.979 acre tract of land situated in the Antonio Velasco Survey, Abstract No. 45, Hidalgo County, Texas, being a portion of Lot 65, Kelly-Pharr Subdivision, as recorded in Volume 3, Pages 133-134, Deed Records of Hidalgo County, Texas (D.R.H.C.T.), being that certain called 5.97 acre tract of land described in deed to Raul Ayala, as recorded in Clerk's File No. 505182, Official Public Records of Hidalgo County, Texas (O.P.R.H.C.T.), and being more particularly described by metes and bounds as follows:

COMMENCING at the southwest corner of said Lot 65 (Y = 16,614,882.98', X = 1,095,510.38')

THENCE South 81°28'32" East, along the south line of said Lot 65, a distance of 851.56 feet to the common south corner of said Ayala tract and that certain called 1.0 acre tract of land described in deed to Juan M. Pena, as recorded in Volume 1608, Page 813, D.R.H.C.T. (Y = 16,614,756.75', X = 1,095,510.38'), said point being in E. Owassa Road (a variable width right-of-way) and being the **POINT OF BEGINNING**.

THENCE North 09°28'40" East, passing a 1-inch iron pipe found at a distance of 20.00 feet, passing a point at 20.00 feet from which a found 1/2-inch iron rod found bears South 56°07'54" East, a distance of 1.44 feet, and continuing a total distance of 660.20 feet to the common north corner of said Ayala and Pena tracts, and being on the south line of Villa Del Sol addition, as recorded in Volume 22, Page 193, Plat Records of Hidalgo County, Texas (P.R.H.C.T.).

THENCE South 81°28'32" East, along the common line of said Ayala tract and said Villa Del Sol addition, a distance of 394.46 feet to the common north corner of said Ayala tract and that certain called 1 acre tract of land described in deed to Abraham A. Ajibade, as recorded in Volume 3068, Page 314, D.R.H.C.T.).

THENCE South 09°28'40" West, along the east line of said Ayala tract, passing a 5/8-inch iron rod found at a distance of 20.00 feet marking the common west corner of certain tracts of land described in deed to Victor M. Reyes et al, as recorded in Volume 1068, Page 813, D.R.H.C.T., passing a 5/8-inch iron rod found at a distance of 619.30 feet, passing a 5/8-inch iron rod found at a distance of 640.20 feet, and continuing a total distance of 660.20 feet to the southeast corner of said Ayala tract and being in aforesaid E. Owassa Road.

THENCE North 81°28'32" West, along the south line of said Ayala tract and along said E. Owassa Road, a distance of 394.46 feet to the **POINT OF BEGINNING** and containing 5.979 acres (250,425 square feet) of land.

SURVEYOR'S CERTIFICATION

I, Allen W. Kerley, registered professional land surveyor in the state of Texas, do hereby certify that this plat is true and correctly made from an actual survey made on the ground of the property legally described hereon, and that there are no apparent discrepancies, conflicts, overlapping of improvements, visible utility lines or roads in place, except as shown on the accompanying plat, and that the corner monuments shown thereon were properly placed under my supervision in accordance with the subdivision regulations of the City of Edinburg, Texas.

Dated this 8th day of March, 2017.

Allen W. Kerley
Allen W. Kerley
Registered Professional Land Surveyor
R.P.L.S. No. 5427

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1 CERTIFICATION

Hidalgo County Drainage District No. 1 hereby certifies that the drainage plans for this subdivision comply with the minimum standards of the district adopted under Texas Water Code 49.211(C). The District has not reviewed and does not certify that the drainage structures described are appropriate for the specific subdivision, based on generally accepted engineering criteria. It is the responsibility of the Developer and his Engineer to make these determinations.

Hidalgo County Drainage District No. 1
Raul E. Spain
General Manager

Date 03/16/17

HIDALGO COUNTY IRRIGATION DISTRICT NO. 2 CERTIFICATION

This Plat is hereby approved by the Hidalgo County Irrigation District No. 2 on this, the 16th day of March, 2017.

No improvements of any kind (including without limitation, trees, fences, and buildings) shall be placed upon Hidalgo County Irrigation District #2 rights of ways or easements.

Karl Obst
President

ATTEST *Frederick*
Secretary

ENGINEER'S CERTIFICATION

I, the undersigned, a registered professional engineer in the State of Texas, hereby certify that proper engineering consideration has been given to this plat.

I certify that the water and sewer service facilities for lots intended for residential purposes described above are in compliance with the Model Rules adopted under Section 16.343, Water Code. The estimated cost to install unconstructed water and sewerage facilities described above are as follows:
Water facilities: These facilities will be constructed.
Sewage facilities: (Sewer service connection/installation of septic systems are not required.)
The subdivider has paid a total of \$54750.00 to cover the cost of the connections/installation of septic systems.

Dated this 19th day of March, 2017.

Craig Carney
Registered professional engineer (P.E.)
No. 55714 State of Texas

FLOOD ZONE INFORMATION

The subject property has a Flood Zone "B" Rating according to the Map published by the Federal Emergency Management Agency, Map No. 490334025C, dated November 16, 1982.

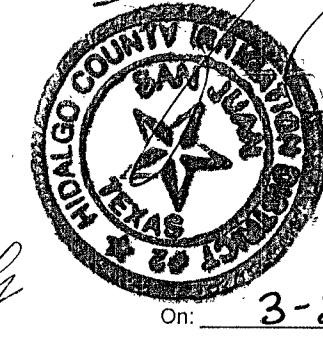
Flood Zone "B" is defined as:
"Areas between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding with average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood."

State of Texas
County of Hidalgo

Jesus R. Saenz
Jesus R. Saenz, Administrator/Director of Planning and Zoning Department of the City of Edinburg, Texas do hereby certify this minor subdivision plat known as Avanti East conforms to all subdivision requirements of this City which my approval is required and has been approved for recording on this the 14th day of March, 2017 with the County Clerk of Hidalgo County, Texas.

State of Texas
County of Hidalgo

Frederick
Frederick, Administrator/Planning and Zoning Department Director



Instrument Number 2799911
of the Map Records of Hidalgo County, Texas

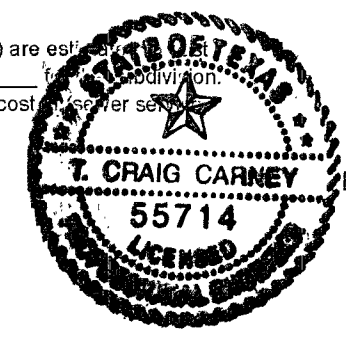
By *Frederick*
Deputy

Minor Plat of AVANTI EAST

BEING a 5.979 acre portion of Lot 65, Kelly-Pharr Subdivision, as recorded in Volume 3, Pages 133-134, Deed Records of Hidalgo County, Texas.

OWNER
Raul Ayala
2616 James Ave
Edinburg, TX 78539

SURVEYOR
Frontier Surveying Company
710 Buffalo St, Suite 700
Corpus Christi, TX 78401
PH: (361) 881-8044
TBPLS Firm No. 10082900



1k

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action regarding an additional Placed in Service (“PIS”) deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for Cypress Creek at Wayside (HTC # 14291)

RECOMMENDED ACTION

WHEREAS, Cypress Creek Wayside, LP (the “Development Owner”) was allocated \$1,500,000 in 9% Housing Tax Credits (“HTC”) in 2014 to construct Cypress Creek at Wayside (the “Development”), a development consisting of 200 new multifamily units in Houston, Harris County;

WHEREAS, the Development Owner was required by the Carryover Allocation Agreement and by Internal Revenue Code (“Code”) §42(h)(1) to place each building in service by no later than December 31, 2016;

WHEREAS, Internal Revenue Service (“IRS”) Revenue Procedure 2014-49 allows the allocating agency to provide an extension to the placed in service deadline to the extent necessary because the buildings are located in and impacted by a major disaster area, as declared by the President, during the two year period described in Code §42(h)(1)(E)(i), as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the two year period;

WHEREAS, on May 29, 2015, (under FEMA-4223-DR), on November 25, 2015, (under FEMA-4245-DR), on April 25, 2016, (under FEMA-4269-DR), and on June 11, 2016 (under FEMA-4272-DR), notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to severe storms, tornadoes, straight-line winds, and flooding that ensued that included Harris County in the list of Texas counties eligible to receive individual and/or public assistance;

WHEREAS, at the Board meeting of November 10, 2016, the Development Owner was granted approval for an eight month extension to the placed in service deadline to August 31, 2017, after construction delays caused by the storms were documented;

WHEREAS, on August 25, 2017, under FEMA-4332-DR, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to excessive rain, wind and flooding that included Harris County in a list of Texas counties eligible to receive individual and/or public assistance;

WHEREAS, as of August 25, 2017, the Development Owner had obtained Certificates of Occupancy (“COs”) or Temporary Certificates of Occupancy (“TCOs”) for all residential

buildings and the clubhouse with the exception of Building 9, which was scheduled for inspection by the City of Houston during the last week of August;

WHEREAS, the final inspection for Building 9 had to be delayed as a direct result of Hurricane Harvey;

WHEREAS, the final inspection was conducted by the City of Houston and a Temporary Certificate of Occupancy was issued for Building 9 on September 8, 2017;

WHEREAS, the Development Owner now requests disaster relief in the form of an eight day extension to the Development's previously extended PIS deadline of August 31, 2017;

WHEREAS, aside from delaying the availability of affordable units, the requested changes do not negatively affect the Development or impact the long term viability of the transaction, and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances set forth in the Development Owner's request;

NOW, therefore, it is hereby

RESOLVED, that an eight day extension of the PIS deadline to September 8, 2017, is hereby approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Cypress Creek at Wayside was awarded credits in 2014 under the 9% HTC program. The property is a 200-unit new construction property located in Houston in Harris County. The Development Owner, Cypress Creek Wayside LP and its General Partner, Cypress Creek Wayside General Partner LLC, are managed by Donald Sampley. Bonner Carrington Construction LLC, managed by Stuart Shaw, has been subcontracted 100% of the construction work. Stuart Shaw and Casey Bump represent the Development Owner.

On September 23, 2016, the Development Owner submitted a letter to the Department requesting an eight month extension to the date the Development Owner is required to place each building in service in accordance with Code §42(h)(1) and the Development's Carryover Allocation Agreement. The Development Owner sought the relief under IRS Procedure Ruling 2007-54 (superseded and modified by IRS Revenue Procedure 2014-49) relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

At the Board meeting of November 10, 2016, the Development Owner was granted approval of an eight month extension to the placed in service deadline, with a new approved deadline of August 31, 2017.

According to the Development Owner, COs or TCOs were issued for all residential buildings and the clubhouse, with the exception of Building 9. The City of Houston had scheduled the inspection for Building

9 on August 30, 2017. The Development Owner had the building ready and expected to pass inspection, and receive a TCO for that building before expiration of the extended PIS deadline.

However, the heavy rains and flooding resulting from Hurricane Harvey delayed the City of Houston's inspection. On August 31, 2017, the Development Owner was not sure when the inspection would be rescheduled and, as a result, submitted to the Department a request for an additional 90-day extension to the PIS deadline. Since that initial request was received, however, the City of Houston conducted its final inspection on Building 9 on September 8, 2017, and issued a TCO for Building 9. As a result, the Development Owner only requires an additional eight day PIS extension. Copies of all COs or TCOs issued for each building in this Development have been submitted to the Department, and the Development is considered to have met PIS.

In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as a Development Owner affected by Presidentially declared disaster in a Major Disaster Area, the Development Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure Ruling, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of Code §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act. The Department's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC § 10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request, as presented herein.

CYPRESS CREEK WAYSIDE LP

T O : LUCY TREVINO, TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

F R O M : DONALD SAMPLEY

R E G A R D I N G : PLACED IN SERVICE EXTENSION REQUEST, CYPRESS CREEK APARTMENT HOMES AT WAYSIDE

D A T E : AUGUST 31, 2017

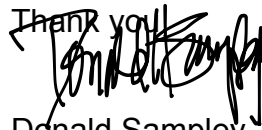
Ms. Trevino,

Pursuant to your conversations with Casey Bump earlier this week we are submitting the following extension request to the Placed In Service date for Cypress Creek Apartment Homes at Wayside Drive (CCWD Houston) at the request of the owner, Cypress Creek Wayside LP.

The CCWD Houston team has provided Certificates of Occupancy OR Temporary Certificates of Occupancy for all residential buildings and the clubhouse with the exception of Building 9. The final inspection for Building 9 was scheduled for this week (proof of inspection request provided to you via email) and our team was expecting to get a Temporary Certificate of Occupancy from the City of Houston, but that inspection has been delayed indefinitely by Hurricane Harvey. Our team is assessing the damage from Hurricane Harvey and will be working on our recover efforts in the coming days and weeks. In the mean time we are not sure when the City will resume inspections.

In order to avoid multiple extension requests, Cypress Creek Wayside LP requests a 90 day extension to November 30, 2017 to secure the final Temporary Certificate of Occupancy.

Should you have any questions or need additional information please contact Casey Bump at 512-505-0603.

Thank you


Donald Sampley
Manager of Its General Partner

CITY OF HOUSTON

CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

This certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

| | | | | | |
|---|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD 1 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 63048SF M-15073869 | | | | | N/A |
| occupany use | | | | | occ. load |
| | 003 | 22-AUG-2017 | 5 | R2 | A |
| subdivision | stories | date | type | group | rating |

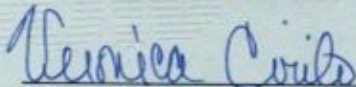
The work listed hereon has been duly inspected and found to comply with City of Houston Building Code requirements for the occupancy group and use shown. This certificate covers ONLY the work described above.

NOTICE

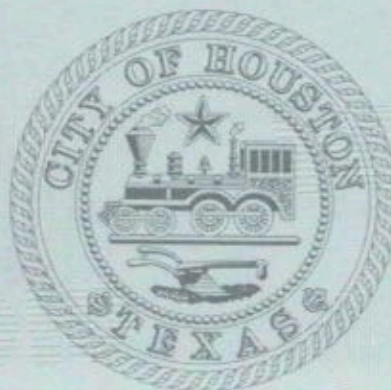
The building official is authorized to, in writing, suspend or revoke a certificate issued under the provisions of the Building Code as per section 110.4. Alterations without the required permits and inspections may, as per section 105.1 of the Building Code, invalidate this certificate.

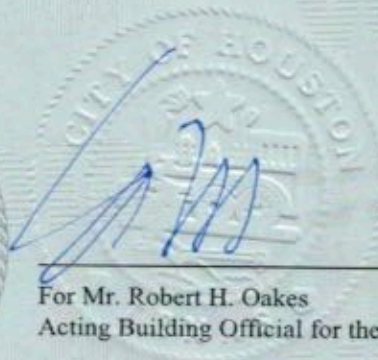
THIS CERTIFICATE DOES NOT CERTIFY COMPLIANCE WITH THE 'AMERICAN WITH DISABILITIES' ACT.

Project Number: 15078080
Receipt Number: 6374599
Film Number: 15073869



Prepared by CIRILO




For Mr. Robert H. Oakes
Acting Building Official for the City of Houston

CITY OF HOUSTON

CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

This certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

| | | | | | |
|---|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD 2 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 33596SF M-15073869 | | | | | N/A |
| occupany use | | | | | occ. load |
| | 003 | 08-AUG-2017 | 5 | R2 | A |
| subdivision | stories | date | type | group | rating |

The work listed hereon has been duly inspected and found to comply with City of Houston Building Code requirements for the occupancy group and use shown. This certificate covers ONLY the work described above.

NOTICE

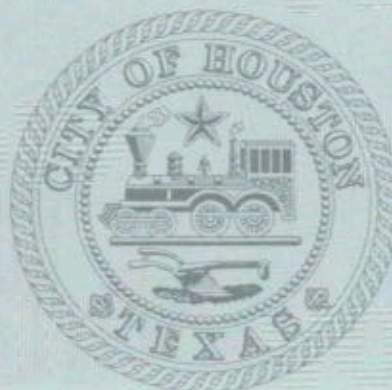
The building official is authorized to, in writing, suspend or revoke a certificate issued under the provisions of the Building Code as per section 110.4. Alterations without the required permits and inspections may, as per section 105.1 of the Building Code, invalidate this certificate.

THIS CERTIFICATE DOES NOT CERTIFY COMPLIANCE WITH THE 'AMERICAN WITH DISABILITIES' ACT.

Project Number: 15078074
Receipt Number: 6374603
Film Number: 15073869

Veronica Cirilo

Prepared by CIRILO



Earl N. Greer

For Mr. Earl N. Greer, CEO, MCP
Building Official for the City of Houston

CITY OF HOUSTON

TEMPORARY

CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

This TEMPORARY certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

| | | | | | | |
|--|---|-------------------------------|------------------------------------|--------------------------|---------------------------------|----------------------------|
| 14220 <small>street no.</small> | S WAYSIDE <small>street name</small> | DR | BLD 3 <small>suite</small> | 1 <small>lot</small> | 1 <small>block</small> | |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 31524SF M-15073869 <small>occupany use</small> | | | | | N/A <small>occ. load</small> | |
| subdivision | | 003 <small>stories</small> | 08-AUG-2017 <small>date</small> | 5 <small>type</small> | R2 <small>group</small> | A <small>rating</small> |

This TEMPORARY certificate is based on the Building Official finding no substantial hazard will result from occupancy of this building or portion prior to completion of said building or portion thereof. This temporary certificate shall expire on 06-OCT-2017 and become null and void unless renewed by the Building Official.

Okay for 60 Day Temp. C.O. 08-08-17 thru 10-08-17

Project Number: 15078081
 Receipt Number: 6711542
 Film Number: 15073869

Amabel Cardona

Prepared by CARDONA



[Handwritten Signature]
 For Mr. Earl N. Greer, CBO, MCP
 Building Official for the City of Houston

CITY OF HOUSTON CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

This certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

| | | | | | |
|---|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD 4 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 36956SF M-15073869 | | | | | N/A |
| occupancy use | | | | | occ. load |
| | 003 | 25-AUG-2017 | 5 | R2 | A |
| subdivision | stories | date | type | group | rating |

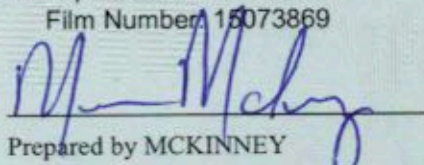
The work listed hereon has been duly inspected and found to comply with City of Houston Building Code requirements for the occupancy group and use shown. This certificate covers ONLY the work described above.

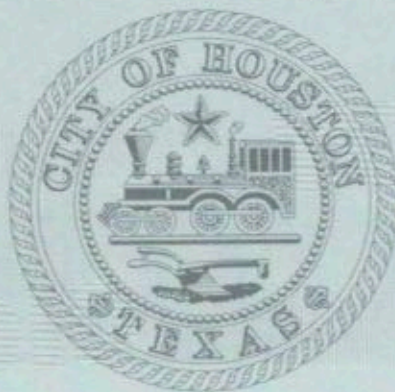
NOTICE

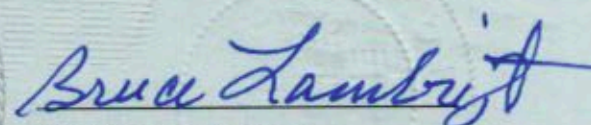
The building official is authorized to, in writing, suspend or revoke a certificate issued under the provisions of the Building Code as per section 110.4. Alterations without the required permits and inspections may, as per section 105.1 of the Building Code, invalidate this certificate.

THIS CERTIFICATE DOES NOT CERTIFY COMPLIANCE WITH THE 'AMERICAN WITH DISABILITIES' ACT.

Project Number: 15078075
Receipt Number: 6374606
Film Number: 15073869


Prepared by MCKINNEY




For Mr. Robert H. Oakes
Acting Building Official for the City of Houston

CITY OF HOUSTON

CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

This certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

| | | | | | |
|---|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD 5 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 31524SF M-15073869 | | | | | N/A |
| occupancy use | | | | | occ. load |
| | 003 | 22-AUG-2017 | 5 | R2 | A |
| subdivision | stories | date | type | group | rating |

The work listed hereon has been duly inspected and found to comply with City of Houston Building Code requirements for the occupancy group and use shown. This certificate covers ONLY the work described above.

NOTICE

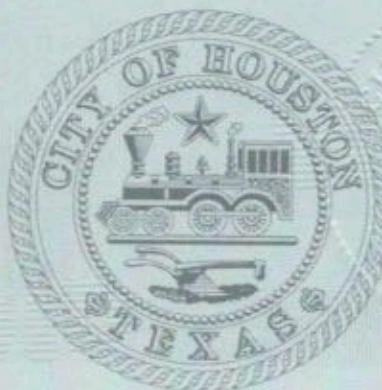
The building official is authorized to, in writing, suspend or revoke a certificate issued under the provisions of the Building Code as per section 110.4. Alterations without the required permits and inspections may, as per section 105.1 of the Building Code, invalidate this certificate.

THIS CERTIFICATE DOES NOT CERTIFY COMPLIANCE WITH THE 'AMERICAN WITH DISABILITIES' ACT.

Project Number: 15078078
Receipt Number: 6374608
Film Number: 15073869

Veronica Cirilo

Prepared by CIRILO



[Signature]

For Mr. Robert H. Oakes
Acting Building Official for the City of Houston

CITY OF HOUSTON

CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

This certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

| | | | | | |
|---|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD 6 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 33596SF M-15073869 | | | | | N/A |
| occupany use | | | | | occ. load |
| | 003 | 23-AUG-2017 | 5 | R2 | A |
| subdivision | stories | date | type | group | rating |

The work listed hereon has been duly inspected and found to comply with City of Houston Building Code requirements for the occupancy group and use shown. This certificate covers ONLY the work described above.

NOTICE

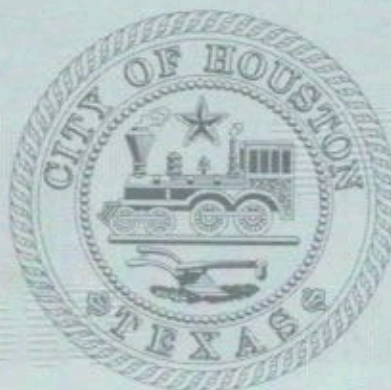
The building official is authorized to, in writing, suspend or revoke a certificate issued under the provisions of the Building Code as per section 110.4. Alterations without the required permits and inspections may, as per section 105.1 of the Building Code, invalidate this certificate.

THIS CERTIFICATE DOES NOT CERTIFY COMPLIANCE WITH THE 'AMERICAN WITH DISABILITIES' ACT.

Project Number: 15078072
Receipt Number: 6374614
Film Number: 15073869

Amabel Cardona

Prepared by CARDONA



[Signature]

For Mr. Robert H. Oakes
Acting Building Official for the City of Houston

CITY OF HOUSTON CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

This certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

| | | | | | |
|---|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD 7 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 25828SF M-15073869 | | | | | N/A |
| occupancy use | | | | | occ. load |
| | 003 | 25-AUG-2017 | 5 | R2 | A |
| subdivision | stories | date | type | group | rating |

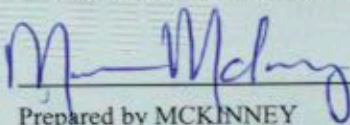
The work listed hereon has been duly inspected and found to comply with City of Houston Building Code requirements for the occupancy group and use shown. This certificate covers ONLY the work described above.

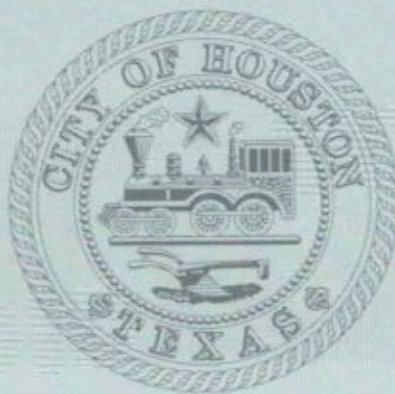
NOTICE

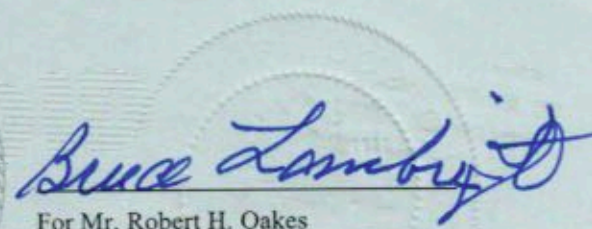
The building official is authorized to, in writing, suspend or revoke a certificate issued under the provisions of the Building Code as per section 110.4. Alterations without the required permits and inspections may, as per section 105.1 of the Building Code, invalidate this certificate.

THIS CERTIFICATE DOES NOT CERTIFY COMPLIANCE WITH THE 'AMERICAN WITH DISABILITIES' ACT.

Project Number: 15078082
Receipt Number: 6374615
Film Number: 15073869


Prepared by MCKINNEY




For Mr. Robert H. Oakes
Acting Building Official for the City of Houston

CITY OF HOUSTON TEMPORARY CERTIFICATE OF OCCUPANCY

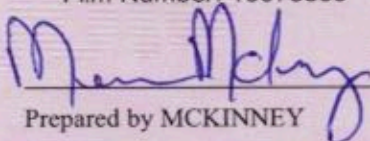
Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

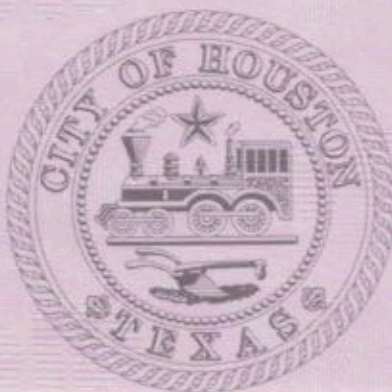
This TEMPORARY certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

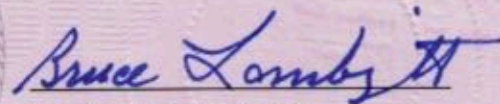
| | | | | | |
|---|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD 8 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 63048SF M-15073869 | | | | | N/A |
| occupany use | | | | | occ. load |
| | 003 | 25-AUG-2017 | 5 | R2 | A |
| subdivision | stories | date | type | group | rating |

This TEMPORARY certificate is based on the Building Official finding no substantial hazard will result from occupancy of this building or portion prior to completion of said building or portion thereof. This temporary certificate shall expire on 25-SEP-2017 and become null and void unless renewed by the Building Official.

Project Number: 15078079
Receipt Number: 6729075
Film Number: 15073869


Prepared by MCKINNEY





For Mr. Robert H. Oakes
Acting Building Official for the City of Houston

CITY OF HOUSTON

TEMPORARY

CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT HOMES AT WAYSIDE

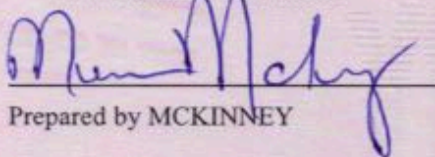
This TEMPORARY certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

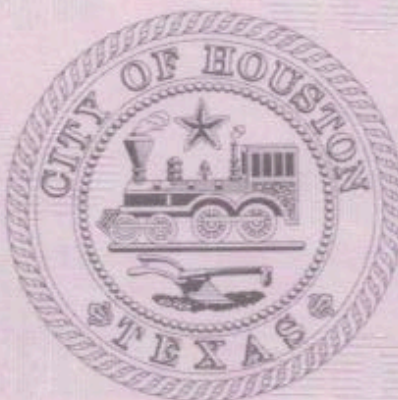
| | | | | | |
|---|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD 9 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| NEW APTS 1-3-5-R2-A-FA/SPK IBC06 36956SF M-15073869 | | | | | N/A |
| occupany use | | | | | occ. load |
| | 003 | 08-SEP-2017 | 5 | R2 | A |
| subdivision | stories | date | type | group | rating |

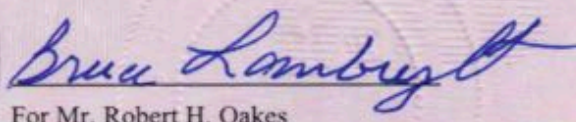
This TEMPORARY certificate is based on the Building Official finding no substantial hazard will result from occupancy of this building or portion prior to completion of said building or portion thereof. This temporary certificate shall expire on 08-OCT-2017 and become null and void unless renewed by the Building Official.

ok for 30 day TCO from 9-8-17 thru 10-8-17 817.939.2993

Project Number: 15078083
Receipt Number: 6734445
Film Number: 15073869


Prepared by MCKINNEY




For Mr. Robert H. Oakes
Acting Building Official for the City of Houston

CITY OF HOUSTON

TEMPORARY

CERTIFICATE OF OCCUPANCY

Owner or Occupant: CYPRESS CREEK APT. HOMES @ WAYSIDE

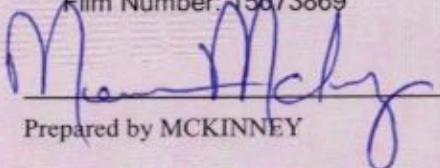
This TEMPORARY certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

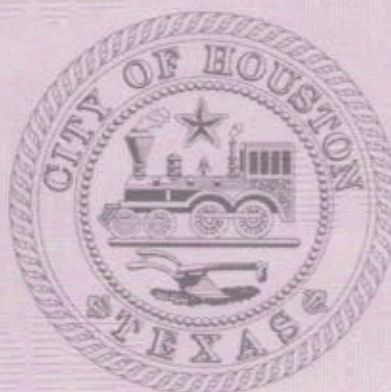
| | | | | | |
|--|-------------|-------------|-------|-------|-----------|
| 14220 | S WAYSIDE | DR | BLD10 | 1 | 1 |
| street no. | street name | | suite | lot | block |
| CLUBHOUSE @ APTS 1-1-5-B/A3-B-FA IBC06 5581SF M-36 | | | | | 0236 |
| occupany use | | | | | occ. load |
| | 001 | 23-AUG-2017 | 5 | A3 | B |
| subdivision | stories | date | type | group | rating |

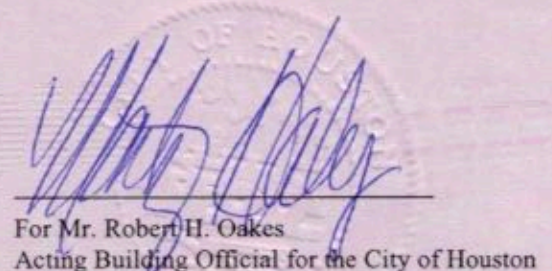
This TEMPORARY certificate is based on the Building Official finding no substantial hazard will result from occupancy of this building or portion prior to completion of said building or portion thereof. This temporary certificate shall expire on 23-OCT-2017 and become null and void unless renewed by the Building Official.

Ok for TCO from 8/23/2017 to 10/23/2017
Vanessa 832-528-8150

Project Number: 15073869
Receipt Number: 6726216
Film Number: 15073869


Prepared by MCKINNEY




For Mr. Robert H. Oakes
Acting Building Official for the City of Houston

11

BOARD ACTION REQUEST

BOND FINANCE DIVISION

OCTOBER 12, 2017

Presentation, discussion, and possible action on Resolution No. 18-006 approving an increase in the maximum amount of outstanding advances under the Advances and Security Agreement with Federal Home Loan Bank of Dallas; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

RECOMMENDED ACTION

See attached resolution.

BACKGROUND

At the Board meeting of September 8, 2016, the Board authorized the execution of an Advances and Security Agreement (the "Agreement") with the Federal Home Loan Bank of Dallas ("FHLB"). The purpose of the Agreement is to provide short-term financing for the purchase of mortgage loans originated through the Department's single family loan program. Collateral for advances under the Agreement consists of the purchased mortgage loans plus amounts on deposit in a related escrow fund. Advances are repaid from the sale of mortgage-backed securities created with pools of the purchased loans.

The Agreement was part of an October 1, 2016, restructuring of the Department's single family mortgage loan program, which resulted in a dramatic increase in loan volume. At the Board meeting of December 15, 2016, the Board authorized an increase in the maximum principal amount of advances under the Agreement at any one time from its original \$75 million to \$125 million. Because the Department's loan volume has continued to increase, staff recommends approval of the attached resolution, which authorizes an increase from the current \$125 million to a maximum principal amount of advances under the Agreement at any one time of \$175 million. At this time, staff is not seeking authorization to increase the amount on deposit in the related escrow fund.

For additional information about the mechanics and benefits of the Agreement, please see a video created by FHLB, located at the following web address: <https://vimeo.com/235961741>.

RESOLUTION NO. 18-006

RESOLUTION APPROVING AN INCREASE IN THE MAXIMUM AMOUNT OF OUTSTANDING ADVANCES UNDER THE ADVANCES AND SECURITY AGREEMENT WITH FEDERAL HOME LOAN BANK OF DALLAS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING THERETO; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, pursuant to Resolution No. 17-004 approved on September 8, 2016 ("Resolution No. 17-004"), the Board authorized the execution and delivery of an Advances and Security Agreement (including the letter agreement thereto, the "Advances Agreement") with the Federal Home Loan Bank of Dallas ("FHLB"), to provide funds to assist the Department's servicer for the single family mortgage purchase program (the "Program") in the purchase of qualifying mortgage loans (including participations therein) through the purchase of mortgage-backed securities ("Mortgage Certificates") issued and guaranteed by Fannie Mae, the Federal Home Loan Mortgage Corporation or the Government National Mortgage Association (referred to herein as "Mortgage Loans"), from the participating lenders in the Program (such funds advanced under the Advances Agreement are referred to herein as "Advances"); and

WHEREAS, pursuant to Resolution No. 17-004, the Board further authorized the deposit of cash and securities in escrow with the Texas Treasury Safekeeping Trust Company (the "Trust Company") in order to provide security for the Department's obligations under the Advances Agreement (the "Escrow Deposit") in the maximum amount of \$5,000,000; and

WHEREAS, pursuant to Resolution No. 17-012 approved on December 15, 2016 ("Resolution No. 17-012"), the Board authorized an increase in the maximum principal amount of Advances that may be outstanding under the Advances Agreement at any one time to \$125,000,000 and an increase in the Escrow Deposit to a maximum of \$15,000,000; and

WHEREAS, the Board desires to authorize (i) an increase in the maximum principal amount of Advances that may be outstanding under the Advances Agreement at any one time from \$125,000,000 to \$175,000,000, and (ii) the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

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

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Increase in Maximum Principal Amount of Advances. The increase in the maximum principal amount of Advances that may be outstanding under the Advances Agreement at any one time to \$175,000,000 is hereby authorized and approved.

Section 1.2 Execution and Delivery of Documents. The Authorized Representatives are each hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.3 Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in documents related to the Advances Agreement as, in the judgment of such Authorized Representative, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the delivery of such documents by the Authorized Representatives.

Section 1.4 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 Deputy Executive Directors of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership 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.

Section 1.5 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the Advances Agreement and the Escrow Deposit are hereby ratified and confirmed.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings

Act, Chapter 551 of the Texas Government Code, and with § 2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 12th day of October, 2017.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

1m

BOARD ACTION REQUEST

BOND FINANCE DIVISION

OCTOBER 12, 2017

Presentation, discussion, and possible action regarding Resolution No. 18-007 authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 88; approving the form and substance of the program manual and the program summary; authorizing the execution of documents and instruments necessary or convenient to carry out Mortgage Credit Certificate Program 88; and containing other provisions relating to the subject

RECOMMENDED ACTION

See attached Resolution.

BACKGROUND

The Texas Department of Housing and Community Affairs (the “Department”) released its current Mortgage Credit Certificate (“MCC”) program, Program 86, on February 7, 2017, using \$1 billion of State ceiling for qualified mortgage bond authority (“volume cap”) to provide MCCs in conjunction with approximately \$625 million in first lien mortgage loans. Approximately \$450 million has been originated or is in the pipeline and over \$100 million is reserved for Targeted Areas until February 7, 2018, leaving approximately \$75 million available for current MCC issuance. To ensure a continuous flow of available MCC issuance authority, staff is requesting approval of this resolution, which authorizes the conversion of up to \$1 billion of the Department’s volume cap to MCC Authority, authorizes the issuance of new MCCs under Program 88, and approves the MCC program and related documents. The resolution also authorizes the use of up to \$250,000 of Department funds to pay the costs of implementing Program 88, and approves MCC processing and compliance fees of up to \$300 per loan. Program 88 is expected to close mid-November, 2017.

An MCC is a federal income tax credit that makes homeownership more affordable by allowing the borrower to receive a tax credit of up to \$2,000 per year as a direct reduction of the borrower’s federal income tax liability. Because the MCC reduces the borrower’s federal income tax liability, the credit amount may be used to effectively increase the borrower’s net income for qualifying purposes. Borrowers can deduct mortgage interest paid that is in excess of the MCC credit as an itemized deduction on their annual federal income tax return.

To be eligible for an MCC, borrowers must meet homebuyer requirements stipulated by the Internal Revenue Code for mortgage revenue bonds. MCC recipients must occupy the residence as their primary residence, comply with IRS income and purchase price limits, and, with few exceptions, must be first-time homebuyers. MCCs cannot be issued for mortgage loans that are funded with tax-exempt bond proceeds. The Department currently offers two MCC options. The first is a stand-alone MCC, where the mortgage loan is originated and funded by a third-party lender and the Department issues an MCC for the mortgage loan. The second option is a “combo” loan that is originated through the Department’s Taxable Mortgage Program, where the Department provides the first-lien mortgage for which it issues an MCC, and provides down payment and closing cost assistance to the homebuyer through a 0% interest, due on sale or refinance, second lien mortgage.

The Internal Revenue Code allows the Department, as an issuer of mortgage revenue bonds, to trade \$1 of mortgage revenue bond authority for \$0.25 of MCC issuance authority. The par amount of mortgage loans that can receive an MCC is determined by dividing the MCC issuance authority by the MCC credit rate, which is established by the Department and can be no less than 10% and no greater than 50%. The Department currently provides a 40% MCC credit rate for all MCCs issued. To more effectively utilize volume cap, staff is recommending that Program 88 MCC credit rates be based on the mortgage loan amount. Program 86 used \$1 billion in volume cap to make available \$250 million of MCC issuance authority with which to provide MCCs for up to \$625 million in mortgage loans at a 40% MCC credit rate. With the proposed change, Program 88 would use \$1 billion in volume cap to make available \$250 million of MCC issuance authority with which to provide MCCs for approximately \$728 million in mortgage loans, an increase of over \$100 million in mortgage loans made to over 600 homebuyers, using the same \$1 billion volume cap amount. The proposed credit rate breakdown is:

- 40% for loans up to \$150,000
- 35% for loans greater than \$150,000 and up to \$200,000
- 25% for loans greater than \$200,000

The following table compares the current credit rate structure with the proposed structure:

| Current Program, Credit Rate 40% for All Mortgage Loans | Loan Amount | | | | | Wtd Avg/ Total | |
|--|---------------|---------------------------|---------------------------|---------------------------|---------------|--------------------|--------------|
| | <=125,000 | >125,000 and <=150,000 | >150,000 and <=175,000 | >175,000 and <=200,000 | >=200,000 | | |
| Volume Cap Used | 1,000,000,000 | 1,000,000,000 | 1,000,000,000 | 1,000,000,000 | 1,000,000,000 | 625,000,000 | |
| IRS MCC Conversion Factor | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 | | |
| MCC Issuance Authority | 250,000,000 | 250,000,000 | 250,000,000 | 250,000,000 | 250,000,000 | | |
| MCC Credit Rate | 40% | 40% | 40% | 40% | 40% | | |
| Par Amount of Loans | 625,000,000 | 625,000,000 | 625,000,000 | 625,000,000 | 625,000,000 | | |
| Average Loan Amount (1st Mtg) | 104,020 | 137,563 | 162,959 | 186,215 | 224,922 | | |
| Market Mortgage Interest Rate | 4.50% | 4.50% | 4.50% | 4.50% | 4.50% | | |
| First Year Mortgage Interest | 4,681 | 6,190 | 7,333 | 8,380 | 10,121 | | |
| Calculated First Year Tax Credit | 1,872 | 2,476 | 2,933 | 3,352 | 4,049 | | |
| Maximum Allowable Tax Credit | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | | |
| Schedule A Mtg Int Deduction | 2,809 | 4,190 | 5,333 | 6,380 | 8,121 | | |
| # of Loans | 803 | 751 | 929 | 735 | 665 | | 3,883 |

| Proposed Program, Credit Rate Based on Loan Amount | Loan Amount | | | | | Wtd Avg/ Total | |
|---|---------------|---------------------------|---------------------------|---------------------------|---------------|--------------------|--------------|
| | <=125,000 | >125,000 and <=150,000 | >150,000 and <=175,000 | >175,000 and <=200,000 | >=200,000 | | |
| Volume Cap Used | 1,000,000,000 | 1,000,000,000 | 1,000,000,000 | 1,000,000,000 | 1,000,000,000 | 727,491,721 | |
| IRS MCC Conversion Factor | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 | | |
| MCC Issuance Authority | 250,000,000 | 250,000,000 | 250,000,000 | 250,000,000 | 250,000,000 | | |
| MCC Credit Rate | 40% | 40% | 35% | 35% | 25% | | |
| Par Amount of Loans | 625,000,000 | 625,000,000 | 714,285,714 | 714,285,714 | 1,000,000,000 | | |
| Average Loan Amount (1st Mtg) | 104,020 | 137,563 | 162,959 | 186,215 | 224,922 | | |
| Market Mortgage Interest Rate | 4.50% | 4.50% | 4.50% | 4.50% | 4.50% | | |
| First Year Mortgage Interest | 4,681 | 6,190 | 7,333 | 8,380 | 10,121 | | |
| Calculated First Year Tax Credit | 1,872 | 2,476 | 2,567 | 2,933 | 2,530 | | |
| Maximum Allowable Tax Credit | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | | |
| Schedule A Mtg Int Deduction | 2,809 | 4,190 | 5,333 | 6,380 | 8,121 | | |
| # of Loans | 934 | 875 | 1,081 | 856 | 774 | | 4,520 |

Please see the attached MCC Summary Report, which details MCC issuance by the Department for Fiscal Years 2015, 2016, and 2017.

Texas Department of Housing and Community Affairs
Texas Homeownership / Bond Finance
MCC Summary Report

| | Combo Loans | | Stand Alone MCCs | | Total MCCs | |
|---------------------|-----------------------|--------------|-----------------------|--------------|-----------------------|--------------|
| Month | Loan Amount | # Loans | Loan Amount | # Loans | Loan Amount | # Loans |
| 9/30/2016 | \$ 4,571,475 | 30 | \$ 23,394,414 | 131 | \$ 27,965,889 | 161 |
| 10/31/2016 | 5,695,097 | 39 | 17,569,266 | 107 | 23,264,363 | 146 |
| 11/30/2016 | 6,884,463 | 48 | 25,296,916 | 144 | 32,181,379 | 192 |
| 12/31/2016 | 9,259,481 | 59 | 31,171,608 | 184 | 40,431,089 | 243 |
| 1/31/2017 | 22,244,813 | 138 | 16,327,540 | 98 | 38,572,353 | 236 |
| 2/28/2017 | 22,725,762 | 141 | 30,307,153 | 173 | 53,032,915 | 314 |
| 3/31/2017 | 19,988,147 | 127 | 27,607,384 | 160 | 47,595,531 | 287 |
| 4/30/2017 | 27,062,306 | 161 | 27,463,210 | 157 | 54,525,516 | 318 |
| 5/31/2017 | 26,544,509 | 165 | 30,551,467 | 176 | 57,095,976 | 341 |
| 6/30/2017 | 28,927,620 | 185 | 38,399,240 | 223 | 67,326,860 | 408 |
| 7/31/2017 | 26,136,484 | 167 | 37,244,746 | 219 | 63,381,230 | 386 |
| 8/31/2017 | 32,826,086 | 202 | 37,765,486 | 213 | 70,591,572 | 415 |
| FY2017 TOTAL | \$ 232,866,243 | 1,462 | \$ 343,098,430 | 1,985 | \$ 575,964,673 | 3,447 |

| Month | Loan Amount | # Loans | Loan Amount | # Loans | Loan Amount | # Loans |
|---------------------|----------------------|------------|-----------------------|--------------|-----------------------|--------------|
| 9/30/2015 | \$ 9,726,411 | 69 | \$ 30,757,106 | 189 | \$ 40,483,517 | 258 |
| 10/31/2015 | 7,850,869 | 61 | 23,361,643 | 143 | 31,212,512 | 204 |
| 11/30/2015 | 4,214,357 | 33 | 18,320,564 | 114 | 22,534,921 | 147 |
| 12/31/2015 | 3,600,713 | 28 | 16,812,377 | 107 | 20,413,090 | 135 |
| 1/31/2016 | 4,507,231 | 33 | 21,662,071 | 128 | 26,169,302 | 161 |
| 2/29/2016 | 4,457,125 | 33 | 18,003,836 | 115 | 22,460,961 | 148 |
| 3/31/2016 | 6,549,190 | 49 | 17,985,455 | 111 | 24,534,645 | 160 |
| 4/30/2016 | 4,337,632 | 33 | 17,638,354 | 106 | 21,975,986 | 139 |
| 5/31/2016 | 5,792,505 | 39 | 16,691,734 | 100 | 22,484,239 | 139 |
| 6/30/2016 | 6,521,314 | 43 | 19,987,159 | 119 | 26,508,473 | 162 |
| 7/31/2016 | 4,353,173 | 31 | 11,087,382 | 67 | 15,440,555 | 98 |
| 8/31/2016 | 6,644,232 | 45 | 21,606,070 | 130 | 28,250,302 | 175 |
| FY2016 TOTAL | \$ 68,554,752 | 497 | \$ 233,913,751 | 1,429 | \$ 302,468,503 | 1,926 |

| Month | Loan Amount | # Loans | Loan Amount | # Loans | Loan Amount | # Loans |
|---------------------|----------------------|------------|-----------------------|--------------|-----------------------|--------------|
| 9/30/2014 | \$ 5,482,880 | 42 | \$ 25,086,736 | 164 | \$ 30,569,616 | 206 |
| 10/31/2014 | 5,371,250 | 38 | 18,604,275 | 121 | 23,975,525 | 159 |
| 11/30/2014 | 5,837,442 | 41 | 11,706,215 | 78 | 17,543,657 | 119 |
| 12/31/2014 | 4,978,065 | 39 | 16,837,792 | 110 | 21,815,857 | 149 |
| 1/31/2015 | 6,380,194 | 44 | 13,488,939 | 87 | 19,869,133 | 131 |
| 2/28/2015 | 4,799,072 | 35 | 13,351,882 | 86 | 18,150,954 | 121 |
| 3/31/2015 | 5,086,735 | 38 | 14,660,076 | 91 | 19,746,811 | 129 |
| 4/30/2015 | 3,807,234 | 28 | 15,406,755 | 97 | 19,213,989 | 125 |
| 5/31/2015 | 5,029,786 | 40 | 16,837,703 | 104 | 21,867,489 | 144 |
| 6/30/2015 | 3,885,411 | 31 | 16,578,687 | 107 | 20,464,098 | 138 |
| 7/31/2015 | 6,541,757 | 47 | 19,903,757 | 131 | 26,445,514 | 178 |
| 8/31/2015 | 8,987,844 | 65 | 15,299,745 | 98 | 24,287,589 | 163 |
| FY2015 TOTAL | \$ 66,187,670 | 488 | \$ 197,762,562 | 1,274 | \$ 263,950,232 | 1,762 |

RESOLUTION NO. 18-007

RESOLUTION AUTHORIZING THE IMPLEMENTATION OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MORTGAGE CREDIT CERTIFICATE PROGRAM 88; APPROVING THE FORM AND SUBSTANCE OF THE PROGRAM MANUAL AND THE PROGRAM SUMMARY; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT MORTGAGE CREDIT CERTIFICATE PROGRAM 88; 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, as amended from time to time (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 and very low income (as defined in the Act) and families of moderate income (as described in the Act and 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 make, acquire and finance, and to enter into advance commitments to make, acquire and finance, mortgage loans and participating interests therein, secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose, among others, of obtaining funds to acquire or finance such mortgage loans, 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 single family mortgage loans or participating interests, and to mortgage, pledge or grant security interests in such mortgages or participating interests, 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, Section 103 and Section 143 of the Internal Revenue Code of 1986, as amended (the "Code"), provide that the interest on obligations issued by or on behalf of a state or a political subdivision thereof the proceeds of which are to be used to finance owner-occupied residences shall be excludable from gross income of the owners thereof for federal income tax purposes if such issue meets certain requirements set forth in Section 143 of the Code; and

WHEREAS, Section 146(a) of the Code requires that certain "private activity bonds" (as defined in Section 141(a) of the Code) must come within the issuing authority's private activity bond limit for the applicable calendar year in order to be treated as obligations the interest on which is excludable from the gross income of the holders thereof for federal income tax purposes; and

WHEREAS, the private activity bond "State ceiling" (as defined in Section 146(d) of the Code) applicable to the State is subject to allocation, in the manner authorized by Section 146(e) of the Code, pursuant to Chapter 1372, Texas Government Code, as amended (the "Allocation Act"); and

WHEREAS, the Department has previously received a reservation of a portion of the State ceiling private activity bond volume cap for qualified mortgage bonds in the amount of \$1,000,000,000 (the "Reservation"); and

WHEREAS, the Department desires to convert an amount not to exceed \$1,000,000,000 of the

Reservation to mortgage credit certificates (“MCCs”), to be used for the Department’s Mortgage Credit Certificate Program to be designated as Program 88 (“MCC Program 88”); and

WHEREAS, the Governing Board desires to approve the Program Manual (the “Program Manual”) in substantially the form attached hereto, setting forth the terms and conditions upon which MCCs will be issued by the Department; and

WHEREAS, the Governing Board desires to approve the Program Summary (the “Program Summary”) in substantially the form attached hereto setting forth the terms of MCC Program 88; and

WHEREAS, the Governing Board desires to approve an initial range for the mortgage credit certificate rate; and

WHEREAS, the Governing Board desires to approve the use of an amount not to exceed \$250,000 of Department funds to pay the costs of implementing MCC Program 88 and to approve MCC processing and compliance fees in an amount not to exceed \$300 per loan; and

WHEREAS, the Governing Board desires to approve the forms of the Program Manual and the Program Summary, in order to find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to implement MCC Program 88 in accordance with such documents by authorizing MCC Program 88, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out MCC Program 88; NOW, THEREFORE,

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

ARTICLE 1

USE OF PRIVATE ACTIVITY BOND VOLUME CAP

Section 1.1. Authorization of Certain Actions. The Governing Board authorizes the Executive Director of the Department, the staff of the Department as designated by the Executive Director and Bond Counsel to take such actions on its behalf as may be necessary to carry out the actions authorized in this Resolution.

Section 1.2. MCC Authority. The Department shall take such steps as are necessary to convert \$1,000,000,000 of its authority to issue qualified mortgage bonds under the Reservation to authority to issue MCCs in order to implement MCC Program 88.

ARTICLE 2

APPROVAL OF MCC DOCUMENTS

Section 2.1. Approval of Program Manual and Program Summary. The form and substance of the Program Manual and Program Summary are hereby authorized and approved.

Section 2.2. Mortgage Credit Certificate Rate. The mortgage credit certificate rate shall be specified by the Department in the manner set forth in the Program Manual, provided that the initial mortgage credit certificate rate for mortgage loans up to \$150,000 shall not exceed 40%, the initial mortgage certificate credit rate for mortgage loans greater than \$150,000 and up to \$200,000 shall not

exceed 35%, and the initial mortgage credit certificate rate for mortgage loans greater than \$200,000 shall not exceed 25%.

Section 2.3. Execution and Delivery of Other Documents and Waiver of Fees. The Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest, affix the Department's seal to and deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests, public notices 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, the Program Manual and the Program Summary. The staff of the Department is authorized to waive the fees described in the Program Manual from time to time for marketing purposes.

Section 2.4. Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the delivery of such documents by the Authorized Representatives.

Section 2.5. Exhibits Incorporated Herein. All of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A - Program Manual
- Exhibit B - Program Summary

Section 2.6. 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 referred to in this Article 2: the Chair or the Vice Chair of the Governing Board, the Executive Director of the Department, the Deputy Executive Directors of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily 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 2.7. Department Contribution and Fees. The Department authorizes the contribution of Department funds in an amount not to exceed \$250,000 to pay certain costs of implementing MCC Program 88 and approves MCC processing and compliance fees not to exceed \$300 per loan.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Purposes of Resolution. The Governing Board of the Department has expressly determined and hereby confirms that the implementation of MCC Program 88 contemplated by this Resolution accomplishes a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 3.2. 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 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 12th day of October, 2017.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

1n

BOARD ACTION REQUEST

COMPLIANCE DIVISION

OCTOBER 12, 2017

Presentation, discussion, and possible approval of amendment to conditions recommended by the Executive Award Review Advisory Committee (“EARAC”) and approved by the Board for applications 17376, 17700, 17719, and 17307

RECOMMENDED ACTION

WHEREAS, the applications 17376/The Bristol, 17700/The Terraces at Arboretum, 17719/Pathways at Goodrich Place, and 17307/Marabella were each and all approved for allocations of 9% housing tax credits at the Board meeting of July 27, 2017;

WHEREAS, due to the compliance histories of the applicants for each of those awards, EARAC recommended and the Board approved the same condition for each of them that “Controlling Members of the General Partner” would review specific webinars prior to November 1, 2017;

WHEREAS, each of the applicants is requesting to designate other individuals whom they deem more appropriate (officers, members, or other senior staff) to review the required webinars rather than having the controlling members of the general partner, who may not be actively involved in day-to-day operations; and

WHEREAS, staff does not have any objection to these requested amendments;

NOW, therefore, it is hereby

RESOLVED, that the conditions placed on applications numbered 17376, 17700, 17719, and 17307 are hereby modified to replace the requirement that the controlling members of the general partners of each review the required webinars with the requirement that the individuals identified herein are so required, as presented to this meeting.

BACKGROUND

Prior to recommending an award of Department funds, all applications must undergo a previous participation review to assess the compliance history of the applicant. Multifamily applicants are categorized based on past responsiveness to monitoring reports, the number of events of noncompliance, and the status (corrected or uncorrected) of those events. Category 1 and 2 applications are deemed acceptable by EARAC without further compliance history review. Category 3 and 4 applicants are reviewed by EARAC. The applicant group for application numbers 17376, 17700, 17719, and 17307 were determined to be a category 4, and the following conditions were placed on the awards by the Board:

“Controlling Members of the General Partner will review the listed webinars and provide a certification that this has been completed by November 1, 2017 (date Carryover Allocation Agreement is due). The videos are available at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm> and include: 2012 Income and Rent Limits Webinar Video; How to properly use the Income and Rent Tool; 2012 Supportive Services Webinar Video; How to identify and properly implement Supportive Services; Income Eligibility Presentation Video; 2013 Annual Owner's Compliance Report (AOCR) Webinar Video; 2015 Tenant Selection Criteria Webinar Video; 2015 Tenant Selection Criteria Presentation; 2015 Tenant Selection Criteria- Q and A's; §10.610 – Tenant Selection Criteria; 2015 Affirmative Marketing Requirements Webinar Video; 2015 Affirmative Marketing Requirements Presentation; 2015 Affirmative Marketing Requirements- Q and A's, and Fair Housing Webinars (including the 2017 FH webinars).”

The applicants described below have requested the following changes:

For 17719/Pathways at Goodrich instead of the Controlling Members of the General Partner, the webinars will be reviewed by Suzanne Schwertner, as Project Development Manager.

For 17376/The Bristol and 17700/The Terraces at Arboretum, instead of the controlling members of the general partner, the webinars will be reviewed by Kenneth Naylor, as Vice President of the General Partners.

For 17307/Marabella instead of the controlling members of the general partner, the webinars will be reviewed by Drew Gray, as Member of the Managing Member of the General Partner.

Staff recommends approval.

10

BOARD ACTION REQUEST
SINGLE FAMILY OPERATIONS & SERVICES
OCTOBER 12, 2017

Presentation, discussion, and possible action on adoption of amendments to 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing that these be published in the *Texas Register*

RECOMMENDED ACTION

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

WHEREAS, pursuant to Tex. Gov't Code §2306.752, the Department is required to establish, operate, monitor, and fund an Owner-Builder Loan Program to enable Owner-Builders to purchase or refinance real property on which to build new residential housing or improve existing residential housing;

WHEREAS, the Department's Governing Board last amended 10 TAC Chapter 24 on October 15, 2015, to be effective on November 12, 2015;

WHEREAS, at the Board meeting of July 27, 2017, the Board approved the proposed amendments to 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, to integrate changes made by the 85th Legislature via House Bill 1512, increase the Administrative Fee to be earned by Participants, add missing definitions, correct capitalization, simplify wording, and eliminate duplication of underwriting rules already stated in the Single Family Programs Umbrella Rule 10 TAC Chapter 20;

WHEREAS, the proposed amendments to 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, were published in the *Texas Register* on August 11, 2017, for public comment and the public comment period ended on September 11, 2017; and

WHEREAS, no public comment was received;

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 adoption of the proposed amendments to 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

On July 27, 2017, the Board approved the proposed amendments to 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule. The significant updates to 10 TAC Chapter 24 were:

§24.1 Purpose. This section is amended to remove the limit on the amount of other funding that could be leveraged with Bootstrap loan funds per House Bill 1512, passed by the 85th Texas Legislature. Previously, Bootstrap borrowers could not exceed a total of \$90,000 for all amortizing loan funds applied to their housing unit, including any leveraged funds from outside the Bootstrap Program.

§24.2 Definitions. This section is amended to include the term "Improvement Survey" because this term appears in §24.12, Property Guidelines and Related Issues, and was undefined.

§24.9 Program Administration. This section is amended to remove the limit on the amount of other funding that could be leveraged with Bootstrap loan funds per House Bill 1512, passed by the 85th Texas Legislature. This section is also amended to increase the Administrative Fee that can be earned by a Participant upon completing and funding a Bootstrap loan from 6% to 10% of the Bootstrap loan amount. This makes both the Bootstrap Loan Program and the Amy Young Barrier Removal Program—the two programs of the State Housing Trust Fund—consistent with one another with respect to the Administrative Fee provided to participating entities.

§24.10 Owner-Builder Qualifications. This section is amended to remove rules pertaining to underwriting (e.g., examples of outstanding items on a credit report that affect eligibility, limits on liquid assets, etc.) that are already stated in the Single Family Programs Umbrella Rule 10 TAC Chapter 20.

§§24.3, 24.5, 24.6, 24.8, 24.11, 24.12, and 24.13 are amended to correct capitalization and simplify wording.

The proposed amendments were published in the August 11, 2017, issue of the *Texas Register* for public comment through September 11, 2017, and no public comments were received. Staff recommends the adoption of the amended rule as published in the August 11, 2017, issue of the *Texas Register*.

Attachment 1: Preamble and adoption of amendments to 10 TAC Chapter 24 Texas Bootstrap Loan Program Rule, §§24.1, 24.2, 24.3, 24.5, 24.6, 24.8, 24.9, 24.10, 24.11, 24.12, and 24.13

The Texas Department of Housing and Community Affairs (the “Department”) adopts amendments to 10 TAC Chapter 24 Texas Bootstrap Loan Program Rule, §§24.1 Purpose, 24.2 Definitions, 24.3 Allocation of Funds, 24.5 Program Activities, 24.6 Prohibited Activities, 24.8 Criteria for Funding, 24.9 Program Administration, 24.10 Owner-Builder Qualifications, 24.11 Types of Funding Transactions, 24.12 Property Guidelines and Related Issues, and 24.13 Nonprofit Owner-Builder Housing Program Certification.

REASONED JUSTIFICATION. The purpose of amending the Texas Bootstrap Loan Program Rule is to integrate changes made by the 85th Texas Legislature via House Bill 1512, add missing definitions, correct capitalization, simplify wording, and eliminate duplication of underwriting rules already stated in the Single Family Programs Umbrella Rule 10 TAC Chapter 20.

SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATIONS. The Department accepted public comments between August 11, 2017, and September 11, 2017, and no public comments were received. Staff recommends the adoption of the amended rule as published in the August 11, 2017, issue of the *Texas Register*.

STATUTORY AUTHORITY. The amended rule is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules; and §2306.752, which requires the Department to establish, operate, monitor and fund an Owner-Builder Loan Program to enable Owner-Builders to purchase or refinance real property on which to build new residential housing or improve existing residential housing.

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

- §24.1. Purpose.
- §24.2. Definitions
- §24.3. Allocation of Funds.
- §24.4. Participant Requirements.
- §24.5. Program Activities.
- §24.6. Prohibited Activities.
- §24.7. Distribution of Funds.
- §24.8. Criteria for Funding.
- §24.9. Program Administration.
- §24.10. Owner-Builder Qualifications.
- §24.11. Types of Funding Transactions.
- §24.12. Property Guidelines and Related Issues.
- §24.13. Nonprofit Owner-Builder Housing Program Certification.

TITLE 10 COMMUNITY DEVELOPMENT

PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 24 TEXAS BOOTSTRAP LOAN PROGRAM RULE

§24.1.Purpose.

(a) This chapter clarifies the Texas Bootstrap Loan Program, administered by the Texas Department of Housing and Community Affairs (the "Department"), also known as the Owner-Builder Loan Program. The Texas Bootstrap Loan Program provides assistance to income-eligible individuals, families and households to purchase or refinance real property, on which to build new residential housing or improve existing residential housing. The Program is administered in accordance with Texas Government Code, Chapter 2306, Subchapter FF, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Housing Trust Fund).

(b) The Texas Bootstrap Loan Program is a Self-Help construction Program that is designed to provide very low-income families an opportunity to help themselves attain homeownership or repair their existing homes through sweat equity. All Owner-Builder Applicants under this Program are required to provide through personal labor at least 65 percent of labor necessary to build or rehabilitate the home. All applicable building codes and housing standards are adhered to under this Program.

§24.2.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Housing Trust Fund).

(1) Capital Recovery Fee--Means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, contributions in aid of construction, and any other fee that functions as described by this definition.

(2) Improvement Survey--A survey locating the boundaries of the property and the location of all improvements.

(3) Loan Origination Agreement--A written agreement, including all amendments thereto between the Department and the Participant that authorizes the Participant to originate certain loans under the Texas Bootstrap Loan Program.

(4) NOHP--Nonprofit Owner-Builder Housing Provider.

(5) Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or is purchasing a piece of real property under a Contract for Deed entered into before January 1, 1999; and who undertakes to make improvements to that property.

(6) Participant--An organization that submits an application to the Department to be certified as an NOHP or a Colonia Self-Help Center.

(7) Program--Texas Bootstrap Loan Program also known as the Owner-Builder Loan Program.

(8) Self-Help Housing Construction--The Self-Help Housing process enables Owner-Builders to Rehabilitate, Reconstruct or construct their own homes, usually working together in groups on other eligible Owner-Builder's houses at the same time. Owner-Builders use their own "sweat equity" to reduce the cost of their homes.

§24.3.Allocation of Funds.

(a) The Department administers all Texas Bootstrap Loan Program funds provided to the Department in accordance with Texas Government Code, Chapter 2306, Subchapter FF. The Department shall solicit gifts and grants to make loans under this chapter.

(b) The Department may also make loans under this chapter from:

(1) available funds in the Housing Trust Fund established under Texas Government Code, §2306.201; or

(2) federal block grants that may be used for the purposes of this chapter.

(c) Each state fiscal year the Department shall transfer at least \$3 million to the Texas Bootstrap Loan Program from money received under federal block grants or from available funds in the Housing Trust Fund.

(d) In a state fiscal year the Department may use not more than 10 percent of the revenue available to enhance the ability of tax-exempt organizations described by Texas Government Code, §2306.755(a) to enhance the number of such organizations that are able to implement the Program. The Department shall use that available revenue to provide financial assistance, technical training and management support.

§24.5.Program Activities.

Texas Bootstrap Loan Program funds may be used to finance affordable housing and promote homeownership through acquisition, new construction, reconstruction, or rehabilitation of residential housing. All eligible organizations that satisfy the requirements of this chapter may reserve funds by submitting a loan application on behalf of an Owner-Builder Applicant for the Texas Bootstrap Loan Program.

§24.6. Prohibited Activities.

The fees described in paragraphs (1) - (8) of this section are prohibited and may not be charged directly to the Owner-Builder, but may be charged as an allowable cost by a third party lender or servicer for a Texas Bootstrap loan:

- (1) payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas Bootstrap Loan Program funds;
- (2) Loan Origination Fees;
- (3) Application fee;
- (4) discount fees;
- (5) underwriter fee;
- (6) loan processing fees;
- (7) loan servicing fees; and
- (8) other fees not approved by the Department in writing prior to expenditure.

§24.8. Criteria for Funding.

(a) The Department will distribute the funds in accordance with the Texas Housing Trust Fund (HTF) Plan in effect at the time. The Department will publish an announcement for a Notice of Funding Availability ("NOFA") in the *Texas Register* and post the NOFA on the Department's website. The Program Rule and NOFA will establish and define the terms, conditions, and maximum Reservation amounts allowed per Participant. The Department may also set a deadline for receiving Reservations and/or Applications. The NOFA will indicate the approximate amount of available funds. The Department may increase funds in the NOFA from time to time without republishing the NOFA in the *Texas Register* and Department's website.

(b) A Nonprofit Organization must have been certified by the Department as an NOHP and must have executed a Loan Origination Agreement to be eligible to submit Reservations. Any Reservation containing false information will be disqualified. The Department will review and process all Reservations in the order received. The NOHP will be notified in writing of the Department's determination.

(c) Reservations received by the Department in response to a NOFA will be handled as described in paragraphs (1) - (5) of this subsection.

(1) The Department will accept Reservations until all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation system. Each Reservation will be reviewed in accordance with the Program rules.

(3) Reservations must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in this chapter. Reservations that do not comply with such requirements may be disqualified. The Participant will be notified in writing of any cancelled and/or disqualified Reservations.

(4) If a Reservation contains deficiencies which, in the determination of the Department, require clarification or correction of information submitted at the time of the Reservation, the Department may request clarification or correction in the form of an email or letter to the Participant.

(5) Prior to issuing an Applicant eligibility letter the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued an Applicant eligibility letter to the Owner-Builder Applicant, but the Participant and/or Owner-Builder Applicant has not complied with all the Program rules and guidelines, the Department may suspend funding until the Participant and/or Owner-Builder Applicant has satisfied all requirements of the Program. If the Participant is unable to cure any deficiencies within fifteen (15) calendar days, the Department may provide a one-time fifteen (15) calendar day extension or decline to fund the Reservation.

§24.9. Program Administration.

(a) Pursuant to §2306.754(b), the Department shall not exceed \$45,000 in household assistance for any Texas Bootstrap Loan Program loan. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for \$45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds with the exception of other State Housing Trust Funds.

(b) The Department shall make loans for Owner-Builder applicants to enable them to:

(1) purchase or refinance real property on which to build new residential housing;

(2) build new residential housing; or

(3) improve existing residential housing.

(c) Upon approval by the Department, the Participant shall enter into, execute, and deliver to the Department the Loan Origination Agreement. The Department may terminate the Loan Origination Agreement in whole or in part if the Participant has not performed as outlined in the Program Rule, NOFA, Loan Origination Agreement, and/or Program Manual.

(d) In the event the Department has additional funds in the same funding cycle, the Department, with Board approval, will distribute funds in accordance with this chapter.

(e) If the Owner-Builder Applicant qualifies for the Program, the Department will issue an Applicant eligibility letter which reserves up to \$45,000 in funds for twelve (12) months from the date of the Applicant eligibility letter. Owner-Builder Applicant will not be required to re-qualify if the Owner-Builder Applicant closes by the expiration date on the Applicant eligibility. Otherwise, the Owner-Builder Applicant must re-qualify for the Program and the Department may grant an extension of up to 90 days from the expiration date on the original Applicant eligibility letter. If the Owner-Builder Applicants fails to close on the loan after the extension is granted the Reservation and/or loan will be cancelled.

(f) Roles and responsibilities for administering the Program Contract. Participants are required to:

(1) qualify potential Owner-Builders for loans;

(2) provide Owner-Builder homeownership education classes;

(3) supervise and assist Owner-Builders to build and/or Rehabilitate housing;

(4) facilitate loans made or purchased by the Department under the Program; and

(5) implement and administer the Program on behalf of the Department.

(g) Loan Servicing Agreement. If the Participant wishes to service the loans originated on behalf of the Department it must obtain prior approval and enter into a Loan Servicing Agreement with the Department.

(h) First Year Consultation Agreement. The Participant agrees that if notified by the Department that Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents, within the first twelve (12) months of funding, the Participant will be required to meet with the Owner-Builder and provide counseling and assistance until the payments are made current. After consultation and in the event that the Department and Participant are not able to bring the Program loan current as required under this chapter, the Department in accordance with its administrative rules may apply appropriate graduated sanctions leading up to, but not limited to, deobligation of funds and future debarment from participation in the Program.

(i) Administrative Fee. The Participant will be granted a 10 percent administration fee upon completion of the house and funding of each Mortgage loan.

(j) Blueprints. If Participant's activity is interim or residential construction, Participant must provide an original copy of the proposed blueprints to be approved by the Department prior to accepting applications. Blueprints must include the required construction requirements pursuant to Texas Government Code, §2306.514, and be prepared and executed by an architect or engineer licensed by the state of Texas.

(k) Work Write-up. If Participant's activity is rehabilitation, Participant must submit work write-ups and cost estimations for Department approval prior to construction.

(l) Loan Program requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as described in paragraphs (1) - (8) of this subsection:

(1) maximum Texas Bootstrap Loan Program loan amount shall not exceed \$45,000. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for \$45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds with the exception of other State Housing Trust Funds.

(2) minimum Loan amount is \$1,000;

(3) may not exceed a term of thirty (30) years;

(4) minimum loan term of five (5) years;

(5) zero (0) percent non-interest loans;

(6) when refinancing a Contract for Deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property;

(7) Owner-Builder must have resided in Texas for the preceding six (6) months prior to the date of loan application.

(m) Loan Assumption. A Program loan is assumable if the Department determines that the Owner-Builder Applicant complies with all Program requirements in effect at the time of the assumption.

(n) Forgivable Loan. The term for a Forgivable Loan may not exceed 15 years from the date of closing.

§24.10. Owner-Builder Qualifications.

The Owner-Builder must:

(1) own or be purchasing a piece of real property through a warranty deed or Contract for Deed;

(2) not have an annual household income that exceeds 60 percent of the greater of the state or local area median family income as determined by HUD's current income table.

Eligibility Income is the total Household income including all income (salary, tips, bonus, overtime, alimony, child support, benefits, etc.) received by the Owner-Builder Applicant, co-Applicant and/or any other persons living in the home. This income is used to determine whether the household income exceeds 60% of the Area Median Family Income or 60% of the State Median Family Income, adjusted for Household size, whichever is greater. No income is excluded in this calculation.

(3) execute a Self-Help Agreement committing to provide at least 65 percent of the labor necessary to build or rehabilitate the proposed housing through a state-certified Participant; or provide an amount of labor equivalent to 65 percent in connection with building or rehabilitating housing for others through a state-certified Participant; provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65 percent of the labor necessary to build or rehabilitate the proposed housing through a state-certified Participant or if due to a documented disability or other limiting circumstances the Owner-Builder cannot provide the amount of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65 percent of the labor necessary to build or rehabilitate the proposed housing through a state-certified Participant;

(4) successfully complete an Owner-Builder homeownership education class prior to loan funding;

(5) be given priority for loans if the Owner-Builder has an income of less than \$17,500 annually; and

(6) not have any outstanding judgments and/or liens on the property.

(7) the Owner-Builder must occupy the residence as a Principal Residence within thirty (30) days of the end of the construction period or the closing of the loan, whichever is later. Any additional habitable structures must be removed from the property prior to closing but a portion of the structure may be utilized as storage upon the Department's written approval prior to closing.

§24.11.Types of Funding Transactions.

All Mortgage Loans will be evidenced by a promissory note and will be secured by a lien on the subject property. The following transaction types are permitted by the Department under the Program.

(1) Purchase Money. All proceeds are used to finance the purchase of a single-family dwelling unit and/or a piece of real property which must become the Owner-Builder's primary residence within thirty (30) days of closing the loan. The Department makes a permanent loan and the

Owner-Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds.

(2) Residential Construction. This transaction is treated as a purchase and is a one-time closing with the Owner-Builder. Construction period may be up to twelve (12) months.

(3) Interim Construction (Closing with Participant). Interim construction is a commercial transaction between the Participant and the Department. The construction period may be up to twelve (12) months. Once the construction of the home is completed, the closing with the Owner-Builder will take place as a purchase money transaction.

(4) Purchase of Mortgage loans. The Department may purchase and take assignments from Mortgage lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this section or for residential construction transactions as described in paragraph (2) of this section.

§24.12. Property Guidelines and Related Issues.

(a) Appraisals are required by the Department on each property prior to closing.

(b) Loan-to-value ratio may not exceed 95 percent of the appraised value. The lien amounts of forgivable loans and/or Grants will not be included in the loan-to-value calculation.

(c) Combined loan-to-value ratio may not exceed 100 percent of the appraised value. The lien amounts of Forgivable Loans will also be included in the combined loan to value ratio.

(d) Improvement Surveys are required on each property.

(e) Category 1A (Texas Society of Professional Surveyors) lot surveys are required for all interim and residential construction loans. Upon Department approval a recorded subdivision plat may be used in lieu of lot surveys for interim construction loans only. Upon completion of construction an improvement survey must also be provided.

(f) Title Commitment. A copy of the preliminary title report including complete legal description and copies of covenants, conditions and restrictions, easements, and any supplements thereto is required. The preliminary title report should not be more than thirty (30) days old at the time the submission or funding package is sent to the Department and must list the Department's Loan.

(g) Existing Property. A property inspection will be required to be completed by a professional inspector licensed by the Texas Real Estate Commission for all existing properties. A copy of the inspection report must be submitted and any deficiencies listed on the report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. may not be required to be corrected if utilizing a Self-Help construction Program. A copy of the reports must be provided to the Owner-Builder Applicant and the Department. The Participant and/or the Owner-Builder Applicant will be responsible for the selection and/or the fee of a licensed inspector.

§24.13. Nonprofit Owner-Builder Housing Program Certification.

(a) The term, Applicant, when used in this section, shall mean a Nonprofit Organization that is an NOHP or has submitted a request to the Department for certification as an NOHP in order to participate in the Texas Bootstrap Loan Program.

(b) Application Procedures for NOHP Certification or NOHP Recertification. An Applicant requesting NOHP certification or recertification must submit an Application prior to submitting an Application for Texas Bootstrap Loan Program Reservation system, and must be recertified every three (3) years. NOHP recertification requires submission of the following only if any changes have occurred.

(1) Applicant must have the following legal status at the time of Application for NOHP certification:

(A) The Applicant must be organized as a nonprofit organization under the Texas Business Code or other state not-for-profit/nonprofit statute as evidenced by charter or Certificate of Formation.

(B) The Applicant must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the state of Texas.

(C) No part of the Nonprofit Organization's net earnings may inure to the benefit of any member, founder, contributor, or individual, as evidenced by charter or Certificate of Formation.

(D) The Applicant must have the following tax status:

(i) A current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective while certified as an NOHP; or

(ii) Classification as a subordinate of a central Nonprofit Organization under the Internal Revenue Code §501(c)(3), as evidenced by a current group exemption letter dated 1986 or later.

(iii) A Nonprofit Organization's pending application for §501(c)(3) status cannot be used to comply with the tax status requirement under this subparagraph.

(E) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's charter, Certificate of Formation, Resolutions, or Bylaws.

(2) An Applicant must have the capacity and experience listed in subparagraphs (A) and (B) of this paragraph.

(A) Conforms to the United States Generally Accepted Accounting Principles ("GAAP") as evidenced by a:

(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department; or

(ii) certification from a Certified Public Accountant.

(B) If the Applicant will be utilizing interim or residential construction funds it must provide an audited financial statement for the most recent fiscal year or a signed and dated financial statement for the period since last published audit. Applicants that do not have audited financial statements or a signed and dated financial statement for the period since last published audit must provide a resolution from the Board of Directors that is signed and dated within 6 months from the date of application and certifies that the accounting procedures used by the organization conform to the GAAP. Applicants that do not have audited financial statements or a signed and dated financial statement for the period since last published audit and are certified NOHPs are restricted to only originating permanent loans and will be ineligible for any interim or residential construction loans until the Department has reviewed the most current audited financial statements.

(C) Has a demonstrated capacity of at least one (1) year for carrying out Mortgage loan origination and Self-Help housing construction Activities, as evidenced by resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization. If applying for NOHP recertification the organization is in good standing as determined by the Department, the organization will not be required to submit any additional information regarding experience.

(3) An Applicant must submit a current roster of all Board of Directors, including names and mailing addresses.

(4) A local or state government and/or public agency cannot qualify as an NOHP, but may sponsor the creation of an NOHP.

(5) Religious or Faith-based Organizations may sponsor an NOHP if the NOHP meets all the requirements of this section. While the governing board of an NOHP sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the religious or faith-based organization may retain control over appointments to the board. Subparagraphs (A) - (C) of this paragraph also apply:

(A) Housing developed must be made available exclusively for the residential use of Program beneficiaries, and must be made available to all persons regardless of religious affiliations or beliefs;

(B) Texas Bootstrap Loan Program funds may never be used to support any explicitly religious activities such as worship, religious instruction, or proselytizing; and

(C) Compliance with subparagraphs (A) and (B) of this paragraph must be evidenced by the Bylaws, charter or Certificate of Formation.

(6) A Colonia Self-Help Center as defined under Texas Government Code, Chapter 2306, Subchapter Z is not required to complete the NOHP Certification process as long as it provides a letter from the unit of local government demonstrating performance is in good standing.

(c) Program Design. Organizations must provide policies for how the Owner-Builder will meet the 65 percent sweat equity requirement. If applying for NOHP recertification and the organization is in good standing and no changes have been made to the Program design, the organization will not be required to submit any additional information.

(d) Applicant must provide details, such as number of houses they are proposing to build, type of proposed financing structure and construction timelines, to evidence its ability to carry out the Program. If applying for NOHP recertification and the organization is in good standing and no changes have been made that impact the proposed financing structure or construction timelines, the organization will not be required to submit any additional information.

(e) Applicant must provide copies of Program guidelines and homebuyer course curriculum to evidence its experience in qualifying potential Owner-Builders and in providing education classes, counseling and training. If applying for NOHP recertification and the organization is in good standing, the organization will not be required to submit any additional information.

(f) Applicant must be in compliance with 10 TAC §1.403 or before the Application deadline.

(g) Applicants must be in compliance in any existing or prior Contracts awarded by the Department.

1p

BOARD ACTION REQUEST

SINGLE FAMILY OPERATIONS & SERVICES

OCTOBER 12, 2017

Presentation, discussion, and possible action on an Order adopting the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an Order adopting new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing that these be published in the *Texas Register*.

RECOMMENDED ACTION

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

WHEREAS, pursuant to Tex. Gov't Code §2306.202, the Department is required to use the Housing Trust Fund to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities, nonprofit organizations and income-eligible individuals, families, and households to finance, acquire, rehabilitate, and develop decent, safe and sanitary housing;

WHEREAS, at the Board meeting of July 27, 2017, the Board approved the proposed repeal of, and adoption of the new, 10 TAC Chapter 26, Texas Housing Trust Fund Rule, to update and clarify applicability of the Rule to the Texas Bootstrap Loan Program and the Amy Young Barrier Removal Program; improve readability through the re-ordering of phrases and sections; and further delineate program guidelines for the Amy Young Barrier Removal Program with regards to purpose, definitions, geographic dispersion of funds, administrative requirements, reservation system requirements, household eligibility, property eligibility, construction requirements and project completion requirements.

WHEREAS, the new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, was published in the *Texas Register* on August 11, 2017, for public comment and the public comment period ended on September 11, 2017; and

WHEREAS, public comment was received, the Department has carefully considered the comments, and the Department has made changes in response to the comments;

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 repeal of the current 10 TAC Chapter 26 and adoption of new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

On July 27, 2017, the Board approved the proposed repeal, with concurrent proposed new, 10 TAC Chapter 26, Texas Housing Trust Fund Rule. The significant updates to 10 TAC Chapter 26 were:

- The Rule has been reorganized in a style similar to 10 TAC Chapter 23, Single Family HOME Program Rule, in which subchapters and subsections are used to categorize content, instead of just subsections. There are two subchapters: Subchapter A, General Guidance; and Subchapter B, the Amy Young Barrier Removal Program. There is no subchapter devoted to the Texas Bootstrap Loan Program, which is also funded by the HTF, because this Program is fully described by 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule.
- Subchapter A, General Guidance, is based on the original version of the HTF Rule. It contains minor reorganization of sentences, correction of capitalization, and adds and removes references to other rules or codes that are applicable or no longer applicable, respectively.
- Subchapter B, the Amy Young Barrier Removal Program, contains nine subsections to comprehensively describe core rules of the Program: §26.20 Purpose, §26.21 Definitions, §26.22 Geographic Dispersion (as an alternative to the Department's Regional Allocation Formula, which is not applicable because the Program is dedicated to People with Disabilities), §26.23 Administration Requirements, §26.24 Reservation System Requirements, §26.25 Household Eligibility, §26.26 Property Eligibility, §26.27 Construction Requirements, and §26.28 Project Completion Requirements. Each of these subsections contains requirements that previously appeared in Program Notices of Funding Availability, but this content is being proposed to be reflected in Rule in order to enhance program clarity, and create consistency with other Department programs.

The proposed new rule was published in the August 11, 2017, issue of the *Texas Register* for public comment through September 11, 2017. Public comments were received via email and are summarized below. Staff is recommending the adoption of the rule with the changes described in response to the public comments.

Attachment 1: Preamble and order adopting the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule. The rule is adopted for repeal in connection with the adoption of new 10 TAC Chapter 26, Texas Trust Fund Rule, which was published concurrently in the August 11, 2017, issue of the *Texas Register* (42 Tex. Reg. 3943).

REASONED JUSTIFICATION. The repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, will allow for the concurrent adoption of new 10 TAC Chapter 26, Texas Housing Trust Fund Rule.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

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

Attachment 2: Preamble and adoption of new 10 TAC Chapter 26, Texas Housing Trust Fund Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC Chapter 26, Texas Housing Trust Fund Rule. This new rule is being proposed concurrently with the repeal of existing 10 TAC Chapter 26, Texas Housing Trust Fund Rule, with changes being made in response to public comments on the proposed text as published in the August 11, 2017, issue of the *Texas Register* (42 Tex. Reg. 3944).

REASONED JUSTIFICATION. The new rule updates and clarifies applicability of the Rule to the Texas Bootstrap Loan Program and the Amy Young Barrier Removal Program; improves readability through the re-ordering of phrases and sections; removes frequent references to Notices of Funding Availability and Program Manuals; and further delineates program guidelines for the Amy Young Barrier Removal Program with regard to purpose, definitions, geographic dispersion of funds, administrative requirements, reservation system requirements, household eligibility, property eligibility, construction requirements and project completion requirements.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was from August 11, 2017, through September 11, 2017. Comments were accepted in writing and via email, with comments received from: (1) Robb Stevenson of Equity Community Development Corporation, (2) Luis Chavez of Fort Bend Community Revitalization Projects, (3) Charles Cloutman of Meals on Wheels Central Texas, and (4) Raimund Gideon of Habitat for Humanity of Smith County.

§26.22. AMY YOUNG BARRIER REMOVAL PROGRAM GEOGRAPHIC DISPERSION.

COMMENT SUMMARY: Commenter 4 stated that 90 days is too lengthy a period for each geographic category to access funds (rural and urban subregions first, then state region second, then concluding with one state-wide pool). Commenter 4 suggested a shorter time frame for prompt completion of projects and time in between funding years to identify new clients.

STAFF RESPONSE: Ninety days is the estimated amount of time needed for an eligible entity to submit an application to become an Administrator, conduct marketing and application intake, and ultimately access funds. Releasing funding in phases, with ample time to conduct program activities, promotes geographic dispersion of program funds to places that are historically underserved by the program. No changes to this section of the rule will be made in response to this comment.

§26.25(c) AMY YOUNG BARRIER REMOVAL PROGRAM HOUSEHOLD ELIGIBILITY REQUIREMENTS.

COMMENT SUMMARY: Commenter 1 suggested that when calculating a program participant's liquid assets, the full appraised value of real property that is not a principal residence be excluded from the calculation.

STAFF RESPONSE: Utilizing the local appraisal district's market value for any real property that is not a principal residence is the simplest method to account for liquid assets. This method can be consistently applied across the state and treats assisted households equally. No changes to this section of the rule will be made in response to this comment.

§26.26(a) AMY YOUNG BARRIER REMOVAL PROGRAM PROPERTY ELIGIBILITY REQUIREMENTS.

COMMENT SUMMARY: Commenter 4 suggested clarification of eligibility of property in which the owner of record is deceased but heirs reside on the property.

STAFF RESPONSE: Staff agrees and has revised an adjacent section, §26.26(b)(3), accordingly. The new rule (revision in italics) is "(3) If the property is family-owned but the owner of record is not a Household member (or is deceased), the Department may consider it a renter-occupied unit *on a case by case basis.*"

§26.26(b)(1) AMY YOUNG BARRIER REMOVAL PROGRAM PROPERTY ELIGIBILITY REQUIREMENTS.

COMMENT SUMMARY: Commenter 1 stated that, in the case of renting households, it is problematic to require that all household members be listed on the lease because lease formats can vary.

STAFF RESPONSE: Staff agrees and has revised §26.26(b)(1) accordingly. The new rule (revision in italics) states "(1) In rental units, all Household occupants, including the Person with Disability, must be named on the intake application and Household Income Certification."

§26.27(c)(2) AMY YOUNG BARRIER REMOVAL PROGRAM CONSTRUCTION REQUIREMENTS.

COMMENT SUMMARY: Commenter 4 suggested that accessibility modifications be made with consideration of the design standards established by the 2012 Texas Accessibility Standards instead of the 2010 standards under the of the American with Disabilities Act.

STAFF RESPONSE: Using the 2010 Standards for Accessible Design of the American with Disabilities Act as a guideline for the design of Amy Young Barrier Removal Program projects allows for a more uniform way of establishing standards and implementation across the State. The Texas Accessibility Standards are only equivalent for compliance with Title III of the ADA while 2010 ADA complies with Title II. No changes to this section of the rule will be made in response to this comment.

§26.27(d)(3) AMY YOUNG BARRIER REMOVAL PROGRAM CONSTRUCTION REQUIREMENTS.

COMMENT SUMMARY: Commenter 1, Commenter 2, and Commenter 4 suggested clarification or elimination of the phrase "inadequate, faulty or damaged systems".

STAFF RESPONSE: Staff agrees and has revised §26.27(d)(3) accordingly. The new rule (revision in italics) is "(3) Because of the essential nature of the elimination of certain life-threatening hazards, the percentage of Project Hard Costs budget devoted to eliminating life-threatening hazards and correcting unsafe conditions in the housing unit may exceed 25% if the work write-up and cost estimation includes the correction *of inadequate, faulty, damaged or absent:* emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire and carbon monoxide detection/alarm systems. The combination of the correction of these certain life-threatening hazards with the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget."

§26.27(d)(4) AMY YOUNG BARRIER REMOVAL PROGRAM CONSTRUCTION REQUIREMENTS.

COMMENT SUMMARY: Commenter 3 stated that requiring properties to be completely free of unsafe conditions upon project completion limits the feasibility of the program in rural areas, where leveraged funding opportunities are scarce. Commenter 3 stated that such a requirement merits increasing the maximum program grant amount per household.

STAFF RESPONSE: The primary purpose of the program is to increase housing accessibility, and the secondary purpose is to address health and safety repairs (the budget for which is limited to 25% of the total Project Hard Costs budget). Other funding sources should be utilized to address life-threatening hazards and unsafe conditions if these repairs exceed limitations under the AYBR program. No changes to this section of the rule will be made in response to this comment.

STATUTORY AUTHORITY. The new rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

The new rule affects no other code, article or statute.

<rule>

SUBCHAPTER A GENERAL GUIDANCE

- §26.1. Purpose
- §26.2. Definitions
- §26.3. Allocation of Funds
- §26.4. Use of Funds
- §26.5. Prohibited Activities
- §26.6. Administrator Eligibility and Requirements

SUBCHAPTER B AMY YOUNG BARRIER REMOVAL PROGRAM

- §26.20. Amy Young Barrier Removal Program Purpose
- §26.21 Amy Young Barrier Removal Program Definitions
- §26.22 Amy Young Barrier Removal Program Geographic Dispersion
- §26.23 Amy Young Barrier Removal Program Administrative Requirements
- §26.24 Amy Young Barrier Removal Program Reservation System Requirements
- §26.25 Amy Young Barrier Removal Program Household Eligibility Requirements
- §26.26 Amy Young Barrier Removal Program Property Eligibility Requirements
- §26.27 Amy Young Barrier Removal Program Construction Requirements
- §26.28 Amy Young Barrier Removal Program Project Completion Requirements

TITLE 10 COMMUNITY DEVELOPMENT

PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 26 TEXAS HOUSING TRUST FUND RULE

SUBCHAPTER A GENERAL GUIDANCE

§26.1. Purpose.

This chapter clarifies the administration of the Texas Housing Trust Fund Program (HTF). The HTF provides loans, grants or other comparable forms of assistance to income-eligible individuals, families and households. The HTF is administered in accordance with Texas Government Code, Chapter 2306, Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), and Chapter 24 of this Title (relating to Texas Bootstrap Loan Program Rule).

§26.2. Definitions.

Definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title relating to Enforcement; Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule); Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 24 of this Title (relating to Texas Bootstrap Loan Program Rule), unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

§26.3. Allocation of Funds.

(a) The Department administers all HTF funds provided to the Department in accordance with Texas Government Code, Chapter 2306. The Department may solicit gifts and grants to endow the fund.

(b) Pursuant to Texas Government Code, §2306.202(b), use of the HTF is limited to providing:

- (1) assistance for individuals and families of low and very low income;
- (2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;
- (3) security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and
- (4) subject to the limitations in Texas Government Code, §2306.251, the Department may also use the fund to acquire property to endow the fund.

(c) Set-Asides. In accordance with Texas Government Code, §2306.202(a) and program guidelines:

- (1) in each biennium, the first \$2.6 million available through the HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit Organizations;
- (2) any additional funds may also be made available to for-profit organizations provided that at least 45 percent of available funds, as determined on September 1 of each state fiscal year, in excess of the first \$2.6 million shall be made available to Nonprofit Organizations; and
- (3) the remaining portion shall be distributed to Nonprofit Organizations, for-profit organizations, and other eligible entities, pursuant to Texas Government Code, §2306.202.

§26.4. Use of Funds.

(a) Use of additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations and interest earnings, the Department will redistribute the funds

in accordance with the HTF plan in effect at the time the additional funds become available.

(b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the HTF plan in effect at the time.

§26.5. Prohibited Activities.

(a) Persons receiving or benefiting from HTF funds, as determined by the Department, may not be currently in delinquency or in default with child support and/or government loans.

(b) The activities described in paragraphs (1) - (7) of this subsection are prohibited in relation to the origination of a HTF loan, but may be charged as an allowable cost by a third (3rd) party lender for the origination of all other loans originated in connection with an HTF loan:

(1) payment of delinquent property taxes or related fees or charges on properties to be assisted with HTF funds;

(2) loan origination fees;

(3) application fees;

(4) discount fees;

(5) underwriter fees;

(6) loan processing fees; and

(7) other fees not approved by the Department in writing prior to expenditure.

§26.6. Administrator Eligibility and Requirements.

Administrator must enter into an agreement with the Department in order to be eligible to access the Housing Trust Fund.

SUBCHAPTER B AMY YOUNG BARRIER REMOVAL PROGRAM

§26.20. Amy Young Barrier Removal Program Purpose.

The Amy Young Barrier Removal Program (the “Program” or “AYBRP”) provides one-time grants of up to \$20,000 in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards and correct unsafe conditions.

§26.21. Amy Young Barrier Removal Program Definitions.

The following words and terms used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise. Other definitions are found in Texas Government Code, Chapter 2306, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26, Subchapter A of this Title (relating to Housing Trust Fund).

- (1) Administration Fee – Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.
- (2) Hard Costs – Site-specific costs incurred during construction, including but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.
- (3) Low-Income – Household income does not exceed the greater of 80% of the Area Median Family Income or 80% of the Statewide Income Limits, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits as defined by HUD.
- (4) Project Costs – Program funds (combined Hard and Soft Costs) that directly assist a Household.
- (5) Qualified Inspector – Certified by the Administrator that the individual has professional certifications, relevant education or a minimum of five (5) years experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.
- (6) Reservation Agreement – A written Agreement including all amendments thereto between the Department and Administrator that authorizes the Administrator to reserve funds under the AYBRP.
- (7) Soft Costs – Costs related to and identified with a specific Single Family Housing Unit other than construction costs, per Texas Administrative Code, Title 10, Part 1, Single Family Umbrella Rule §20.3.

§26.22. Amy Young Barrier Removal Program Geographic Dispersion.

- (a) The process to promote geographic dispersion of program funds is as follows:
 - (1) For the first 90 days of the initial release of funds, each state region will receive funding amounts for their rural and urban subregions. For 90 days, these funds may be reserved only for Households located in these rural and urban subregions.
 - (2) For the next 90 days following the initial 90 days after the release date, any funds remaining in the rural and urban subregions will be combined into one balance for that state region. For 90 days, these funds may be reserved only for Households located in that state region.
 - (3) After the initial 180 days following the release date, any funds remaining across all state regions will collapse into one state-wide pool. For as long as funds are available, these funds may be

reserved for any Households anywhere in the state on a first-come, first-served basis.

(b) If any additional funds beyond the original program allocations that derive from HTF loan repayments, interest earnings, deobligations, and other HTF funds in excess of those funds required under Rider 8 may be placed directly into the state-wide pool for reservation.

§26.23. Amy Young Barrier Removal Program Administrative Requirements.

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department by the submission of a Reservation System Access Application.

Eligible participants include Colonia Self-Help Centers established under Texas Government Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities and Public Housing Authorities.

(b) The Administrator must enter into a Reservation Agreement (“Agreement”) with the Department in order to be eligible to reserve funds for the Amy Young Barrier Removal Program.

(1) The Applicant submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on throughout the agreement period to access the Reservation System.

(2) The Applicant must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the state of Texas.

(3) The Applicant must have the capacity and experience demonstrating at least two years experience in housing rehabilitation in Texas. Summary of experience will describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It will also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must evidence of financial accountability standards, demonstrated by certification from a Certified Public Accountant and an audited financial statement from the most recent fiscal year, or a current dated and signed financial statement for the period since last audit produced. For Nonprofit Organizations that do not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the application and that certifies that the accounting procedures used by the organization conform to Generally Accepted Accounting Principles (GAAP) and the Financial Accounting Standards Board (FASB), “Financial Statements of Not-For-Profit Organizations”.

(5) Applicants who have previously received any TDHCA funding must be in compliance with all active Contracts and Agreements.

(6) An Applicant must submit a current roster of all Board of Directors, including names and mailing addresses.

(7) The Applicant must submit a resolution from the Board of Directors, Council, or Commissioners that is signed and dated within the six months preceding the application. The resolution must state that the board, council or commissioners have approved the Applicant to access the Reservation System for TDHCA’s Amy Young Barrier Removal Program; and the name and title of the individual authorized to execute a written Reservation System Access Agreement.

(8) The Applicant must submit any past due Single Audit to the Department in a satisfactory format on or before the Application deadline.

(9) The Applicant's compliance history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter 1, §1.302, relating to Previous Participation Reviews for Department Program Awards. Access to funds may be subject to terms and conditions.

(10) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant’s AYBRP activities. They must include a summary of the consultant or other organization’s experience in housing rehabilitation and/or serving Persons with Disabilities.

(c) Administrators must follow the processes and procedures as required by the Department

through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

§26.24. Amy Young Barrier Removal Program Reservation System Requirements.

- (a) An Administrator is ineligible to access the online Reservation System until any past due audits or Department audit certification forms have been submitted to the Department in a satisfactory format.
- (b) Reservation Setups will be processed in the order submitted on the Reservation System. Submission of a Reservation Setup consisting of support documentation on behalf of a Household does not guarantee funding.
- (c) If the Reservation is incomplete and missing any of the required forms as prescribed by the current setup instructions, it will be set back to "pending" status and funds will be released and available for reservation.
- (d) If support documentation needs correction or additional information, the Department will notify the Administrator of the deficiencies. If any deficiencies remain uncured within ten calendar days after notification, the Department may cancel the reservation.
- (e) If a Household is eligible for assistance, the Department will reserve up to the maximum of \$20,000 in Project Costs and an Administration Fee equal to 10% of the combined Hard and Soft costs in the Housing Contract System on behalf of the Household.

§26.25. Amy Young Barrier Removal Program Household Eligibility Requirements.

- (a) At least one Household member shall meet the definition of Persons with Disabilities.
- (b) The assisted Household shall not have Household income that exceeds 80% of Area Median Family Income.
- (c) The assisted Household's liquid assets shall not exceed \$20,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the appraisal district's market value for any real property that is not a principal residence. Funds in tax-deferred accounts for retirement or education savings (*e.g.*, Individual Retirement Accounts, 401Ks, 529 plans) are excluded from the liquid assets calculation.
- (d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

§26.26. Amy Young Barrier Removal Program Property Eligibility Requirements.

- (a) Owner-occupied homes are eligible for Program assistance.
 - (1) In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department.
 - (2) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current (including prior years). Alternatively, the Household must be satisfactorily participating in an approved payment plan with the taxing authority and must be current for at least six consecutive months prior to the date of Application, or, must have qualified for an approved tax deferral plan, or has received a valid exemption from real property taxes.
- (b) Certain rental units are eligible for Program assistance.
 - (1) In rental units, all Household occupants, including the Person with Disability, must be named on the intake application and Household Income Certification.
 - (2) If the owner of record does not live in the subject property with the Person with Disability, the Department may consider it a renter-occupied unit.
 - (3) If the property is family-owned but the owner of record is not a Household member (or is

deceased), the Department may consider it a renter-occupied unit on a case by case basis.

(4) The following rental properties are ineligible for Program assistance:

(A) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

(B) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(C) Rental units that have life-threatening hazards or unsafe conditions identified in the initial inspection. Program funds may not be used to correct hazardous or unsafe conditions in rental units, but may be used for accessibility modifications only after the life-threatening hazards and unsafe conditions have been corrected by the property owner at the property owner's expense.

(D) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

§26.27. Amy Young Barrier Removal Program Construction Requirements.

(a) Inspections.

(1) Initial inspection is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.

(2) Final inspection is required and must verify, assess and document that all construction activities have been repaired, replaced and/or installed in a professional manner consistent with all applicable building codes and Program requirements.

(3) Initial and final inspections must be completed by a Qualified Inspector.

(4) All On-Site Sewage Facilities (OSSF or septic system) shall be inspected by a Texas Commission on Environmental Quality authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366, and the rules adopted under that chapter, unless waived by the Department on a case-by-case basis.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995.

(c) Construction standards.

(1) Administrators must follow all applicable sections of their local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do *not* exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.

(2) Accessibility modifications shall be made with consideration of the design standards established by the 2010 ADA Standards or the 2012 Texas Accessibility Standards. Any variation from 2010 ADA Standards must be documented as necessary to meet the disability related needs of the Person with a Disability.

(3) Administrators must adhere to Chapter 21 of this Title, relating to "Minimum Energy Efficiency Requirements for Single Family Construction Activities."

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the housing unit as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

(2) Life-threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas-fueled systems; faulty or damaged heating and cooling systems or the absence of adequate heating and cooling system; faulty or damaged plumbing systems, including sanitary sewer systems; faulty or damaged smoke, fire and carbon monoxide detection/alarm systems or the absence of these systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire

egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.

(3) Because of the essential nature of the elimination of certain life-threatening hazards, the percentage of Project Hard Costs budget devoted to eliminate life-threatening hazards and correct unsafe conditions in the housing unit may exceed 25% if the work write-up and cost estimation includes the correction of inadequate, faulty, damaged or absent: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire and carbon monoxide detection/alarm systems. The combination of the correction of these certain life-threatening hazards with the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the housing must be free of life-threatening hazards and unsafe conditions at project completion.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrators select for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. Administrators seeking change orders must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

§26.28. Amy Young Barrier Removal Program Project Completion Requirements.

(a) The Administrator has ninety calendar days to complete all construction activities and submit the Project and Administrative draw request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department. The Department may grant a one-time, 30-calendar day extension to the Project completion deadline due to extenuating circumstances that were beyond the Administrator's control.

(b) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative draw request per Department instructions. Interim draws will not be permitted. The Department reserves the right to delay draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household and/or the Administrators and their subcontractors.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion and possible action on the proposed amendments of 10 TAC Chapter 12 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 (“Department”) is authorized to issue multifamily housing revenue bonds for the State of Texas; and

WHEREAS, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to the issuance of bonds;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments of 10 TAC Chapter 12 regarding the Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, are approved to be published 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 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 non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

Attached to this Board Action Request is the amended 2018 Multifamily Housing Revenue Bond Rules (“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 2018 Draft Uniform Multifamily Rules and Qualified Allocation Plan (“QAP”), as applicable. To the extent 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 2018 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 October 27, 2017, and November 16, 2017. The Bond Rules will be brought before the Board in December for final approval and will be subsequently published in the *Texas Register*.

Summary of Proposed Changes to the Bond Rule: This section outlines some of the more significant recommendations by staff. It should be noted that there are other changes in the Bond Rules that are not specifically mentioned herein; such amendments are being made to ensure consistency with those changes

proposed in Chapter 10 relating to the Uniform Multifamily Rules and Chapter 11 relating to the Qualified Allocation Plan. The applicable sections and page references are indicated for ease of reference.

1. **§12.4 - Pre-Application Process and Evaluation (page 2 of 8)**. The tie breaker factors to be used in the event there are pre-applications with the same score are proposed to be based on the highest score achieved under the Underserved Area scoring item instead of those tie breaker factors (in the order presented) identified in the Qualified Allocation Plan. Staff believes that considering most tax-exempt bond transactions are done in urban areas and considering the concentration that can be seen in some of the major metropolitan cities, tapping into those areas that do not have or have not had a housing tax credit development in the past 15 years could be of more value in deciding which application wins the tie breaker.
2. **§12.5 - Pre-Application Threshold Requirements (page 2 of 8)**. This section was modified to add clarifying language to the Organizational Chart item. These modifications were made to be consistent with the proposed 2018 Uniform Multifamily Rules.
3. **§12.6 - Pre-Application Scoring Criteria (page 3 of 8)**. Some of the common amenities listed in this section have been modified to provide clarification based on the Department's monitoring expectations. Moreover, the requirement that limited green amenities to be included and list thereof is proposed to be removed, leaving it at the option of the applicant whether or incorporate green building features.
4. **§12.6 - Pre-Application Scoring Criteria (page 3 of 8)**. The Underserved Area and Declared Disaster Area sections were modified to add clarifying language and be consistent with the proposed 2018 QAP.
5. **§12.9 – Occupancy Requirements (page 7 of 8)**. This section has been clarified to address how the Department will monitor for eligible tenants under the multifamily bond program.
6. **§12.10 – Fees (page 7 of 8)**. The bond application fee is proposed to be based on a per unit calculation rather than a flat amount.

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 12 concerning the 2018 Multifamily Housing Revenue Bond Rules. The Multifamily Housing Revenue Bond Rules outline the threshold and scoring related requirements associated with private activity bond funding from the Department. The proposed amendments will improve the 2018 Private Activity Bond 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 amendment does not have any foreseeable changes 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 amendment, will be improved efficiency in the 2018 Private Activity Bond Program. There will not be any additional economic cost to any persons required to comply with the amendments.

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 October 27, 2017 through November 12, 2017, to receive input on the amendments. 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. November 12, 2017.

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.

Multifamily Housing Revenue Bond Rules

§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 ("Department"). The Department is authorized to issue Bonds pursuant to Tex. Gov't 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 Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code ("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. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) and Chapter 10 of this title (relating to Uniform Multifamily Rules) for the current program year. In general, the Applicant will be required to satisfy the requirements of the Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board ("[TBRB](#)"). If the applicable QAP or Uniform Multifamily Rules contradict rules set forth in this Chapter, the applicable QAP or Uniform Multifamily Rules 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 related to 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 [stagepoint](#) 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 must be made in accordance with §10.207 of this title (relating to Waiver of Rules [for Applications](#)).

§12.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 10 of this title (relating to Uniform Multifamily Rules).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

§12.3 Bond Rating and Investment Letter

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a [division of The McGraw-Hill Companies, Inc.](#) or Moody's Investors Service, Inc. If such rating is based upon credit

enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

(b) Investment Letters. Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investor letter in a form acceptable to the Department.

§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 or meeting. Prior to the submission of a pre-application, it is essential 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 to any formal action regarding an inducement resolution.

(b) Undesirable Neighborhood Characteristics. If the Development Site has any of the characteristics described in §10.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §10.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions) and the Applicant failed to disclose.

(c) 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 set forth 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 the time 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).

(d) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Tex. Gov't 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 Tex. Gov't Code, §2306.359. In the event Should two or more pre-applications receive the same score, the Department will use the tie breaker will go to the pre-application with the highest number of points achieved under factors as outlined in §11.7 §12.6(8) of this title chapter (relating to Underserved Area Tie Breaker Factors) in the order they are presented to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(e) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application 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 or that an inducement resolution be approved despite the presence of undesirable neighborhood characteristics not fully evaluated by staff. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

§12.5 Pre-Application Threshold Requirements

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) 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) 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) of this title at the time of Application;
- (4) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;
- (5) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable. The List of Organizations form, as provided in the pre-application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;
- (6) Distribution List Form, as provided in the pre-application, to include the anticipated financing participants;
- (7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;
- (8) 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 (§2306.6705(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 from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. 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 no later than the Full Application Delivery Date.

§12.6 Pre-Application Scoring Criteria

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Tex. Gov't 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 Procedures Manual. Applicants 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 rent capped at 60 percent AMGI; or

(ii) Set aside 15 percent of Units rent capped at 30 percent AMGI and the remaining 85 percent 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 Development per Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs as represented in the Development Cost Schedule, as originally provided in the pre-application. 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 (1 point).

(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), ~~provided they are requested in the Private Activity Bond Pre-Application Scoring Form.~~

(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 State Restrictive Period for a Development to a total of thirty-five (35) years.

(5) Unit and Development Construction Features. 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 State Restrictive 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 (3 points).

(6) Common Amenities. All Developments must provide 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) of this paragraph. The common amenities include those listed in §10.101(b)(5) of this title and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same. ~~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)(xxxii) of this title.~~

(A) Developments with 16 to 40 Units must qualify for (4 points);

(B) Developments with 41 to 76 Units must qualify for (7 points);

(C) Developments with 77 to 99 Units must qualify for (10 points);

(D) Developments with 100 to 149 Units must qualify for (14 points);

(E) Developments with 150 to 199 Units must qualify for (18 points); or

(F) Developments with 200 or more Units must qualify for (22 points).

(7) Tenant Supportive 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 and must be maintained throughout the State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development and accessible to all. 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. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site is located in an Underserved Area as further described in §11.9(c)(65)(A) - (E) of this title. The pre-application must include evidence that the Development Site meets this requirement.

(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) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission. 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 area under Tex. Gov't Code, §418.014.

§12.7 Full Application Process

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §10.201 of this title (relating to Procedural Requirements for Application Submission).

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code, Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. ~~For every Bond issuance, t~~The Department will hold a public hearing ~~in order~~ to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should ~~contain~~ include at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, ~~then~~ the presentation should include the proposed scope of work that is planned for the Development. ~~All~~ The handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Staff Appeals Process) and §1.8 of this title (relating to Board Appeals Process). To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be submitted to the Department.

§12.8 Refunding Application Process

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §10.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9 ~~Regulatory and Land Use Restrictions~~Occupancy Requirements

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

- (1) the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development;
- (2) the end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or
- (3) the period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph:

(A) at least 20 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50 percent of the area median income; or

(B) at least 40 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60 percent of the area median income.

(2) The Development Owner must designate at the time of Application which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. The Regulatory Agreement will reflect the income and rent limits as identified in the Department's Underwriting Report, constituting the eligible tenants of the Development and monitored as such by the Department. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit, ~~provided, however, that~~ However, should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

§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 the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees associated with the Certificate of Reservation to the TBRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of \$30 per Unit based on the total number of Units and ~~\$10,000 for the~~ bond application fee of \$20 per Unit based on the total number of Units. (for multiple site Applications the application fee shall be \$10,000 or \$30 per Unit based on the total number of Units, 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 the bonds 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 (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

BOARD ACTION REQUEST
REAL ESTATE ANALYSIS DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action on proposed amendments of 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policy, and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Underwriting and Loan Policy 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;

WHEREAS, the rule provides the standards employed by the Department in the review of operating and development costs, market analysis, appraisals, environmental reports, and property condition assessments; and

WHEREAS, changes have been proposed to improve the efficiency of the funding sources involved and enhance their effectiveness in achieving policy objectives;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments of 10 TAC Chapter 10 Subchapter D Underwriting and Loan Policy 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 of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Underwriting and Loan Policy 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 proposed 2018 Draft Underwriting and Loan Policy which reflects staff's recommendations for the Board's consideration. This rule establishes the general requirements associated with analysis of the feasibility of a proposed Development. In getting the 2018 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff hosted monthly roundtable discussions throughout the year that, while they were mostly focused on scoring items in the Qualified Allocation Plan, discussion on several of those scoring items had applicability to underwriting and other items within the Underwriting and Loan Policy. Additionally, staff participated in several discussions with and received input from the Rural Rental Housing Association, the Texas Association of Affordable Housing Providers, the market analyst community and other stakeholders to discuss proposed changes and solicit feedback. Staff evaluated the

information received in all of these discussions and considered them in developing its proposed draft rules.

Rule-Making Timeline: Upon Board approval, the draft Underwriting and Loan Policy will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between October 27, 2017, and November 27, 2017, and there will also be a consolidated public hearing during this time to garner public comment. The Underwriting and Loan Policy will be brought before the Board in December for final approval and subsequently published in the *Texas Register* for adoption.

Subchapters for this Action Request: This Board Action Request is specifically for Subchapter D of the 2018 draft Uniform Multifamily Rule.

Summary of Proposed Changes: This section describes in general terms some of the clarifications and changes recommended by staff.

1. **§10.302(d)(2)(H) Property Tax.** Clarifying language has been added to reflect the sources the Underwriter may consider to determine the property tax expense.
2. **§10.302(d)(2)(I) Replacement Reserves.** Clarifying language has been added to reflect that the Underwriter's operating pro forma will include replacement reserve amounts specified by USDA.
3. **§10.302(d)(4)(D) Acceptable Debt Coverage Ratio Range.** Language modified to clarify the specifics steps followed by the Underwriter when the debt coverage ratio is outside the acceptable range. Added limitation to 75% of Surplus Cash for Direct Loans that will be subordinate to FHA financing.
4. **§10.302(e)(1) Acquisition Costs.** Language added to clarify how acquisition cost is determined at Cost Certification.
5. **§10.302(e)(1)(B) Identity of Interest Acquisitions.** Language added to clarify that the relationships that determine identity of interest transactions include an Affiliate of the seller; and that the original acquisition cost refers back to acquisition in a non-identity of interest transaction.
6. **§10.302(e)(4)(B)(i) Rehabilitation and Adaptive Reuse.** Language added to clarify the required description of the scope of work.
7. **§10.302(e)(4) General Contractor Fee.** Language added to clarify treatment of fees paid to affiliated subcontractors.
8. **§10.302(g)(3)(A) Supportive Housing: Operating Income.** Language added to clarify that operating income for Supportive Housing can include project-based rental assistance that exceeds program rent limits.
9. **§10.302(i)(1) Feasibility Conclusion.** Language added to include AMGI Band Capture Rates with maximums set at Gross Capture Rate levels. Individual Unit Capture Rate maximum reduced from 70 percent to 65 percent.
10. **§10.303(a) Market Analysis Rules and Guidelines – General Provision.** Requirement added to include a statement that the Market Analyst/company is a disinterested third party and will not materially benefit from the Development except for the fee, and that the fee is not contingent upon the outcome of the Market Analysis.

11. **§10.303(d)(8) Market Analysis Rules and Guidelines – Market Analysis Contents.** Secondary Market Area has been removed. Language added to definition of PMA narrative.
12. **§10.303(d)(9)(E)(i)(II) Market Analysis Rules and Guidelines – Market Analysis Contents.** Language has been added in the Demographics and Potential Demand sections to allow for the varying age requirements of elderly developments.
13. **§10.303(d)(9)(E)(iii)(V) Market Analysis Rules and Guidelines – Market Analysis Contents.** Changes supportive housing potential demand qualifications to include a \$1 minimum eligible income and allow outside data to quantify the households in the area that meet the development’s targeted population.
14. **§10.303(d)(9)(iii)(E)(VI) Market Analysis Rules and Guidelines – Market Analysis Contents.** Language added to include a \$1 minimum eligible income and a maximum eligible income equal to the minimum eligible affordable income.
15. **§10.303(d)(9)(iv) Market Analysis Rules and Guidelines – Market Analysis Contents.** Language added for External Demand to be calculated at 10% of potential demand from PMA.
16. **§10.303(d)(10)(E)(iii) Market Analysis Rules and Guidelines – Market Analysis Contents.** Comparable units in supply calculation to 90% occupancy for 90 days instead of 12 months.
17. **§10.304(a) Appraisal Rules and Guidelines – General Provision.** Requirement added to include a statement that the Market Analyst/company is a disinterested third party and will not materially benefit from the Development except for the fee, and that the fee is not contingent upon the outcome of the Market Analysis.
18. **§10.304(d)(10)(A) Value Estimates.** Language added to clarify the meaning of “as-vacant” land value.
19. **§10.306(a) Property Condition Assessment Guidelines.** Language added throughout section to clarify the expected requirements and components of the PCA.

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policy. The proposed amendments eliminate certain provisions and modifications are made to others.

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 amendment does not have any foreseeable changes 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 amendment, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments.

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 October 27, 2017 through November 27, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Brent Stewart, 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. Austin local time November 27, 2017.

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.

TITLE 10 COMMUNITY DEVELOPMENT

PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10 UNIFORM MULTIFAMILY RULES

SUBCHAPTER D UNDERWRITING AND LOAN POLICY

§10.301 General Provisions

(a) Purpose. This Subchapter applies 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 Subchapter 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)) includes general appeal procedures. 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 of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in an ~~Credit~~-Underwriting ~~Analysis~~-Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. 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. For the purpose of this Subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A - E and G).

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following:

(1) Program Limit Method. For Housing Credit Allocations, 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 defined in §10.3 of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap 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 downward (but not less than 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 (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income ("NOI") to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to utility allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a 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. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use 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 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.

(iii) Contract Rents. The Underwriter will review 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 an increase.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of Subchapter F of this Chapter relating to Utility Allowances. Utility allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(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 and garage 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 and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a 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.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional 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 normalized 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. 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 immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) Effective Gross Income ("EGI"). EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten 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 operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's 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 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.

(A) General and Administrative Expense ("G&A")--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 EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of EGI 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. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense ("WST"). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage 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) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve 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 Property Condition Assessment ("PCA") or, for existing USDA developments, an amount approved by USDA. 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 Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Tenant Services. Tenant services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described above. 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 Applicant's first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, 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. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index

history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) Repayment Period. For purposes of projecting the DCR over a thirty (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. Except as set forth in clauses (i) or (ii) of this subparagraph, 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 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) 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 subject to a Direct Loan NOFA and program rules:

(I) a reduction to the principal amount of a Direct Loan;

~~(II); or in the case where no repayable Developer Fee remains available for deferral and the amount of the~~ Direct Loan ~~determined in (I) is insufficient is necessary~~ to balance the sources and uses;

~~(a); a reduction to the interest rate;~~

~~(b) or an increase in the amortization period for Direct Loans;~~

~~(II) a reclassification of Direct Loans to reflect grants;~~

(III) ~~a~~ ~~an~~ ~~assumed~~ 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 subject to a Direct Loan NOFA and program rules:

~~(I) reclassification of Department funded grants to reflect loans;~~

~~(II) an increase ~~in to~~ the interest rate up to the highest interest rate on any senior debt or if no senior debt a market rate determined by the Underwriter based on current market interest rates;~~

~~(III) or a decrease in the amortization period but not less than thirty (30) years for Direct Loans;~~

(III) an assumed 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 Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

~~(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (as defined by the applicable FHA program).~~

~~(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.~~

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the following:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that costs 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 Rehabilitation Developments will be based in accordance with the

estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate 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. At Cost Certification, the underwritten acquisition cost will be the amount verified by the settlement statement. For Identify of Interest acquisitions, the cost will be limited to the underwritten acquisition cost at initial Underwriting.

(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 an Affiliate of 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 in the most recent non-identity of interest transaction 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 residential or non-residential 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 residential or non-residential buildings are occupied or otherwise producing revenue, holding and improvement costs may will not include capitalized costs, operating expenses, including, but not limited to, property taxes, and interest expense or any other cost associated with the operations of the buildings.

~~(C)~~ 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. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

~~(D)~~ Eligible Basis on Acquisition of Buildings. Building acquisition cost 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 that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance and/or property tax exemptions. 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 with 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 with 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. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a ~~detailed narrative description of the~~ scope of work ~~for the proposed rehabilitation~~ and narrative description of the work to be completed. The narrative should speak to all off-site, site work, building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it should generally be arranged consistent with the line-items on the PCA Cost Schedule Supplement and must also be consistent with the development cost schedule of the Application.

(ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.

(5) Contingency. Total contingency, 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.

(6) General Contractor Fee. General 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. General 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. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For ~~Housing Tax Credit~~^{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 Fee 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. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.

(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. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. 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). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, 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 found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services 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 sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account as a Development Cost.

(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) in cases when warranted. The Underwriter may 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 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 may result in an Application being referred to the Committee by the Director of Real Estate Analysis. 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 proposed to be designed to comply with the QAP, [Program Rules and NOFA](#), and applicable Federal [or state](#) requirements.

(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. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(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-or](#) equal to any project based rental subsidy rent to be utilized for the Development [if higher than the maximum rent limits](#);

(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 affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;

(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, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §10.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad 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 or any AMGI band 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 or any AMGI band capture rate exceeds 30 percent; or

(D) is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30 percent; or,

(E) has an Individual Unit Capture Rate for any Unit Type greater than ~~75~~65 percent.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) 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, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMI rents, 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 underwritten capitalization 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.

(A) Except when underwritten at cost certification, 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.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) Long Term Feasibility. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) a Debt Coverage Ratio below 1.15; or,

(B) negative cash flow (throughout the term of a Direct Loan).

(6) Exceptions. The infeasibility conclusions may be excepted when:

(A) 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), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).

(i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program 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.

(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. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis.

(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) The approved Qualified Market Analyst list will be updated and published annually on or about ~~October~~-November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) calendar days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) calendar days prior to submission of any other application for funding for which the Market Analyst must be approved.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing 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.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(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 will be posted on the Department's web site no later than November 1st.~~

(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) Market Analysis Summary. 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 geographic area from which the Development may draw limited demand in addition to the PMA. A SMA 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 SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)~~

~~(A) The SMA will be defined by the Market Analyst with:~~

~~(i) geographic size based on a base year population of no more than 250,000 people inclusive of the PMA; and~~

~~(ii) boundaries based on U.S. census tracts.~~

~~(B) The Market Analyst's definition of the SMA must include:~~

~~(i) a detailed narrative specific to the SMA explaining;~~

~~(I) how the boundaries of the SMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;~~

~~(II) whether a more logical market area within the SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;~~

~~(III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;~~

~~(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development; and~~

~~(V) other housing issues in general, if pertinent.~~

~~(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 in numerical order with labels as well as the location of the subject Development and all comparable Developments.~~

(98) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to

draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants ~~currently residing in from~~ other areas of the PMA to relocate to the Development;

(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development; ~~and~~

(V) if the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) for rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(V) discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VI) other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable 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;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,

(xii) for rental developments only, the occupancy and turnover.

(109) Market Information.

(A) ~~For each of the defined market areas, identify~~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) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(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 Elderly 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 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. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(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 the elderly populations (and any other qualifying residents for Elderly Developments) to be served for-by an 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 elderly-qualifying demographic characteristics such as the minimum age of the population ~~targeted to be served~~ 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 35-40 percent for the general population and 50 percent for 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 External Demand. ~~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 35-40 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 35-40 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) Elderly Developments ~~or Supportive Housing~~:

(-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 within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) Supportive Housing:

(-a-) minimum eligible income is \$1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (PBV's, PHU's):

(-a-) minimum eligible income for the assisted units is \$1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(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.

(iv) External Demand: Assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(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. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(~~10~~) 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) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15 percent must be supported with additional narrative.

(vi) 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.

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, 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 in an Application with priority over the subject pursuant to §10.201(6) of this chapter; ~~and~~

(iii) Comparable Units in previously approved ~~but Unstabilized~~ Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days; 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. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%), the capture rate by AMGI band is defined as Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

~~(H)~~ Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(H) 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.

(14) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(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. The appraisal must include a statement that the person or company preparing the appraisal is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(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 "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. 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". For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. 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 value must be based on the proposed restricted rents 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 the 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 must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 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 the Department 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 must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must 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 Lead Based Paint and/or asbestos containing materials would

be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) 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. For buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;

(6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;

(7) 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; and

(8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(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 an existing 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 section.

§10.306 Property Condition Assessment Guidelines

(a) General Provisions. The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides an evaluation of the current conditions of the Development, identifies a scope of work and cost estimates for both immediate and long-term physical needs, evaluates the sufficiency of the Applicant's scope of work under 10 TAC §10.302(e)(4)(B)(i) for the rehabilitation or conversion of the building(s) from a non-residential use to multifamily residential use and provides an independent review of the Applicant's proposed costs based on the scope of work. The report should be in sufficient detail for the

Underwriter to fully understand current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the PCA author. The PCA must include a copy of the Applicant's scope of work narrative and Development Cost Schedule. 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.

(b) The PCA prepared for the Department should must 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 (e) of this section. Additional information is encouraged if deemed relevant by the PCA author. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(c) The PCA must include the Department's PCA Property Condition Assessment Cost Schedule Supplement ("PCA Supplement"). The purpose of the PCA Supplement is to consolidate and show reconciliation of the scope of work and costs of the immediate physical needs identified by the PCA author with the Applicant's scope of work and costs provided in the Application. The consolidated scope of work and costs shown on the PCA Supplement will be used by the Underwriter in the analysis. The PCA Supplement also details the which details all Rehabilitation costs and projected repairs and replacements through at least thirty (30) years.

(d) The PCA must include good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of the structure). 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) The PCA must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the PCA must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the PCA must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the development. Replacement or relocation of systems and components must be described.

(2) Description of Scope of Work. The PCA must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any new construction must be

described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available.

(43) Useful Life Estimates. For each system and component of the property the PCA ~~should~~must ~~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;

(24) Code Compliance. The PCA ~~should~~must 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. For ~~transactions-Applications requesting with~~ Direct Loan funding from the Department, the PCA provider must include a comparison between the local building code and the International Existing Building Code of the International Code Council~~also evaluate cost estimates to meet the International Existing Building Code and other property standards;~~

(35) Program Rules. The PCA ~~should~~must 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, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points;

(46) Accessibility Requirements. The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).

(57) Reconciliation of Scope of Work and Costs. The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and ~~Hard Costs~~costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and

(68) 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.~~The Development Cost Schedule and PCA Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, Systems immediately necessary repair and replacement should be identified for 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~~scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, ~~such items~~the additional scope of work must be ~~identified-evaluated~~ and either the nature or source of obsolescence to be cured 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~~additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the ~~Hard Costs~~costs presented on the Applicant's development cost schedule and the PCA Supplement.

(D) 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 lesser of thirty (30) years or 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 thirty (30) 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 subsection (a)(~~46~~), (~~58~~)(A) and (~~58~~)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

~~(e)~~ 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.

(dh) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (bg) 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 Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs 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 Texas Department of Housing and Community Affairs.

(i) The PCA report ~~should also~~ must include a statement that the ~~person individual and/~~ 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. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(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 (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement.

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BOARD ACTION REQUEST
REAL ESTATE ANALYSIS DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action on proposed amendments of 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policy, and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Underwriting and Loan Policy 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;

WHEREAS, the rule provides the standards employed by the Department in the review of operating and development costs, market analysis, appraisals, environmental reports, and property condition assessments; and

WHEREAS, changes have been proposed to improve the efficiency of the funding sources involved and enhance their effectiveness in achieving policy objectives;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments of 10 TAC Chapter 10 Subchapter D Underwriting and Loan Policy 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 of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Underwriting and Loan Policy 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 proposed 2018 Draft Underwriting and Loan Policy which reflects staff's recommendations for the Board's consideration. This rule establishes the general requirements associated with analysis of the feasibility of a proposed Development. In getting the 2018 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff hosted monthly roundtable discussions throughout the year that, while they were mostly focused on scoring items in the Qualified Allocation Plan, discussion on several of those scoring items had applicability to underwriting and other items within the Underwriting and Loan Policy. Additionally, staff participated in several discussions with and received input from the Rural Rental Housing Association, the Texas Association of Affordable Housing Providers, the market analyst community and other stakeholders to discuss proposed changes and solicit feedback. Staff evaluated the

information received in all of these discussions and considered them in developing its proposed draft rules.

Rule-Making Timeline: Upon Board approval, the draft Underwriting and Loan Policy will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between October 27, 2017, and November 27, 2017, and there will also be a consolidated public hearing during this time to garner public comment. The Underwriting and Loan Policy will be brought before the Board in December for final approval and subsequently published in the *Texas Register* for adoption.

Subchapters for this Action Request: This Board Action Request is specifically for Subchapter D of the 2018 draft Uniform Multifamily Rule.

Summary of Proposed Changes: This section describes in general terms some of the clarifications and changes recommended by staff.

1. **§10.302(d)(2)(H) Property Tax.** Clarifying language has been added to reflect the sources the Underwriter may consider to determine the property tax expense.
2. **§10.302(d)(2)(I) Replacement Reserves.** Clarifying language has been added to reflect that the Underwriter's operating pro forma will include replacement reserve amounts specified by USDA.
3. **§10.302(d)(4)(D) Acceptable Debt Coverage Ratio Range.** Language modified to clarify the specifics steps followed by the Underwriter when the debt coverage ratio is outside the acceptable range. Added limitation to 75% of Surplus Cash for Direct Loans that will be subordinate to FHA financing.
4. **§10.302(e)(1) Acquisition Costs.** Language added to clarify how acquisition cost is determined at Cost Certification.
5. **§10.302(e)(1)(B) Identity of Interest Acquisitions.** Language added to clarify that the relationships that determine identity of interest transactions include an Affiliate of the seller; and that the original acquisition cost refers back to acquisition in a non-identity of interest transaction.
6. **§10.302(e)(4)(B)(i) Rehabilitation and Adaptive Reuse.** Language added to clarify the required description of the scope of work.
7. **§10.302(e)(4) General Contractor Fee.** Language added to clarify treatment of fees paid to affiliated subcontractors.
8. **§10.302(g)(3)(A) Supportive Housing: Operating Income.** Language added to clarify that operating income for Supportive Housing can include project-based rental assistance that exceeds program rent limits.
9. **§10.302(i)(1) Feasibility Conclusion.** Language added to include AMGI Band Capture Rates with maximums set at Gross Capture Rate levels. Individual Unit Capture Rate maximum reduced from 70 percent to 65 percent.
10. **§10.303(a) Market Analysis Rules and Guidelines – General Provision.** Requirement added to include a statement that the Market Analyst/company is a disinterested third party and will not materially benefit from the Development except for the fee, and that the fee is not contingent upon the outcome of the Market Analysis.

11. **§10.303(d)(8) Market Analysis Rules and Guidelines – Market Analysis Contents.** Secondary Market Area has been removed. Language added to definition of PMA narrative.
12. **§10.303(d)(9)(E)(i)(II) Market Analysis Rules and Guidelines – Market Analysis Contents.** Language has been added in the Demographics and Potential Demand sections to allow for the varying age requirements of elderly developments.
13. **§10.303(d)(9)(E)(iii)(V) Market Analysis Rules and Guidelines – Market Analysis Contents.** Changes supportive housing potential demand qualifications to include a \$1 minimum eligible income and allow outside data to quantify the households in the area that meet the development’s targeted population.
14. **§10.303(d)(9)(iii)(E)(VI) Market Analysis Rules and Guidelines – Market Analysis Contents.** Language added to include a \$1 minimum eligible income and a maximum eligible income equal to the minimum eligible affordable income.
15. **§10.303(d)(9)(iv) Market Analysis Rules and Guidelines – Market Analysis Contents.** Language added for External Demand to be calculated at 10% of potential demand from PMA.
16. **§10.303(d)(10)(E)(iii) Market Analysis Rules and Guidelines – Market Analysis Contents.** Comparable units in supply calculation to 90% occupancy for 90 days instead of 12 months.
17. **§10.304(a) Appraisal Rules and Guidelines – General Provision.** Requirement added to include a statement that the Market Analyst/company is a disinterested third party and will not materially benefit from the Development except for the fee, and that the fee is not contingent upon the outcome of the Market Analysis.
18. **§10.304(d)(10)(A) Value Estimates.** Language added to clarify the meaning of “as-vacant” land value.
19. **§10.306(a) Property Condition Assessment Guidelines.** Language added throughout section to clarify the expected requirements and components of the PCA.

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policy. The proposed amendments eliminate certain provisions and modifications are made to others.

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 amendment does not have any foreseeable changes 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 amendment, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments.

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 October 27, 2017 through November 27, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Brent Stewart, 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. Austin local time November 27, 2017.

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.

TITLE 10 COMMUNITY DEVELOPMENT

PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10 UNIFORM MULTIFAMILY RULES

SUBCHAPTER D UNDERWRITING AND LOAN POLICY

§10.301 General Provisions

(a) Purpose. This Subchapter applies 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 Subchapter 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)) includes general appeal procedures. 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 of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in an ~~Credit~~-Underwriting ~~Analysis~~-Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. 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. For the purpose of this Subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A - E and G).

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following:

(1) Program Limit Method. For Housing Credit Allocations, 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 defined in §10.3 of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap 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 downward (but not less than 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 (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income ("NOI") to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to utility allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a 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. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use 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 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.

(iii) Contract Rents. The Underwriter will review 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 an increase.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of Subchapter F of this Chapter relating to Utility Allowances. Utility allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(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 and garage 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 and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a 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.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional 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 normalized 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. 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 immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) Effective Gross Income ("EGI"). EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten 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 operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's 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 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.

(A) General and Administrative Expense ("G&A")--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 EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of EGI 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. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense ("WST"). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage 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) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve 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 Property Condition Assessment ("PCA") or, for existing USDA developments, an amount approved by USDA. 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 Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Tenant Services. Tenant services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described above. 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 Applicant's first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, 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. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index

history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) Repayment Period. For purposes of projecting the DCR over a thirty (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. Except as set forth in clauses (i) or (ii) of this subparagraph, 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 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on an ~~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 subject to a Direct Loan NOFA and program rules:

(I) a reduction to the principal amount of a Direct Loan;

~~(II); or in the case where no repayable Developer Fee remains available for deferral and the amount of the Direct Loan determined in (I) is insufficient is necessary to balance the sources and uses;~~

~~(a); a reduction to the interest rate;~~

~~(b) or an increase in the amortization period for Direct Loans;~~

~~(II) a reclassification of Direct Loans to reflect grants;~~

(III) ~~a~~ ~~an~~ ~~assumed~~ 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 subject to a Direct Loan NOFA and program rules:

~~(I) reclassification of Department funded grants to reflect loans;~~

~~(II) an increase ~~in to~~ the interest rate up to the highest interest rate on any senior debt or if no senior debt a market rate determined by the Underwriter based on current market interest rates;~~

~~(III) or a decrease in the amortization period but not less than thirty (30) years for Direct Loans;~~

(III) an assumed 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 Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

~~(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (as defined by the applicable FHA program).~~

~~(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.~~

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the following:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that costs 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 Rehabilitation Developments will be based in accordance with the

estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate 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. At Cost Certification, the underwritten acquisition cost will be the amount verified by the settlement statement. For Identify of Interest acquisitions, the cost will be limited to the underwritten acquisition cost at initial Underwriting.

(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 an Affiliate of 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 in the most recent non-identity of interest transaction 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 residential or non-residential 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 residential or non-residential buildings are occupied or otherwise producing revenue, holding and improvement costs may will not include capitalized costs, operating expenses, including, but not limited to, property taxes, and interest expense or any other cost associated with the operations of the buildings.

~~(C)~~ 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. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

~~(D)~~ Eligible Basis on Acquisition of Buildings. Building acquisition cost 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 that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance and/or property tax exemptions. 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 with 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 with 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. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a ~~detailed narrative description of the~~ scope of work ~~for the proposed rehabilitation~~ and narrative description of the work to be completed. The narrative should speak to all off-site, site work, building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it should generally be arranged consistent with the line-items on the PCA Cost Schedule Supplement and must also be consistent with the development cost schedule of the Application.

(ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.

(5) Contingency. Total contingency, 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.

(6) General Contractor Fee. General 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. General 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. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For ~~Housing Tax Credit~~^{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 Fee 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. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.

(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. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. 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). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, 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 found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services 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 sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account as a Development Cost.

(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) in cases when warranted. The Underwriter may 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 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 may result in an Application being referred to the Committee by the Director of Real Estate Analysis. 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 proposed to be designed to comply with the QAP, [Program Rules and NOFA](#), and applicable Federal [or state](#) requirements.

(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. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(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-or](#) equal to any project based rental subsidy rent to be utilized for the Development [if higher than the maximum rent limits](#);

(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 affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;

(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, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §10.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad 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 or any AMGI band 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 or any AMGI band capture rate exceeds 30 percent; or

(D) is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30 percent; or,

(E) has an Individual Unit Capture Rate for any Unit Type greater than ~~75~~65 percent.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) 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, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMI rents, 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 underwritten capitalization 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.

(A) Except when underwritten at cost certification, 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.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) Long Term Feasibility. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) a Debt Coverage Ratio below 1.15; or,

(B) negative cash flow (throughout the term of a Direct Loan).

(6) Exceptions. The infeasibility conclusions may be excepted when:

(A) 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), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).

(i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program 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.

(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. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis.

(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) The approved Qualified Market Analyst list will be updated and published annually on or about ~~October~~-November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) calendar days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) calendar days prior to submission of any other application for funding for which the Market Analyst must be approved.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing 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.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(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 will be posted on the Department's web site no later than November 1st.~~

(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) Market Analysis Summary. 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 geographic area from which the Development may draw limited demand in addition to the PMA. A SMA 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 SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)~~

~~(A) The SMA will be defined by the Market Analyst with:~~

~~(i) geographic size based on a base year population of no more than 250,000 people inclusive of the PMA; and~~

~~(ii) boundaries based on U.S. census tracts.~~

~~(B) The Market Analyst's definition of the SMA must include:~~

~~(i) a detailed narrative specific to the SMA explaining;~~

~~(I) how the boundaries of the SMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;~~

~~(II) whether a more logical market area within the SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;~~

~~(III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;~~

~~(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development; and~~

~~(V) other housing issues in general, if pertinent.~~

~~(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 in numerical order with labels as well as the location of the subject Development and all comparable Developments.~~

(98) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to

draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants ~~currently residing in from~~ other areas of the PMA to relocate to the Development;

(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development; ~~and~~

(V) if the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) for rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(V) discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VI) other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable 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;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,

(xii) for rental developments only, the occupancy and turnover.

(109) Market Information.

(A) ~~For each of the defined market areas, identify~~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) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(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 Elderly 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 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. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(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 the elderly populations (and any other qualifying residents for Elderly Developments) to be served for-by an 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 elderly-qualifying demographic characteristics such as the minimum age of the population ~~targeted to be served~~ 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 35-40 percent for the general population and 50 percent for 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 External Demand. ~~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 ~~35-40~~ 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 ~~35-40~~ 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) Elderly Developments ~~or Supportive Housing~~:

(-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 within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) Supportive Housing:

(-a-) minimum eligible income is \$1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (PBV's, PHU's):

(-a-) minimum eligible income for the assisted units is \$1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(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.

(iv) External Demand: Assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(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. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(~~10~~) 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) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15 percent must be supported with additional narrative.

(vi) 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.

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, 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 in an Application with priority over the subject pursuant to §10.201(6) of this chapter; ~~and~~

(iii) Comparable Units in previously approved ~~but Unstabilized~~ Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days; 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. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%), the capture rate by AMGI band is defined as Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

~~(H)~~ Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(H) 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.

(14) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(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. The appraisal must include a statement that the person or company preparing the appraisal is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(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 "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. 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". For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. 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 value must be based on the proposed restricted rents 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 the 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 must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 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 the Department 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 must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must 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 Lead Based Paint and/or asbestos containing materials would

be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) 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. For buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;

(6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;

(7) 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; and

(8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(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 an existing 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 section.

§10.306 Property Condition Assessment Guidelines

(a) General Provisions. The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides an evaluation of the current conditions of the Development, identifies a scope of work and cost estimates for both immediate and long-term physical needs, evaluates the sufficiency of the Applicant's scope of work under 10 TAC §10.302(e)(4)(B)(i) for the rehabilitation or conversion of the building(s) from a non-residential use to multifamily residential use and provides an independent review of the Applicant's proposed costs based on the scope of work. The report should be in sufficient detail for the

Underwriter to fully understand current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the PCA author. The PCA must include a copy of the Applicant's scope of work narrative and Development Cost Schedule. 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.

(b) The PCA prepared for the Department should must 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 (bf) and (eg) of this section. Additional information is encouraged if deemed relevant by the PCA author. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(c) The PCA must include the Department's PCA-Property Condition Assessment Cost Schedule Supplement ("PCA Supplement"). The purpose of the PCA Supplement is to consolidate and show reconciliation of the scope of work and costs of the immediate physical needs identified by the PCA author with the Applicant's scope of work and costs provided in the Application. The consolidated scope of work and costs shown on the PCA Supplement will be used by the Underwriter in the analysis. The PCA Supplement also details the which details all Rehabilitation costs and projected repairs and replacements through at least thirty (30) years.

(d) The PCA must include good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of the structure). 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) The PCA must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the PCA must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the PCA must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the development. Replacement or relocation of systems and components must be described.

(2) Description of Scope of Work. The PCA must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any new construction must be

described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available.

(43) Useful Life Estimates. For each system and component of the property the PCA ~~should~~must ~~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;

(24) Code Compliance. The PCA ~~should~~must 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. For ~~transactions-Applications requesting with~~ Direct Loan funding from the Department, the PCA provider must include a comparison between the local building code and the International Existing Building Code of the International Code Council~~also evaluate cost estimates to meet the International Existing Building Code and other property standards;~~

(35) Program Rules. The PCA ~~should~~must 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, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points;

(46) Accessibility Requirements. The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).

(57) Reconciliation of Scope of Work and Costs. The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and ~~Hard Costs~~costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and

(68) 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.~~The Development Cost Schedule and PCA Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, Systems immediately necessary repair and replacement should be identified for 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~~scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, ~~such items~~the additional scope of work must be ~~identified-evaluated~~ and either the nature or source of obsolescence to be cured 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~~additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the Hard-Costs~~costs~~ presented on the Applicant's development cost schedule and the PCA Supplement.

(D) 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 lesser of thirty (30) years or 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 thirty (30) 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 subsection (a)(~~46~~), (~~58~~)(A) and (~~58~~)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

~~(e)~~ 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.

(dh) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (bg) 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 Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs 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 Texas Department of Housing and Community Affairs.

(i) The PCA report ~~should also~~ must include a statement that the ~~person individual and/~~ 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. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

2a

TDHCA Outreach Activities, September - October 2017

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

| Activity | Event | Date | Location | Division |
|---------------|---|------------|--------------------|------------|
| Webinar | Hurricane Harvey Forum | 09/21/2017 | N/A | Compliance |
| Training | Affordable Housing Specialist Certification | 10/03/2017 | N/A | MFTH |
| TICH meeting | Texas Interagency Council for the Homeless (TICH) Quarterly Meeting | 10/04/2017 | Dallas | HRC |
| Conference | Greater El Paso Association of REALTORS | 10/06/2017 | El Paso | MFTH |
| N/A | Public Comment Closes: Draft Amendment of the 2017 State of Texas Consolidated Plan: One-Year Action Plan | 10/08/2017 | N/A | HRC |
| HHSCC meeting | Housing and Health Services Coordination Council | 10/18/2017 | TDHCA headquarters | HRC |

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Colonia Initiatives:

- Updated Contract for Deed Conversion page; directing users to HOME

Communications:

- Revised/Updated Disaster Resources page
- Posted updated list of Texas counties eligible for FEMA assistance due to Hurricane Harvey

Community Affairs:

- Posted CSBG Organizational Standards
- Posted CSBG Organizational Standards Submission Guidelines
- Updated CEAP service delivery plans for 2018
- Removed CSBG additional requirements page

Compliance:

- Updated links for property damages due to Hurricane Harvey
- Updated links for Construction Inspection Request forms
- Updated links for Construction Inspection Request

Fair Housing

- Updated Single Family Affirmative Marketing Tool

Homeownership:

- Posted information related to eligibility on forbearance/deferment on mortgage loans due to Hurricane Harvey damages
- Updated information related to TSHEP training and new contract with NeighborWorks America
- Updated lender list for MFTH program
- Updated interest rate page

HOME and Homeless:

- HOME releases funds to assist with Hurricane Harvey disaster relief efforts
- Updated ESG application log

Housing Resource Center

- Updated calendar of events to include agency/council meetings

Internal Audit:

- Posted Fiscal Year 2018 plan
- Posted Fiscal Year 2017 report for Information Systems

Multifamily:

- Posted draft of 2018 QAP
- Updated the 2017 4% HTC Bond Status Log
- Posted public hearing dates
- Posted Davis-Bacon/Labor Presentation
- Posted NOFA amendment to Multifamily Direct Loan 2017-1 NOFA
- Posted Asset Management announcements for board meeting
- Posted 2017 9% HTC carryover allocation information

Notices of Funding Availability (“NOFA”):

- Listed the Amy Young Barrier Removal Program 2018 funding
- Removed listing for Dallas County Community Affairs subrecipient

Public Comment: www.tdhca.state.tx.us/public-comment.htm

- Posted comment period for draft Amendment of the 2017 State of Texas Consolidated Plan
- Posted comment period closed for proposed amendments/rules of Texas Bootstrap Loan Program and Housing Trust Fund
- Posted comment period for proposed rule of the Section 811 PRA Program
- Posted comment period for draft amendment to the 2017 HOME rules
- Posted comment period for proposed amendments/rules to MF (10 TAC Chapter 10)

Purchasing:

- Invitation to bid for Community Needs Assessment and Strategic Plan Training
- Updated contracts for services list

Real Estate Analysis

- Updated approved market analysts list

Frequently Used Acronyms

| | | | |
|------|--|------|--------------------------------------|
| AMFI | Area Median Family Income | LURA | Land Use Restriction Agreement |
| AYBR | Amy Young Barrier Removal Program | MF | Multifamily |
| CEAP | Comprehensive Energy Assistance Program | MFTH | My First Texas Home Program |
| CFD | Contract for Deed Program | MRB | Mortgage Revenue Bond Program |
| CFDC | Contract for Deed Conversion Assistance Grants | NHTF | National Housing Trust Fund |
| CHDO | Community Housing Development Organization | NOFA | Notice of Funding Availability |
| CMTS | Compliance Monitoring and Tracking System | NSP | Neighborhood Stabilization Program |
| CSBG | Community Services Block Grant Program | OIG | Office of Inspector General |
| ESG | Emergency Solutions Grants Program | QAP | Qualified Allocation Plan |
| FAQ | Frequently Asked Questions | QCP | Quantifiable Community Participation |
| HBA | Homebuyer Assistance Program | REA | Real Estate Analysis |
| | | RFA | Request for Applications |
| | | RFO | Request for Offer |
| | | RFP | Request for Proposals |
| | | RFQ | Request for Qualifications |
| | | ROFR | Right of First Refusal |

| | | | |
|-------|---|-------|--|
| HHSCC | Housing and Health Services Coordination Council | SLIHP | State of Texas Low Income Housing Plan |
| HHSP | Homeless Housing and Services Program | TA | Technical Assistance |
| HRA | Homeowner Rehabilitation Assistance Program | TBRA | Tenant Based Rental Assistance Program |
| HRC | Housing Resource Center | TICH | Texas Interagency Council for the Homeless |
| HTC | Housing Tax Credit | TSHEP | Texas Statewide Homebuyer Education Program |
| HTF | Housing Trust Fund | TXMCC | Texas Mortgage Credit Certificate |
| HUD | US Department of Housing and Urban Development | VAWA | Violence Against Women Act |
| IFB | Invitation for Bid | WAP | Weatherization Assistance Program |

2b

BOARD REPORT ITEM
HOUSING RESOURCE CENTER
OCTOBER 12, 2017

Report on 2019 Regional Allocation Formula timeline and possible changes in methodology as it relates to housing need, available resources and other variables due to disaster response and recovery efforts impacted by Hurricane Harvey

BACKGROUND

Overview of the Regional Allocation Formula (“RAF”)

Tex. Gov’t Code §2306.111 requires the Department to develop and use a formula to regionally allocate its HOME Investment Partnerships Program (“HOME”), Housing Tax Credit (“HTC”), and under certain circumstances, State Housing Trust Fund (“SHTF”) Program funding. The resulting RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. It also allocates funding to rural and urban areas within each region. The Department has flexibility in determining variables to be used in the RAF, per Tex. Gov’t Code §2306.1115(a)(3), “the department shall develop a formula that...includes other factors determined by the department to be relevant to the equitable distribution of housing funds.”

Annual Revisions as Necessary

The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources. In recent years, a draft RAF has been released for public comment in the spring and approved in final form by the TDHCA Board in the fall, which was then utilized for the following year’s competitive HTC round, for which pre-applications are due in January. Most notably, in 2013 after careful and thorough analysis and much public participation, staff recommended substantial changes to increase accuracy and transparency in the RAF by using a methodology called the Compounded Need Model. The changes resulted in the increased ability for developers and community members to predict funding availability, the elimination of large swings in funding from one region to another each year, and a simplified process that is easier to replicate and explain to the Legislature, the Board and the public.

In 2014, based on 2013 Metropolitan Statistical Areas (“MSAs”) updates by the Office of Management and Budget (“OMB”), the 2014 RAF Methodology was revised to reflect that, instead of using MSAs to allocate between urban and rural areas, the RAF uses “MSA counties with urban places” and “Non-MSA counties or counties with only rural places”.

Based on public comment received in the 2015 RAF cycle, factors for lack of kitchen and plumbing facilities were added to the RAF to measure housing need for Single Family activities. Similarly, in the 2016 RAF cycle, a Regional Coverage Factor was added to the 2016 RAF Methodology for Single Family activities in order to account for the smaller populations of rural areas as well as scattered locations of single family projects, instead of relying solely on population as an absolute.

Final 2018 RAF

During the spring and summer of 2017, staff prepared the 2018 RAF Methodology using factors, in keeping with the statutory requirements, which included the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state. A public comment period was open for the Draft 2018 RAF between May 26, 2017, and June 16, 2017, and the Final 2018 RAF was approved at the Board meeting of July 27, 2017. No changes are anticipated to be made to the Final 2018 RAF. As such, the Final 2018 RAF methodology will be applied to PY 2018 allocations for HOME, HTC, and possibly SHTF.

Development of the 2019 RAF

As staff prepares the 2019 RAF, it is anticipated that prior to a formal public comment period, informal public input will be sought through roundtables and/or online forums, to garner input on factors that may address disaster recovery in the equitable distribution of housing funds in accordance with Tex. Gov't Code §2306.111. Staff anticipates beginning this informal public comment process in early 2018. Factors may include but are not limited to the State and Federal designation of disaster counties, the number of displaced persons or households, reports of single and/or multifamily property damage, and other factors determined by the Department to be relevant to the equitable distribution of housing funds. Opportunities for comments will be posted on the Department's webpage, posted in the *Texas Register* and announced by TDHCA Listserv email distribution.

Separate Allocation of Special Funding for Disasters

Should any additional federal or state resources for longer term disaster recovery activities be appropriated for programs assigned to the Department, staff will develop and present future allocation plans for Board approval. Specifically, the Department may develop a separate modified RAF, should a special allocation of tax credits or funds be allocated to the Department through the HTC or HOME programs.

2c

BOARD REPORT ITEM
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Report on the submission of the 2017 National Housing Trust Fund Allocation Plan

BACKGROUND

On June 15, 2017, the U.S. Department of Housing and Urban Development (“HUD”) released the formula allocation amounts for the National Housing Trust Fund (“NHTF”) and published guidance on how to submit the 2017 NHTF Allocation Plan. At the Board meeting of June 29, 2017, the Board approved the draft version of the Allocation Plan for release for public comment and publication in the *Texas Register*. No substantive changes were made to the 2016 Plan that was deemed accepted on June 15, 2017. Minor changes such as updating the allocation amount to reflect what the State of Texas received for Program Year 2017, revising the regional allocation method as a result of the new allocation amount, and some minor reformatting as a result of the changes to the 2017 Allocation Plan Sample Form provided by HUD, were made.

The NHTF Allocation Plan was required to be submitted with the 2017 State of Texas Consolidated Plan: One-Year Action Plan no later than August 16, 2017. On August 15, 2017, staff submitted the Final 2017 State of Texas NHTF Allocation Plan to HUD, which was reported to the Board in item 2d of the September 7, 2017, Board meeting.

On September 22, 2017, the Department received an email from HUD requesting corrections be made to several parts of the Department’s Allocation Plan by September 26, 2017. On September 27, 2017, staff had a conference call with HUD employees in Fort Worth and Washington, DC, regarding the insufficient amount of time provided to make corrections that were being requested. Staff requested that HUD disapprove of the Allocation Plan to allow for more time to respond to the requested corrections. On September 28, 2017, HUD sent a letter to the Department disapproving the 2017 NHTF Allocation Plan, thereby allowing the Department 45 days to respond. The Department intends to prepare a response to HUD.

September 28, 2017 Disapproval
Letter from HUD and
accompanying list of deficiencies



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Fort Worth Regional Office, Region VI
Office of Community Planning and Development
801 Cherry Street, Unit #45, Ste. 2500
Fort Worth, TX 76102
www.hud.gov

Timothy K. Irvine, Executive Director
Texas Department of Housing and Community Affairs
State of Texas
P. O. Box 13941, 221 E. 11th St.
Austin, TX 78711-3941

Dear Mr. Irvine:

**SUBJECT: State of Texas – Housing Trust Fund
Disapproval of the FY 2017 Housing Trust Fund Allocation Plan**

The FY 2017 Housing Trust Fund Allocation Plan was submitted by State of Texas on August 15, 2017. This letter serves as official notification that HUD disapproved the allocation plan. This determination was made by HUD's Office of Community Planning and Development after a conference call was held between the Fort Worth Field Office, the Office of Affordable Housing Programs and TDHCA staff on September 27, 2017. It was agreed upon that there is insufficient time to revise the plan prior to the automatic approval date. Therefore, the allocation plan was disapproved to allow additional time for TDHCA to make the necessary revisions. A complete list of deficiencies will be provided to TDHCA separately. Pursuant to 24 CFR 91.500(d), States may revise or resubmit a plan within 45 days after the first notification of disapproval. HUD must respond to either approve or disapprove the revised plan within 30 days of resubmission.

If you have any questions please contact Gerald Jensen, Senior Community Planning and Development Representative, at (817) 978-5940 or via e-mail at gerald.r.jensen@hud.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shirley J. Henley".

Shirley J. Henley
Director

cc:

6ADM

OF

6AD

RF

6ADM

JENSEN

DGH

PETER HUBER

6ADM: Jensen: 817-978-5940 9-27-2017 2017 State of Texas HTF Disapproval Letter

CONCURRENCE

6ADM

6AD

JENSEN

HENLEY

OFFICIAL FILE

The HTF statute requires the development of a standalone plan which complies with HTF statutory and regulatory requirements as outlined in program regulations at 24 CFR Parts 91 and 93 and discussed in Notice CPD 17-05: Guidance for HTF Grantees on FY 2017 HTF Allocation Plans. TDHCA includes references to and excerpts of the Texas Administrative Code (TAC) to demonstrate compliance with HTF requirements. The TAC requirements are not always consistent with nor satisfy the HTF requirements. Because certain HTF requirements are statutory, precise adherence is required. The cross-references to TAC and other TX laws or rules challenges the clarity of the HTF plan and hampers the public's ability to distinguish the requirements of the HTF program from other programs administered by the TDHCA.

Statutory Eligibility Requirements under §93.2 Definition of Recipient

The eligibility requirements of 24 CFR §93.2 are statutory factors that must be considered. However, the factors are not precisely addressed in the State's response because TDHCA provides excerpts of TAC to demonstrate compliance. The State must explicitly address each requirement listed in 93.2 (Question 3.a.) in a manner that clearly addresses the requirement. An analysis is provided below as an example of the HTF requirements and TDHCA's responses.

1. §24 CFR 93.2 requires a recipient make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities.

To demonstrate compliance with the HTF requirement, the State included 10 TAC §13.1 which states that loans and grants issued to finance the Department 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, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act and the implementing regulations 24 CFR Part 91, 92, and Part 93 as they may be applicable to a specific fund source. *Note: The State's code does not cite to the correct law. Regulations applicable to the Housing Trust Fund are found at 24 CFR Parts 91 and 93; however, the statute authorizing the Housing Trust Fund is not Title II of the Cranston-Gonzalez National Affordable Housing Act, but rather section 1131 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289). Section 1131 amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq*

The State's code does not satisfy the HTF requirement. The State code requires that the applicant certify that they have familiarized themselves with all applicable rules that govern the specific program. The State rule does not satisfy the HTF requirement of acceptable assurances of **compliance** during the entire period of receipt of HTF funds.

2. The HTF requirement is for a recipient to demonstrate the financial capacity necessary to undertake, complete, and manage the proposed project, and have

familiarity and understanding of the Federal, State and local housing programs used in conjunction with HTF funds to ensure compliance with all applicable program requirements and regulations.

The TAC requirement states that applicants must certify familiarity with certain Chapters of TAC including the Housing Tax Credit Program Qualified Allocation Plan (QAP) and the Multifamily Housing Revenue Bond Rules. (see pages 12-16 of Allocation Plan).

Although other sections of TAC describe applicant requirements regarding financing, and operating and development cost documentation, this is not sufficient to demonstrate compliance with the HTF requirements. Because the TAC allows the combination of other federal, state, or local financing sources (including rental and operating assistance), for purposes of HTF eligibility, applicants for HTF funding must demonstrate familiarity with all such programs.

3. 24 CFR 93.2 also requires that the recipient demonstrate the ability and financial capacity to undertake, comply and manage the eligible activity.

To demonstrate this compliance, TDHCA included 10 TAC §10.204 (7) and (8) Financing Requirements and Operating and Development Cost Documentation, respectively. While the financing requirements appear to be acceptable to establish the applicant has secured financing for the project (i.e., financial ability to undertake the project), financial capacity is not demonstrated. To demonstrate financial capacity, applicants must demonstrate sustainability, compliance and management of the project (see pages 12-16 of Allocation Plan).

4. 24 CFR §93.2 also requires that the recipient have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to own, construct or rehabilitate and manage and operate an affordable multifamily rental housing development

The State includes 10 TAC §§13.5(d)(1) and 10.204 to demonstrate compliance with the HTF requirement. 10 TAC §13.5(d)(1) states the following:

Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under §10.204(6) of this Chapter or by providing evidence of the successful development and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the application.

The State's experience requirement appears to be limited to applications requesting MFDL as the only source of funding. If TDHCA intends to use the experience requirement under §10.204(6) to meet the statutory HTF experience requirement, the section must be made applicable to applicants requesting HTF funding but not receiving MFDL funding. In addition, if the State proposes to select HTF applicants under §10.204(6)(A), it must broaden the experience requirement under the definition because

placing in service 150 or more units does not satisfy the statutory requirement to demonstrate the ability to own, construct or rehabilitate and manage and operate an affordable multifamily rental housing development. The excerpt from the State's experience requirement outlined in §10.204(6)(A) states that, the applicant must "provide evidence of the successful development and operation for at least 5 years of twice as many affordability restricted units as requested in the application."

Experience and capacity under the HTF statute requires evidence of a recipient's ability to own, construct/rehabilitate, manage, and operate an affordable rental multifamily rental housing development.

HTF Funding Priorities

Under the 2017 Housing Trust Fund Allocation Plan Guide, question 3 was broken into 7 separate questions (questions c-i). In 2016, question 3 asked that the State describe all the criteria that will be used to select applications and the relative importance of the criteria. The question stated, at a minimum, as required in 91.320(k)(i), the selection criteria must include:

- Priority based on geographic diversity
- Applicant's ability to obligate HTF funds
- Applicant's ability to undertake eligible activities in a timely manner
- For rental housing, the extent to which the project has Federal, State or local project-based rental assistance so rents are affordable to extremely low-income families
- For rental housing the duration of the units' affordability period
- The merits of the application meeting the State's priority housing needs (please describe)
- The extent to which application makes use of non-federal funding sources

In 2017, each of the bullets above are broken into a separate question and each question clearly indicates the "required priority for funding" for each of the items outlined above.

Question c

Describe the selection criterion that the State will use to select applications submitted by eligible recipients. If not distributing funds by selecting applications submitted by eligible recipients enter N/A.

The State responded by stating that selection criteria typically only applies if the application is layered with 9% Housing Tax Credits and to the extent that two or more applications for HTF are received on the same date, the scoring criteria listed in the 2017 Multifamily Direct Loan Rule (10 TAC Chapter 13) as amended will apply.

The statute authorizing the HTF requires selection of applicants in accordance with the selection criterion outlined in the criteria above. The State's HTF allocation plan must comply with the HTF selection criterion.

Question e

Describe the State's required priority funding based on the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner. In addition to the revised language in the 2016 plan, in its 2017 plan, the state includes the following -

The State of Texas will assess an applicant's experience in completion of similar projects, as evidenced by TDHCA's Experience Requirement in 10 TAC section 10.204(6) or 10 TAC section 13.5(d)(1) as applicable, which is mentioned in the table HTF Funding Priorities Question 3a, along with the ability to present a complete application package as threshold requirements. Additionally, readiness to proceed as evidenced by site control, appropriate zoning, architectural plans, and evidence of financing will be evaluated as threshold criteria as well. *Since all of these items are threshold criteria, they will not be subject to point distribution/weighting; rather, these items are binary in that either the applicant submits these items with the application or they do not (emphasis added).*

The State's 2017 allocation plan does not comply with the statutory requirement since the State relies on the Experience Requirement in §10.204(6) of TAC to demonstrate compliance with the HTF requirements. The State's plan indicates that the criteria will not be subject to point distribution or weighing.

Question f

Describe the State's required priority funding based on the extent to which the rental project has Federal, State or local project-based rental assistance so that rents are affordable to extremely low-income families.

The State's 2017 plan states that the State will consider project-based rental assistance to the extent that the existence of it allows or the lack of it does not allow an application to meet TDHCA's underwriting requirements. *There will be no point distribution/weighting of his item (emphasis added).*

The response does not satisfy the statutory requirement. The State must demonstrate in its plan how priority funding based on the extent to which the rental project has Federal, State or local project-based rental assistance so that rents are affordable to extremely low-income families is used as a selection criterion.

Question g Describe the State's required priority for funding based on the financial feasibility of the project beyond the required 30-year period.

The State's 2017 response states - No priority for funding based on the feasibility of the project beyond the required 30-year period will be given except in instances where a first-lien loan ahead of an NHTF loan or grant has a term greater than 30 years that would result in the NHTF loan or grant having a term greater than 30 years.

The response does not satisfy the statutory requirement. The State must demonstrate in its plan how priority funding will be provided to HTF applicants based on the financial feasibility of the project beyond the required 30-year period.

Question h

In 2017, the question required the State to describe the State's required priority for funding based on the merits of the application in meeting the priority housing needs of the State (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, or housing that serves special needs populations).

The State indicated that it will prioritize HTF funding for the needs of ELI households in accordance with its Analysis of Impediments and high opportunity measures of the QAP, as in its 2016 revised response. The 2017 response, cross references the Multifamily Direct Loan Rule and describes when the applicant is allowed to claim points. It is difficult to determine if the areas under which points can be claimed under the Multifamily Direct Loan program rules are the same as the States' priority housing needs.

The State's plan must clearly describe the State's required priority for funding based on the merits of the application in meeting the priority housing needs of the State. Priority housing needs for HTF must match those outlined in the State's 5-year Consolidated Plan.

Question i

Describe the State's required priority for funding based on the extent to which the application makes use of non-federal funding sources.

The 2017 response states - Generally, the State of Texas prefers applications proposing developments utilizing the highest proportion of non-federal contributions, but will not evaluate HTF applications based on this preference, if HTF is the only source of funds that the application is requesting. Applications layered with 9% Housing Tax Credits will be subject to scoring in 10 TAC section 11.9(e)(4).

The statement that the HTF applications will not be evaluated based on this preference, if HTF is the only source of funds that the application is requesting does not comply with the statutory requirement. Neither the statute, nor the HTF regulations impose the limitation of a combination of 9% Housing Tax Credits. To comply with the requirement, HTF applicants must receive priority funding for the use of non-federal funding sources and not solely limited to Housing Tax Credits.

Maximum Per-Unit Development Subsidy Limits

In the 2016 plan, the State provided a justification as to why it would not establish separate maximum limitations on the total amount of HTF. See the discussion under Maximum Per-Unit Development Subsidy Limits contained within the 2016 revised plan. The state should revise its 2017 plan to reflect the approved 2016 language if the State is relying on the same justification in 2017.

2d

BOARD REPORT ITEM
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Report Regarding Ranking of Applications on the Waiting List from the 2017 Competitive Housing Tax Credit Application Cycle

BACKGROUND

The Department's Governing Board approved awards of competitive housing tax credits at the meeting of July 27, 2017, as well as a waiting list of Applications still eligible for an award. There have been some changes in the list since the awards were made and the changes and their effects on the list are described below. You will remember that awards were made to Applications as long as there were enough credits to award the next one. When there were not enough credits left to fully award the next Application, the remaining Applications were placed on the waiting list.

At the board meeting of September 7, 2017, the Applicant for 17390 Las Palomas stated, "On July 27, the tax credit ceiling accounting summary showed that Region 11 Urban was the third most underserved subregion in the state at 17.39 percent. This did not include Baxter Lofts, as it should have. With Baxter Lofts, Region 11 Urban would have been 11.23 [percent] underfunded on the day of the awards. Despite being more underfunded, Region 11 Urban was bypassed in the collapse and their credits were instead awarded to the fourth most underfunded region which would be Urban 2 which was 11.05 percent underfunded." Staff will address this comment while describing actions taken since the waiting list was approved.

At the meeting of July 27, 2017, staff revised the awards and waiting list to set aside funds for 17010 Baxter Lofts, which at the time was pending an appeal to the Board. Staff stated that this revision required the removal of 17360 Paseo Plaza. However, adding funds for Baxter Lofts resulted in over-allocation of the credit ceiling, and the application to be removed should have come from Region 2 Urban as that region was less underserved (11.05%) than Region 11 Urban (11.23%).

Since the time that awards were made #17362 Pellicano Place has withdrawn from the At-Risk Set-Aside. It will be replaced by #17334, Medano Heights, which is currently under staff review. Application 17133, The Pointe at Rowlett, has withdrawn from Region 3 Urban. The two Applications in Region 11 Urban that were under review at the time of the awards (17287 Jackson Place and 17360 Paseo Plaza, Phase II) each lost one tie-breaker item and were therefore no longer eligible for an award, based on score. The Applicants elected not to appeal staff's decision to the Board. With these two applications out of the competition, Application 17221 Twin Oaks was awarded in Region 11 Urban, as this was the next Application on the waiting list in that region by score. The next application to be awarded would be Application 17390 Las Palomas, also in Region 11 Urban. That Application would be awarded from the statewide collapse; however, due to the interpretive error of awarding made on July 27 where Region 2 Urban was awarded, there are not enough credits remaining to award Las Palomas. At this time, the Department has \$1,301,117 in credits (based on the latest recommended credit amounts), which is \$150,883 short of enough to award Las Palomas.

Staff believes that the application will still be able to receive an award. Tax credits that are not used by states within two years of allocation are returned to the IRS and combined into a "National

Pool.” These credits are then re-allocated to those states that used all their credits. The Department expects to receive enough credits from the National Pool in mid-October to fund 17390 Las Palomas. Any further awards for the year would only be made if remaining credits from the National Pool allocation combined with any returned credits are enough to fund another Application.

2e

BOARD REPORT ITEM

BOND FINANCE DIVISION

OCTOBER 12, 2017

Report on funding for Down Payment and Closing Cost Assistance provided in conjunction with loans originated through the Texas Department of Housing and Community Affairs single family mortgage loan program

BACKGROUND

The Texas Department of Housing and Community Affairs (the “Department”) provides down payment and closing cost assistance (“DPA”) for all loans originated through its single family mortgage loan program (the “Program”). Currently, the Department offers borrowers the choice of 4 points of DPA for FHA, VA, and USDA-RD mortgage loans, and either 3 points or 5 points of DPA for conventional mortgage loans; borrowers pay no origination or discount points. The DPA is provided through a 30-year, 0% interest, second lien mortgage loan that is due on sale or refinance.

Historically, the Department has used a combination of sources for funding DPA, including bond proceeds, master servicer payments, indenture funds, and other available amounts. More recently, the Department has used a \$10 million 2016 Issuer Note, premiums received on the sale of mortgage-backed securities (“MBS”), indenture funds, and other funds on hand. Due to the increased volume of loan origination and the corresponding increase in DPA funds provided, the Department needs additional funds with which to continue to provide DPA. Recent loan origination for the Program is as follows:

| <u>Fiscal Year</u> | <u>Par Amount of Loans Originated</u> |
|--------------------|---|
| 2013 | \$158,574,079 |
| 2014 | \$236,306,821 |
| 2015 | \$186,123,863 |
| 2016 | \$216,876,180 |
| 2017 | \$552,110,145 |

In fiscal year 2018, the Department expects to originate over \$1 billion in loans through its single family mortgage loan program, which would require approximately \$45 million in DPA funds. Staff is working with the Department’s financial advisor, George K. Baum, to evaluate potential sources of funds. Options include the sale of subordinate lien bonds or notes and the sale of some or all of the Department’s existing second lien mortgage loans. Staff expects to make a recommendation for action at the Board meeting to be held November 9, 2017.

2f

BOARD REPORT ITEM

TEXAS HOMEOWNERSHIP DIVISION

OCTOBER 12, 2017

Quarterly Report on Texas Homeownership Division Activity

Background

The Texas Homeownership Division is primarily responsible for the creation, oversight and administration of the Department's non-federal homeownership programs, which are designed to assist low-to-moderate income first time homebuyers. The program does this through both bond proceeds, as well as through a TBA program in which funds are generated through private investors. The Department currently offers homeownership options through the following programs:

- My First Texas Home ("TMP 79") Program offers expanded mortgage-loan opportunities to qualifying first-time homebuyers, including government and conventional 30-year fixed rate mortgage loan options that include downpayment and/or closing cost assistance.
- Texas Mortgage Credit Certificate ("MCC") Program assists in making homeownership more affordable by providing first-time homebuyers a federal income tax credit, reducing the homebuyer's potential federal income tax liability. By having an MCC, the homebuyer has the ability to convert a portion (currently 40%) of their annual mortgage interest into a direct income tax credit of up to \$2,000 on their U.S. individual income tax return. The credit may be applied for the life of the loan, as long as it continues to be the borrower's primary residence. The Texas MCC Stand-alone option can be used with a conventional or government first mortgage loan.
- "Combo" option – to further expand the opportunity for affordable homeownership, first-time homebuyers can maximize their home-purchase benefits by combining a Texas Mortgage Credit Certificate with a My First Texas Home-TMP 79 mortgage loan. This "Combo" option is available at a minimal additional cost to the homebuyer.

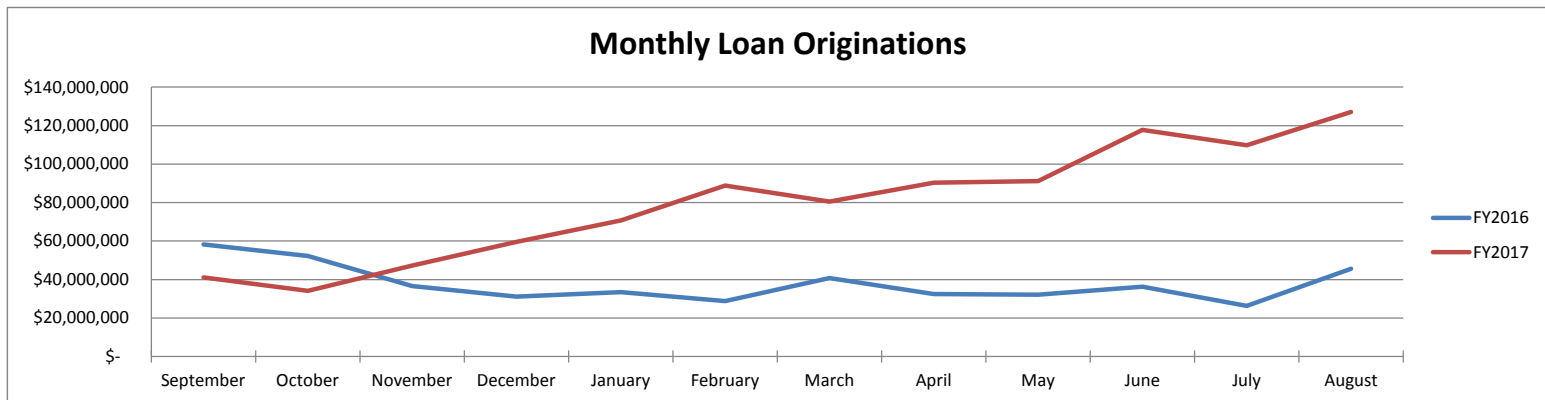
The following reports reflect program activity over the prior two years (updated through August 31, 2017) for each of the three available options described above (Loan Only, MCC Only, Combo). The reports provide monthly loan purchase trends, average interest rates, top originating counties, average mortgage credit certificate amount, and average FICO score.

The reports reveal an increase in activity in November 2016, which includes the first closings following the changes to the program that took place in October 2016. As previously reported to the Board, the Department made three significant changes to the financing structure that resulted in substantially better pricing and more effective execution effective October 1, 2016. The Department designated the Idaho Housing and Finance Association as its master servicer, and in doing so was able to improve the servicing-related economics and reduce loan processing and approval timeframes. The Department began accessing a \$10 million, 10-year low interest loan from

Woodforest National Bank which reduced the cost of funds used for down payment assistance. The Department also began accessing short term funds from the Federal Home Loan Bank of Dallas to further reduce the cost previously incorporated as part of the master servicer costs. These structural and pricing improvements combined with our marketing surge to generate awareness of the changes and available options, have resulted in Fiscal Year 2017 activity volumes that have doubled from the previous fiscal year.

Texas Department of Housing and Community Affairs
Texas Homeownership / Bond Finance
Aggregate Summary Report as of August 31, 2017

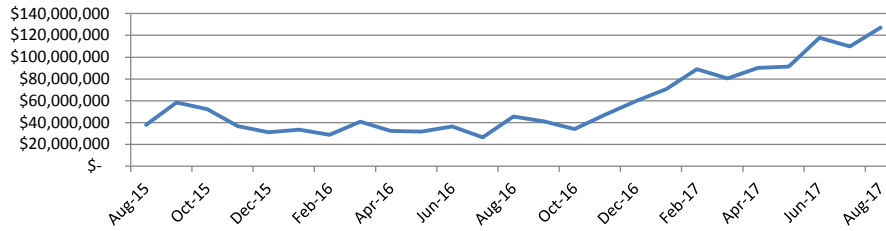
| | Month | My First Texas Home (Program 79) | | Combo Only (MFTH and MCC) | | Stand Alone MCCs | | AGGREGATE TOTAL | |
|---------------------|------------|----------------------------------|-------------|---------------------------|-------------|--------------------------|-------------|--------------------------|-------------|
| | | Loan Amount | # of Loans | Loan Amount | # of Loans | Loan Amount | # of Loans | Loan Amount | # of Loans |
| Fiscal Year 2017 | 9/30/2016 | \$ 13,136,791.00 | 83 | \$ 4,571,475.00 | 30 | \$ 23,394,414.00 | 131 | \$ 41,102,680.00 | 244 |
| | 10/31/2016 | \$ 10,868,479.00 | 74 | \$ 5,695,097.00 | 39 | \$ 17,569,266.00 | 107 | \$ 34,132,842.00 | 220 |
| | 11/30/2016 | \$ 15,001,023.00 | 91 | \$ 6,884,463.00 | 48 | \$ 25,296,916.00 | 144 | \$ 47,182,402.00 | 283 |
| | 12/31/2016 | \$ 19,171,756.00 | 120 | \$ 9,259,481.00 | 59 | \$ 31,171,608.00 | 184 | \$ 59,602,845.00 | 363 |
| | 1/31/2017 | \$ 32,200,708.00 | 202 | \$ 22,244,813.00 | 138 | \$ 16,327,540.00 | 98 | \$ 70,773,061.00 | 438 |
| | 2/28/2017 | \$ 35,878,062.00 | 222 | \$ 22,725,762.00 | 141 | \$ 30,307,153.00 | 173 | \$ 88,910,977.00 | 536 |
| | 3/31/2017 | \$ 32,991,885.00 | 214 | \$ 19,988,147.00 | 127 | \$ 27,607,384.00 | 160 | \$ 80,587,416.00 | 501 |
| | 4/30/2017 | \$ 35,775,933.00 | 233 | \$ 27,062,306.00 | 161 | \$ 27,463,210.00 | 157 | \$ 90,301,449.00 | 551 |
| | 5/31/2017 | \$ 34,132,731.00 | 219 | \$ 26,544,509.00 | 165 | \$ 30,551,467.00 | 176 | \$ 91,228,707.00 | 560 |
| | 6/30/2017 | \$ 50,436,451.00 | 317 | \$ 28,927,620.00 | 185 | \$ 38,399,240.00 | 223 | \$ 117,763,311.00 | 725 |
| | 7/31/2017 | \$ 46,380,266.00 | 294 | \$ 26,136,484.00 | 167 | \$ 37,244,746.00 | 219 | \$ 109,761,496.00 | 680 |
| | 8/31/2017 | \$ 56,475,652.00 | 354 | \$ 32,826,086.00 | 202 | \$ 37,765,486.00 | 213 | \$ 127,067,224.00 | 769 |
| FY2017 TOTAL | | \$ 382,449,737.00 | 2423 | \$ 232,866,243.00 | 1462 | \$ 343,098,430.00 | 1985 | \$ 958,414,410.00 | 5870 |
| Fiscal Year 2016 | 9/30/2015 | \$ 17,827,969.00 | 128 | \$ 9,726,411.00 | 69 | \$ 30,757,106.00 | 189 | \$ 58,311,486.00 | 386 |
| | 10/31/2015 | \$ 21,049,371.00 | 150 | \$ 7,850,869.00 | 61 | \$ 23,361,643.00 | 143 | \$ 52,261,883.00 | 354 |
| | 11/30/2015 | \$ 14,066,040.00 | 106 | \$ 4,214,357.00 | 33 | \$ 18,320,564.00 | 114 | \$ 36,600,961.00 | 253 |
| | 12/31/2015 | \$ 10,712,141.00 | 76 | \$ 3,600,713.00 | 28 | \$ 16,812,377.00 | 107 | \$ 31,125,231.00 | 211 |
| | 1/31/2016 | \$ 7,237,057.00 | 54 | \$ 4,507,231.00 | 33 | \$ 21,662,071.00 | 128 | \$ 33,406,359.00 | 215 |
| | 2/29/2016 | \$ 6,334,351.00 | 47 | \$ 4,457,125.00 | 33 | \$ 18,003,836.00 | 115 | \$ 28,795,312.00 | 195 |
| | 3/31/2016 | \$ 16,218,288.00 | 111 | \$ 6,549,190.00 | 49 | \$ 17,985,455.00 | 111 | \$ 40,752,933.00 | 271 |
| | 4/30/2016 | \$ 10,430,161.00 | 74 | \$ 4,337,632.00 | 33 | \$ 17,638,354.00 | 106 | \$ 32,406,147.00 | 213 |
| | 5/31/2016 | \$ 9,573,861.00 | 65 | \$ 5,792,505.00 | 39 | \$ 16,691,734.00 | 100 | \$ 32,058,100.00 | 204 |
| | 6/30/2016 | \$ 9,800,877.00 | 66 | \$ 6,521,314.00 | 43 | \$ 19,987,159.00 | 119 | \$ 36,309,350.00 | 228 |
| | 7/31/2016 | \$ 10,933,873.00 | 70 | \$ 4,353,173.00 | 31 | \$ 11,087,382.00 | 67 | \$ 26,374,428.00 | 168 |
| | 8/31/2016 | \$ 17,368,246.00 | 115 | \$ 6,644,232.00 | 45 | \$ 21,606,070.00 | 130 | \$ 45,618,548.00 | 290 |
| FY2016 TOTAL | | \$ 151,552,235.00 | 1062 | \$ 68,554,752.00 | 497 | \$ 233,913,751.00 | 1429 | \$ 454,020,738.00 | 2988 |



Texas Department of Housing and Community Affairs Aggregate (My First Texas Home, MCCs and Combos)

As of August 31, 2017

Aggregate (My First Texas Home, MCCs and Combos) Monthly Issuance Activity



Reflects Aggregate (My First Texas Home, MCCs and Combos) loan originations issued over a two-year period. The recent surge in activity is primarily due to our new relationship with Idaho HFA as Master Servicer.

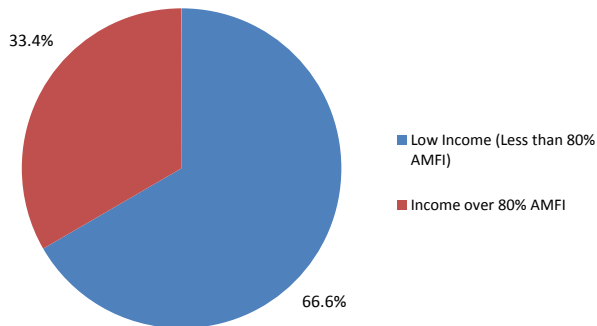
Recent 3-Month Activity (6/1/2017 - 8/31/17)

| | |
|-------------------|----------------|
| Number of Loans | 2,174 |
| Total Loan Amount | \$ 354,592,031 |

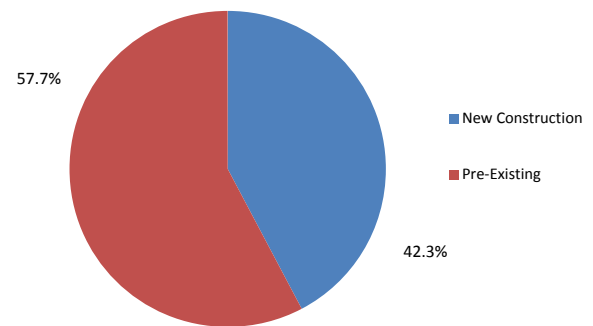
At a Glance (For the Past 2 Year Period)

| | |
|---------------------------------|------------|
| Number of Loans | 8,855 |
| Average Loan Amount | \$ 159,453 |
| Average Down Payment Assistance | \$ 6,436 |
| Current MCC Credit Rate | 40% |
| Average Purchase Price | \$ 163,737 |
| Average Annual Income | \$ 51,225 |
| Average Household Size | 2.6 |
| Average FICO Score | 688 |

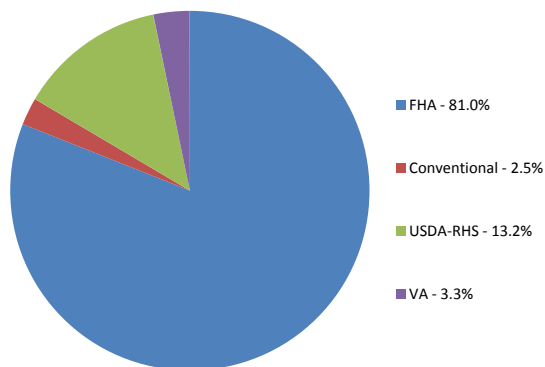
Household Income



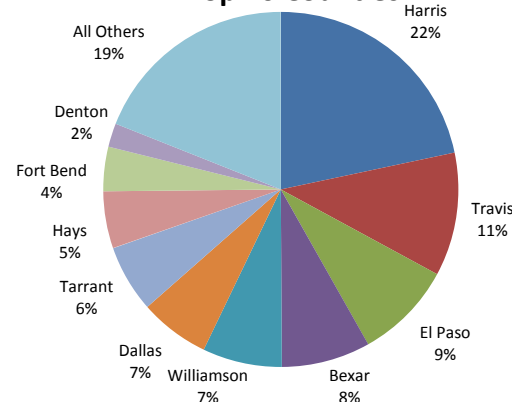
New Construction or Pre-Existing



Type of Loan



Top 10 Counties

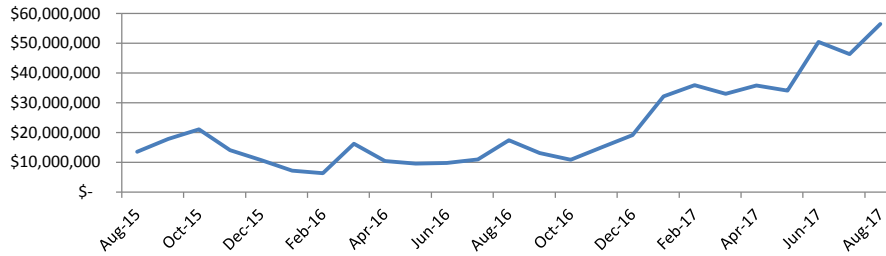


Texas Department of Housing and Community Affairs

My First Texas Home - Program 79

As of August 31, 2017

My First Texas Home Monthly Loan Purchase Activity



Reflects loans purchased by the Master Servicer in the month the loan was purchased. A seasonal reduction in new loan origination typically occurs December through February and is reflected on a delayed basis to take into account the time from loan origination to closing and purchase by the Master Servicer. The recent surge in activity is primarily due to our new relationship with Idaho HFA as Master Servicer.

Recent 3-Month Activity (6/1/2017 - 8/31/17)

| | |
|-------------------|----------------|
| Number of Loans | 965 |
| Total Loan Amount | \$ 153,292,369 |

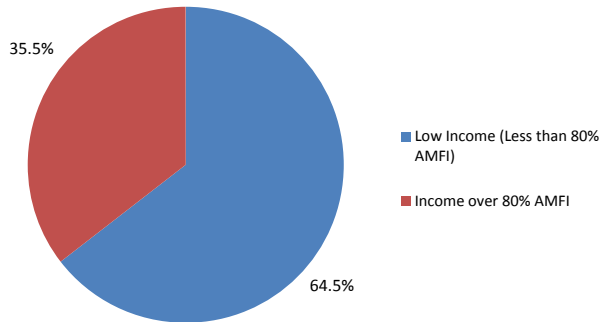
At a Glance (For the Past 2 Year Period)

| | |
|---------------------------------|------------|
| Number of Loans | 3,485 |
| Average Loan Amount | \$ 153,229 |
| Average Down Payment Assistance | \$ 6,449 |
| Average Purchase Price | \$ 156,028 |
| Average Annual Income | \$ 51,652 |
| Average Household Size | 2.7 |
| Average FICO Score | 680 |

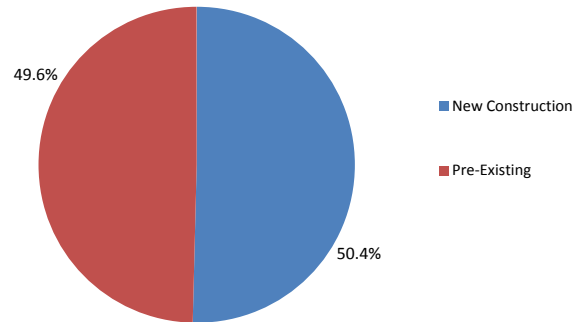
Interest Rates (For the Past 2 Year Period)

| | |
|-----------------------|-------|
| 2 Year Average | 4.24% |
| Last 12 Month Average | 4.10% |
| Last 30 Day Average | 4.16% |

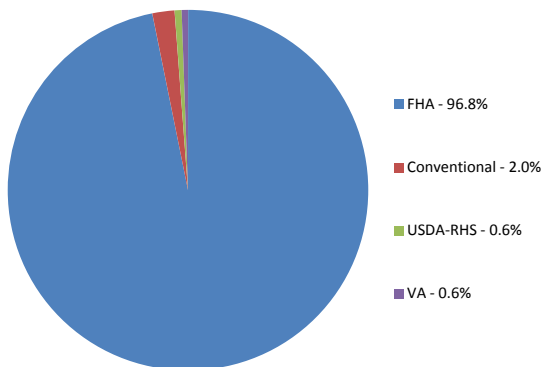
Household Income



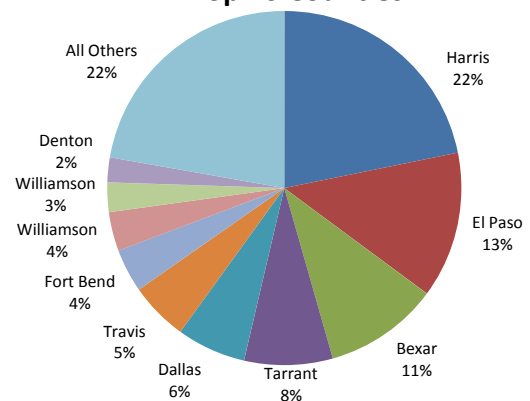
New Construction or Pre-Existing



Type of Loan



Top 10 Counties

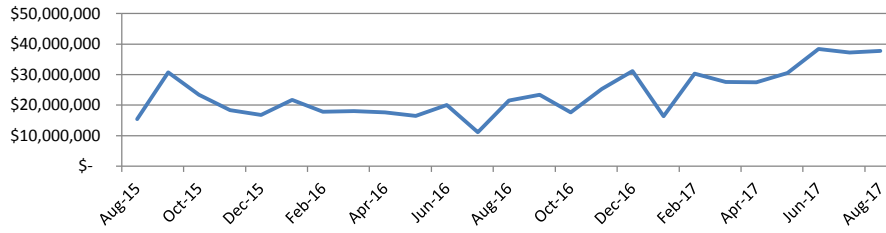


Texas Department of Housing and Community Affairs

Mortgage Credit Certificates (MCCs)

As of August 31, 2017

Mortgage Credit Certificates (MCCs) Monthly MCC Issuance Activity



Reflects MCCs issued over a two-year period. A seasonal reduction in MCC issuances typically occurs September through December; however, the recent surge in activity is primarily due to our new relationship with Idaho HFA as Master Servicer.

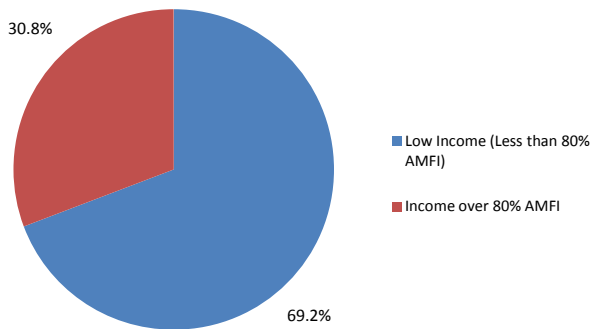
Recent 3-Month Activity (6/1/2017 - 8/31/17)

| | |
|-------------------|----------------|
| Number of Loans | 655 |
| Total Loan Amount | \$ 113,409,472 |

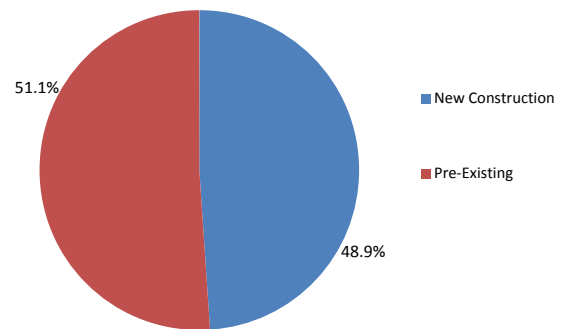
At a Glance (For the Past 2 Year Period)

| | |
|-------------------------|------------|
| Number of MCCs | 3,411 |
| Average Loan Amount | \$ 169,021 |
| Average MCC Amount | \$ 67,609 |
| Current MCC Credit Rate | 40% |
| Average Purchase Price | \$ 175,416 |
| Average Annual Income | \$ 51,297 |
| Average Household Size | 2.4 |
| Average FICO Score | 699 |

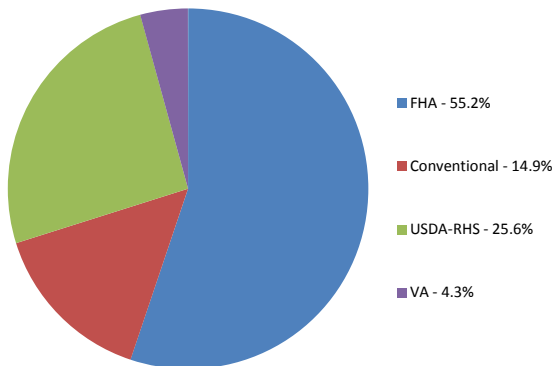
Household Income



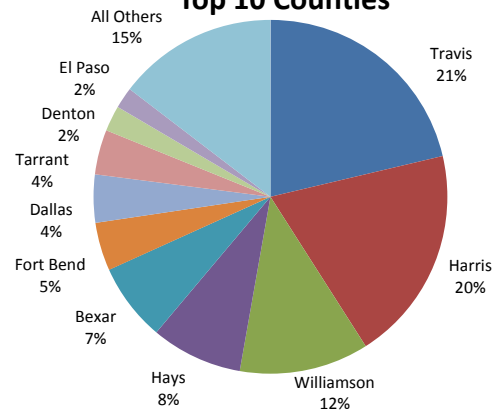
New Construction or Pre-Existing



Type of Loan



Top 10 Counties

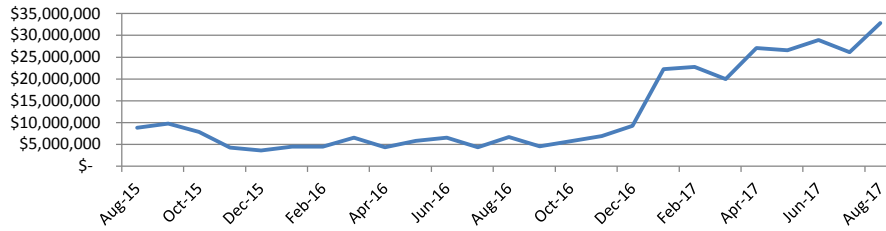


Texas Department of Housing and Community Affairs

Combos (My First Texas Home Loan with an MCC)

As of August 31, 2017

Combos (My First Texas Home Loan with an MCC) Monthly Combo Issuance Activity



Reflects Combos issued over a two-year period. A seasonal reduction in Combos typically occurs September through December. The recent surge in activity is primarily due to our new relationship with Idaho HFA as Master Servicer.

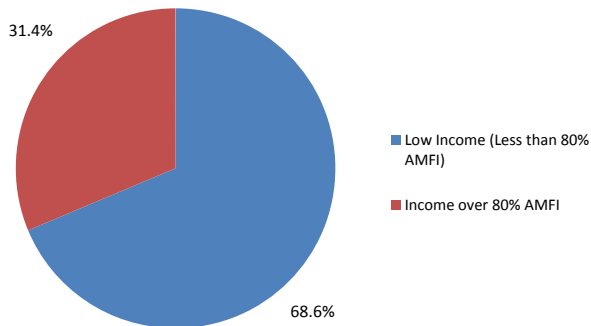
Recent 3-Month Activity (6/1/2017 - 8/31/17)

| | |
|-------------------|---------------|
| Number of Loans | 554 |
| Total Loan Amount | \$ 87,890,190 |

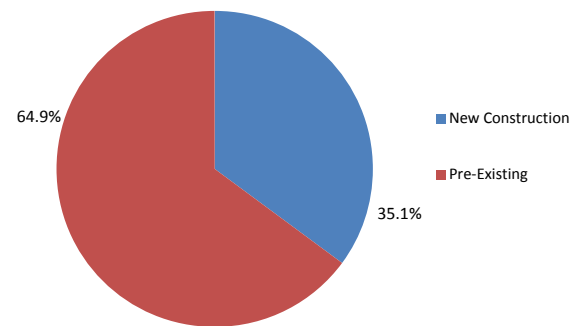
At a Glance (For the Past 2 Year Period)

| | |
|---------------------------------|------------|
| Number of Combos | 1,959 |
| Average Loan Amount | \$ 153,865 |
| Average MCC Amount | \$ 61,546 |
| Average Down Payment Assistance | \$ 6,412 |
| Current MCC Credit Rate | 40% |
| Average Purchase Price | \$ 157,110 |
| Average Annual Income | \$ 50,339 |
| Average Household Size | 3.1 |
| Average FICO Score | 683 |

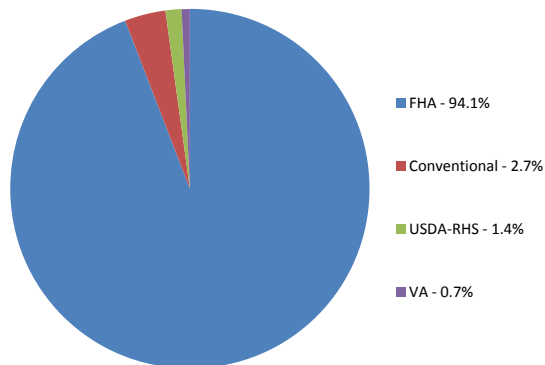
Household Income



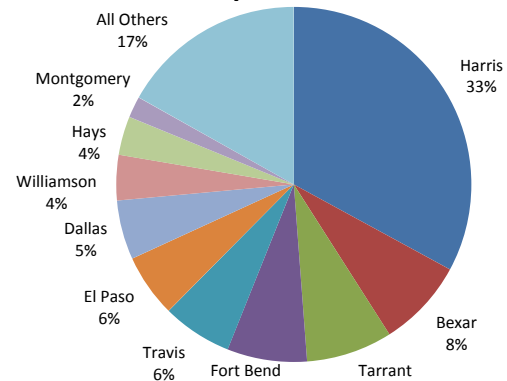
New Construction or Pre-Existing



Type of Loan



Top 10 Counties



Texas Department of Housing and Community Affairs

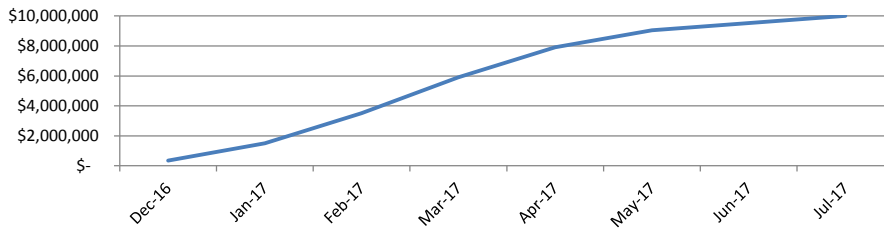
Woodforest National Bank Partnership

As of August 31, 2017

On September 28, 2016, the Department entered into a loan agreement with Woodforest National Bank for funds to be used by the Department to make DPA loans. The 2016 Issuer Note was in the amount of \$10 million, had a term of ten years, had an interest rate of 1% per annum, and all principal and interest is due at maturity. The collateral for the note was a subordinate interest in the Residential Mortgage Revenue Bond ("RMRB") Indenture. The Department has the right to prepay the outstanding principal balance of the 2016 Issuer Note in full or in part without penalty at any time. Currently, approximately \$1 million remains available under the 2016 Issuer Note to be used for DPA loans.

Woodforest National Bank entered into this loan agreement with the incentive of getting CRA credit for loans made through TDHCA's first-time homebuyer programs in certain Assessment Areas. These Assessment Areas include Harris, Bexar, Travis, Dallas, Williamson, Tarrant, Hays and other counties. Counties not in the Assessment Area include El Paso, Hidalgo, Comal and other counties. This public-private partnership has been mutually beneficial and successful. Working together, TDHCA and Woodforest National Bank can reach more lenders, realtors, and first-time homebuyers.

**TDHCA / Woodforest Partnership:
Cumulative DPA Issuance Activity**

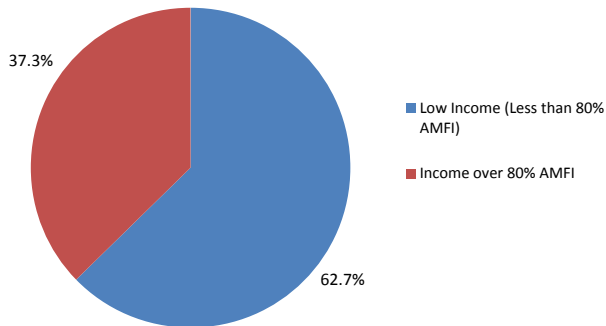


At a Glance (Since Inception Date of 12/1/2016)

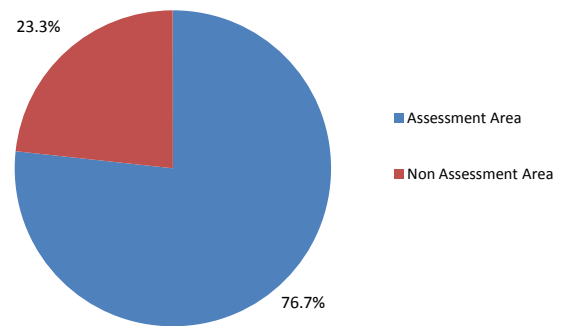
| | |
|------------------------------------|----------------|
| Number of DPA Loans | 1,558 |
| Total DPA Amount | \$ 10,000,000 |
| Total Associated First Lien Amount | \$ 249,471,033 |
| Average DPA Amount | \$ 6,418 |
| Average Loan Amount | \$ 160,123 |
| Average Purchase Price | \$ 163,344 |
| Average Annual Income | \$ 52,376 |
| Average Household Size | 2.5 |
| Average FICO Score | 675 |

Reflects the cumulative amount of DPA loans issued from draws on the Woodforest National Bank loan since inception of the loan agreement.

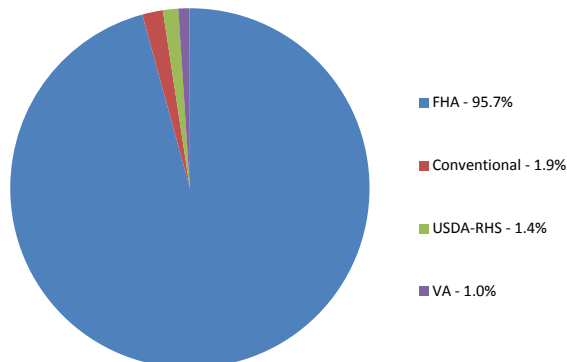
Household Income



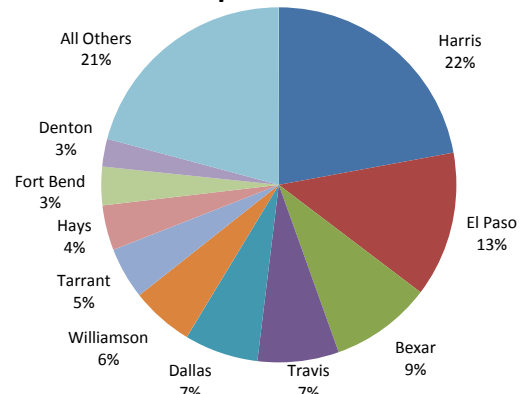
Assessment Area



Type of Loan



Top 10 Counties



2g

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
OCTOBER 12, 2017

Report on the determination that Urban Inter-Tribal Center of Texas (“UITCT”) did not satisfy the conditions of its Federal Fiscal Year (“FFY”) 2017 Community Services Block Grant (“CSBG”) Discretionary Funds award, and opportunity for possible Board action

REPORT

At the Board meeting of June 29, 2017, the Board imposed conditions on the award of \$100,000 to Urban Inter-Tribal Center of Texas (“UITCT”) for education and employment services to Native American and Migrant Seasonal Farm Worker populations using FFY 2017 CSBG Discretionary funds. The award was conditioned on the satisfaction of several specific requirements; however, UITCT did not fulfill the conditions of the award as described, with some conditions being satisfied late and others still, to date, not satisfied (see attached letter). On September 6, 2017, staff issued a letter to UITCT asking that they either submit the required documentation by September 7, 2017, or voluntarily relinquish the award. They did not submit responsive documents on September 7, 2017, nor relinquish, but rather requested to meet with the Executive Award Review and Advisory Committee (“EARAC”) to discuss the conditions that the Board, not EARAC, had imposed.

The Department notified UITCT that: “The action of the Department’s Board on June 29, 2017, included the conditions as proposed, and therefore any action taken on this issue would now have to be an action of the Board. There will be an item placed on the agenda of the next meeting of the Department’s Board.”

This report item is to inform the Board that staff has determined the conditions were not met, and that based on the conditions not being met, a contract has not been, and is not intended to be executed with UITCT for the award. The 2017 CSBG funds previously being held for this contract will be reallocated to Community Action Agencies serving low income Texans affected by Hurricane Harvey.

Staff is not recommending the Board take action on this issue. However, this action item is written such that should the Board choose to act on this contract, or in relation to these conditions, that ability is provided.

BACKGROUND

In early 2017, the Department released a Notice of Funding Availability making available \$300,000 for education and employment services for Migrant Seasonal Farm Workers and Native Americans. Based on EARAC’s recommendations, two of the three eligible applications were recommended at the Board meeting of May 25, 2017. A third applicant, UITCT, was not recommended to be funded at the Board meeting of May 25, 2017, based on EARAC’s decision on May 15, 2017, to recommend denial of the award due to extensive current single audit findings. UITCT was notified of their opportunity to propose conditions to the award for EARAC’s consideration and on June 2, 2017, they proposed conditions which EARAC reviewed and approved on June 7, 2017. On June 29, 2017, the Board approved an award to UITCT conditioned on the following list of conditions being satisfied:

1. Future submissions for cost reimbursements will only represent actual direct costs. UITCT will suspend any requests based on indirect cost rate until such time as it is agreed that it is appropriately calculated and has been approved by the federal cognizant agency.
2. UITCT will capture employee time each week on time sheets which will support the allocation of employee and related costs. UITCT will not only capture time, but what tasks were performed to make clear the benefit to the program.
3. To support reimbursement requests, UITCT will maintain and make available to the Department all appropriate detailed records such as time sheets, invoices and any other appropriate source documents.
4. UITCT will require additional time to fully implement corrective actions. Contained within the audit findings are corrective action plans for each finding. UITCT's new CFO Michael Wiginton will replace references to Carlton Roach as contact person responsible for the corrective action plan contained in the supplemental information within the single audit. UITCT will satisfy the corrective action plan and timeline listed below:
 - a. 2016-005 - Intracompany accounts inter-fund should be balanced to zero by June 30, 2017. *(NOT MET)*
 - b. 2016-006 - Outstanding cost report to be submitted by June 30, 2017. *(NOT MET)*
 - c. 2016-009 - Time sheet system to support payroll allocations to be in place by June 15, 2017. *(MET)*
 - d. 2016-012 - Indirect cost rate proposal for June 30, 2016 to be submitted by June 30, 2017. *(MET)*
 - e. 2016-013 - Establish sub-category for budget period for awarded funds by June 30, 2017. *(NOT MET)*

In the months following Board approval of the conditioned award, staff worked with UITCT staff to assist and track their progress in achieving the conditions outlined above. Multiple correspondences were sent between the Department and UITCT seeking to arrive at a resolution to the conditions. In August 2017, it was determined that conditions 4a, 4b, and 4e were not met.

Furthermore, UITCT has had a recent history of not spending all the funds awarded to them by the Department. In the previous year's CSBG Discretionary contract of FFY2015, UITCT failed to spend the balance of funds allotted to them, only spending 56% of the award. The remaining 44% of the award was forfeited and returned to the Federal government leaving \$44,038 on the table which could have been used to assist low income Texans as it was intended.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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Leo Vasquez, *Member*

September 6, 2017

Writer's direct dial: 512-475-2125
Email: michael.deyoung@tdhca.state.tx.us

Ms. Angela Young
Chief Executive Officer
Urban Inter-Tribal Center of Texas
1283 Record Crossing
Dallas, TX 75235

Dear Ms. Young:

RE: DETERMINATION REGARDING CONDITIONAL AWARD OF FEDERAL FISCAL YEAR ("FFY")
2017 COMMUNITY SERVICES BLOCK GRANT ("CSBG") DISCRETIONARY FUNDS TO NATIVE
AMERICAN POPULATIONS

As you know, on June 29, 2017, Urban Inter-Tribal Center of Texas ("UITCT") was conditionally awarded a FFY 2017 CSBG Discretionary award. Those conditions are noted below.

1. *Future submissions for cost reimbursements will only represent actual direct costs. UITCT will suspend any requests based on indirect cost rate until such time as it is agreed that it is appropriately calculated and has been approved by the federal cognizant agency.*
2. *UITCT will capture employee time each week on time sheets which will support the allocation of employee and related costs. UITCT will not only capture time, but what tasks were performed to make clear the benefit to the program.*
3. *To support reimbursement requests, UITCT will maintain and make available to the Department all appropriate detailed records such as time sheets, invoices and any other appropriate source documents.*
4. *UITCT will require additional time to fully implement corrective actions. Contained within the audit findings are corrective action plans for each finding. UITCT's new CFO Michael Wiginton will replace references to Carlton Roach as contact person responsible for the corrective action plan contained in the supplemental information within the single audit. UITCT will satisfy the corrective action plan and timeline listed below:*
 - a. *2016-005 - Intracompany accounts inter-fund should be balanced to zero by June 30, 2017.*
 - b. *2016-006 - Outstanding cost report to be submitted by June 30, 2017.*
 - c. *2016-009 - Time sheet system to support payroll allocations to be in place by June 15, 2017.*



DETERMINATION REGARDING CONDITIONAL AWARD

September 6, 2017

Page 2

d. 2016-012 - Indirect cost rate proposal for June 30, 2016 to be submitted by June 30, 2017.

e. 2016-013 - Establish sub-category for budget period for awarded funds by June 30, 2017.

Conditions 4c and 4d were met on time. However, conditions 4a, 4b, and 4e to date have still not been satisfied. Therefore, we expect UITCT to either voluntarily relinquish the award or immediately provide the required documentation by Thursday September 7, 2017, no later than 5:00 p.m.

Please keep in mind that UITCT, as a current contract administrator for 2016 funds, is still expected to resolve existing single audit issues that require resolution as listed in the Department's letter dated August 31, 2017. Please continue to work to resolve those issues with the Compliance Division. We appreciate UITCT's interest in providing services to the Native American population in the Dallas area. We note your interest in serving persons affected by the disaster, and you can rest assured that these funds are being reprogrammed for that purpose. If we can answer any questions, feel free to contact me at 512-475-2125.

Sincerely,



Michael De Young

Director

Community Affairs Division

Cc: Tim Irvine
Patricia Murphy
Brooke Boston

ACTION ITEMS

3a

**TO BE POSTED NOT LATER THAN THE
THIRD DAY BEFORE THE DATE OF
THE MEETING**

3b

**TO BE POSTED NOT LATER THAN THE
THIRD DAY BEFORE THE DATE OF
THE MEETING**

4a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action on the proposed amendment of 10 TAC Chapter 13 concerning the Multifamily Direct Loan 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 make awards of loans or grants to developers for the State of Texas; and

WHEREAS, the Department plans to administer the varying fund sources used in making these awards of loans and grants in a specific manner that necessitates these Multifamily Direct Loan Rules;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendment of 10 TAC Chapter 13, together with the preambles presented to this meeting, are hereby 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 amendment of the Multifamily Direct Loan Rules, together with the preambles 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 staff draft of the 2018 Multifamily Direct Loan Rules, which reflects staff’s recommendations for the Board’s consideration. 2017 marked the first year in which the Department, with significant feedback from the development community, drafted and enacted 10 TAC Chapter 13 – the Multifamily Direct Loan (“MFDL”) Rules. The rules came about as a result of the Department having multiple fund sources available with which to make MFDL awards, and the need to therefore govern these fund sources in a somewhat uniform manner in order to maximize efficiency and take advantage of the many similar requirements among these multiple fund sources. These rules determine how MFDL requests may be structured, how MFDL applications are prioritized, how MFDL applications may score points, the post-award process including loan closing and disbursement requests, and the type of amendments that can be requested under the MFDL program.

Rule-Making Timeline: Upon Board approval, the final staff draft of the proposed 2018 Multifamily Direct Loan Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between October 27, 2017, and November 27, 2017. The Multifamily Direct Loan Rules will be brought before the Board in December for approval and subsequently be published in the *Texas Register* for adoption.

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 13, concerning the Multifamily Direct Loan Program Rule. The proposed amendments clarify program requirements.

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 amendment does not have any foreseeable changes 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 amendment, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be not new economic effect on small or mico-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 27, 2017, through November 27, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Andrew Sinnott, 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. November 27, 2017.

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.

TITLE 10 COMMUNITY DEVELOPMENT

PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 13 MULTIFAMILY DIRECT LOAN RULE

§13.1 Purpose

(a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants 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 Tex. Gov't Code, Chapter 2306, ~~(sometimes referred to as the "State Act")~~, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289) ~~and, and~~ the implementing regulations 24 CFR Part 91, Part 92, and Part 93, as they may be applicable to a specific fund source. The Department is authorized to administer HOMEDirect Loan Program funds pursuant to Tex Gov't Code, ~~§2306.111. Tex Gov't Code~~ Chapter 2306, Subchapter I, Housing Finance Division: ~~This Chapter is not applicable to the State Housing Trust Fund or Section 811.~~

~~..~~(b) General. This Chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this Chapter, Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), Chapter 8 (relating to Section 811 PRA Program), and Chapter 10 of this Title (relating to Uniform Multifamily Rules). Chapter 11 of this Title (relating to Housing Tax Credit Program Qualified Allocation Plan ("QAP")) and Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. The Applicant is also required to certify that it is familiar with any other federal, state, or local financing sources that it identifies in its Application. Any conflict with ~~rule of other programs or with federal rules~~ regulations, or statutes will be resolved on a case by case basis, that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications) and as limited by the rules in this Chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute.

§13.2 Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93 and 2 CFR Part 200, and Chapter 10 of this Title (relating to Uniform Multifamily Rules).

(1.) ~~(Annual Income or Annual Incomes~~ means "annual income" as defined at 24 CFR §5.609, which includes but is not limited to the list of income in HUD Handbook 4350, and specifically excludes those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(3.) ~~(2)~~ Choice limiting activity-- any transfer of title that occurs prior to a Development obtaining environmental clearance after an application for federal funds (HOME, NSP, and NHTF) has been submitted. Choice limiting activities ~~may~~ also include closing on loans including loans for interim financing, signing of a contract, and commencing construction. ~~All applicants for MFDL funds, regardless of whether or not the Development Site is in a Participating Jurisdiction, must include the following language in the purchase contract or site control agreement: "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. The Department shall use its best efforts to conclude the environmental review of the property expeditiously."~~ Construction Completion means that title transfer requirements and construction work have been performed as reflected by the Development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704) and the final drawdown of funds has been disbursed. In addition, for Developments not layered with Housing Tax Credits, Construction Completion means all modifications requested as a result of the Department's Final Construction Inspection were cleared as evidenced by receipt of the Closed Final Development Inspection Letter.

(4.) ~~(2)~~ Community Housing Development Organization (CHDO)-- a private nonprofit organization that has experience developing and/or owning affordable rental housing and that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME funds under the CHDO set-aside. In addition, a member of a CHDO's board cannot be a Principal of the development beyond his/her role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be ~~the~~ paid executive ~~director of the CHDO~~).

~~(5.)~~ (3) Encumbered Funds or Revenue—funding or revenue that has a state or "Federal Affordability Period" means the period commencing on the date of Construction Completion and ending on the date which is the required number of years as defined by the federal program designation and ~~must be allocated~~ from the date of Construction Completion

~~(5.)~~(6.) HOME Match-Eligible Unit means a Unit in accordance with such statute or regulation. (e.g., the Development that is not assisted with HOME Program income ~~must be re-allocated as HOME funding and therefore funds, but would be encumbered~~ qualify as such.) eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the NOFA, TCAP-RF funds and matching contribution on NSP and NHTF Developments must be used on HOME-Match Eligible Units.

~~(7.)~~ (4) Land Use Restriction ("LURA") Term means the period commencing on the effective date of the LURA and ending on the date which is the greater of the loan term or 30 years.

~~(6.)~~(8.) Matching contribution (Match)-- a contribution to a ~~proposed~~ Development from nonfederal sources that may be in the form of one or more of the following:

a. ~~(A)~~ Cash contribution (grant), except for cash contributions made by ~~investor~~ investors in a limited partner partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including deferred developer fee);

b. ~~(B)~~ Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

c. ~~(C)~~ Net present value of yield foregone from a below market interest rate loan as described in CPD Notice 97-03;

- d. ~~(D)~~ Waived or reduced fees from cities or counties not related to the Applicant in connection with the proposed Development;
- e. ~~(E)~~ Donated land or land sold below market value, as evidenced by a third party appraisal, from an unrelated party.

~~(9.)~~ (5) Section 234 Condominium Housing basic mortgage limits ("234 Condo Limits")—Relocation Plan means a residential anti-displacement and relocation assistance plan which (i) includes provisions consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655), implementing regulations at 49 CFR Part 24, and policy guidance in Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378) and the TDHCA Relocation Handbook; and in some HOME and NSP funded developments Section 104(d) of the Housing and Community Development Act of 1974, as amended and 24 CFR Part 42 (as modified for NSP), and (ii) is in form and substance consistent with requirements of the Department.

~~(7.)~~(10.) Section 234 Condominium Housing basic mortgage limits ("234 Condo Limits") means the per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. Currently, the high cost percentage adjustment applicable to the 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program.

(11.) State Affordability Period means the LURA Term as described in the MFDL contract and loan documents and as required by Department in accordance with the State Act which is usually an additional period after the Federal Affordability Period.

§13.3 General Loan Requirements

(a) Direct Loan funds may be made available through a Notice of Funding Availability ("NOFA") or other similar governing document that includes the basic Application and funding requirements. ~~MFDL funds may be used to directly assist distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board ("Board").~~

~~(b)~~ Direct loan funds may not be awarded if an underwriting report that has been issued by the Department Real Estate Analysis Division has become final and concludes that the Development does not need the MDFL funding for which it has applied because it is over sourced. [need to address funding to accelerate payment of developer fee?]

(c) Direct Loan funds are composed of annual HOME and National Housing Trust Fund allocations from HUD, repayment of TCAP loans, HOME Program Income, NSP Program Income, and any other similarly encumbered funding that may become available by Board action, except as otherwise noted in this Chapter. Similar funds include any funds that are required to be to be loaned or granted for the development of multifamily property and are not governed by another Chapter in this Title.

(ed) Direct Loan funds may be used for the acquisition, new construction, reconstruction, or rehabilitation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, all subject to HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist directly distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board ("Board").

~~(de)~~ While all costs associated with the Development and known by the sponsor must be disclosed as part of the Application, costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200, as federally required or identified in the NOFA include but are not limited to:

- (1) Offsite costs;
- (2) Stored Materials;
- (3) Site Amenities;
- (4) Detached Community Buildings;
- (5) Carports and/or garages;
- (6) Parking garages;
- (7) Swimming pools;
- (8) Commercial Space costs;
- ~~(89)~~ Reserve accounts not related to NHTF;
- ~~(910)~~ TDHCA fees;
- ~~(1011)~~ Syndication and organizational costs;
- (12) Delinquent fees, taxes, or charges;
- ~~(113)~~ Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract unless the Application is awarded TCAP Loan Repayment funds;
- ~~(12)~~(14) Costs that have been allocated to or paid by another fund source;
- (15) Deferred Developer fee; and,
- (16) Other costs limited by Award or NOFA, or as established by the Board.

§13.4 Set-asides, Regional Allocation, and Priorities

(a) *Set-asides*: Specific types of Applications or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in set-asides. The Supportive Housing/Soft Repayment set-aside, CHDO set-aside, and General set-aside, as described below, are fixed set-asides that will be included in the annual NOFA. The remaining set-asides described below are flexible set-asides and are applicable only when identified in the NOFA. The amount of a single award may be credited to multiple set-asides, in which case the depleted portion of funds may be repositioned into an oversubscribed set-aside prior to a defined collapse deadline. Applications under any and all set-asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) Fixed Set-Asides:

(A) Supportive Housing/Soft Repayment Set-Aside. The Supportive Housing/Soft Repayment ("SH/SR") Set-aside will be limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the NHTF allocation received by the Department and not otherwise programmed. Supportive Housing and Soft Repayment may be two independent set-asides in the NOFA, in order to accommodate fund source requirements. The SH/SR set-aside is reserved for developments that are not able to support amortizing debt due to higher costs for supportive services and/or extremely low income and rent restrictions. Soft repayment loans may be provided with deferred payable, deferred forgivable or cash flow terms. Applicants seeking to qualify under this set-aside must propose Developments that meet either:

(i) the Supportive Housing requirements in 10 TAC §10.3(a) in the Uniform Multifamily Rules including the other underwriting consideration for Supportive Housing Developments 10 TAC §10.302(g)(3) of the Underwriting and Loan Policy; or

(ii) the requirements in subclauses (I) - (III), funding exclusively units targeting 30% Area Median Income (AMI) households;

(I) All units assisted with MFDL funds must be available for and have rents no higher than households earning 30% AMI or less;

~~(II) Any units assisted with MFDL funds may not also be receiving project-based rental assistance, other than MFDL funds.~~

~~(II)~~ Any Units assisted with MFDL funds may not also be receiving tenant-based voucher or rental assistance to the extent that there are other available units within the Development that the voucher-holder may occupy; and

(III) Units assisted with MFDL may not be restricted to 30% AMI by another Department program or any other fund source.

(B) CHDO Set-aside. Unless waived by HUD, a portion of the Department's annual HOME allocation, equal to at least 15%, will be set aside for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and §13.2(a). Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions unless the award is made within a Persons with Disabilities ("PWD") set-~~aside~~aside or unless the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor as the result of a disaster declaration. CHDO funds are typically available as fully-repayable amortizing debt consistent with §13.4 of this Chapter relating to debt structure policy. In instances where an application submitted under the CHDO Set-Aside also qualifies under the SH/SR Set-Aside, CHDO funds may be structured in accordance with the SH/SR Set-Aside requirements. A CHDO operating expenses grant may be awarded in conjunction with an award of MFDL funds under the CHDO set-aside. in accordance with 24 CFR §92.208. Applications under the CHDO set-aside may not have a for profit special limited partner within the ownership organization chart.

(C) General. The General set-aside is for all other applications that do not meet the requirements of the SH/SR-~~or~~ CHDO set-asides, or flexible set-asides, if any. A portion of the General set-aside may be repositioned into the CHDO set-aside in order to fully fund a CHDO award that meets or exceeds the set-aside amount.

(2) Flexible Set-Asides:

(A) 4% and Bond Layered. The 4% and Bond Layered set-aside is reserved for Applications meeting all MFDL requirements that are layered with 4% Housing Tax Credits and Private Bond funds that do not meet the definition of CHDO.

(B) Persons with Disabilities ("PWD"). The PWD set-aside is reserved for Developments restricting units for tenants who meet the requirements of Tex. Gov't Code §2306.111(c)(2). MFDL funds will be awarded in a NOFA for the PWD set-aside only to the extent sufficient funds are available to award to at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) 9% Layered. The 9% Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 9% Housing Tax Credits, and do not meet the definition of CHDO. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation.

(D) Additional set-asides may be developed, subject to Board approval, to meet the requirements of

specific funds sources, or to address Department priorities.

(b) *Regional Allocation*. All funds in the annual NOFA will be initially allocated to regions and potentially subregions based on a Regional Allocation Formula ("RAF") within the set-asides. The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the NOFA is published in the *Texas Register*.

(1) After expiration of the RAF, funds collapse but may still be available within set-asides as identified in the NOFA ~~but for an additional period not less than 15 days.~~ All Applications received prior to these first two collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, or funded.

(2) Funds remaining after expiration of ~~set-asides~~the RAF, which have not been requested in the form of a complete application, will be available statewide on a first-come first-served basis to Applications submitted after the collapse dates.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board.

(c) *Priorities for the Annual NOFA*. Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, to the extent that funds are available both in the region and in the set-aside under which the application is received. If insufficient funds are available in a region to fund all Applications then the oversubscribed Applications will be evaluated only after the RAF and/or set-aside collapse and in accordance with the additional priority levels below ~~;~~ unless an Application received earlier is withdrawn or terminated. If insufficient funds are available ~~with~~within a region or set-aside, the Applicant may request to be considered under another set-aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board to the extent funds are available in accordance with the order of prioritization described in (1) - (3) of this subsection.

(1) Priority 1: Applications not layered with ~~2017~~2018 9% HTC that are received prior to the ~~2017~~2018 9% HTC Application deadline as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits. Priority 1 applications will be prioritized ~~on a first come first served basis based on score~~ within their respective set-aside and subregion or region. If the RAF has collapsed, Applications will be reviewed on a first-come first served basis within their set-aside.

(2) Priority 2: Applications layered with ~~2017~~2018 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation. All Priority 2 applications will be deemed received on the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar. In order for an MFDL application layered with ~~2017~~2018 9% HTC to be considered complete, Applications for both programs must be timely received. Priority 2 applications will be recommended for approval at the same meeting when the Board approves the ~~2017~~2018 9% HTC allocations. Applications that ~~will be recommended~~are on the wait list for ~~2017~~a 9% HTC ~~and are tied for allocation are not guaranteed the availability of MFDL under the scoring criteria will be further prioritized for funding based upon the scoring, tiebreaker and award criteria in 10 TAC Chapter 11 (the "QAP").~~ funds.

(3) Priority 3: Applications that are received after the ~~2017~~2018 9% HTC Application deadline on a first come first served basis for any remaining funds until the final deadline identified in the annual NOFA.

(d) Other Priorities. The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

§13.5 Award Process

(a) Notice of Funding Availability ("NOFA"). All MFDL funds from the annual allocation will be

distributed through a NOFA that provides the specific collapse dates and deadlines as well as set-aside and RAF amounts applicable to the MFDL program, along with Application information. Other funds may be distributed by NOFA or through other ~~method~~methods approved by the Board. Set-aside, RAF, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

(b) Date of Receipt. Applications will be considered received on the business day of receipt. If an application is received after 5pm Austin Local Time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all required third party reports and application fee(s), in addition to the application, are received by the Department. Within certain set-asides, the date of receipt may be fixed, regardless of the earlier actual date a complete application is received. If multiple applications are received on the same date, in the same region, and within the same set-aside, then score and tiebreaker factors, as described in §13.6 for MFDL or 10 TAC §11.9 for Applications layered with 9% HTC, will be used asto determine the ~~determining factor affecting the ranking of the application~~Application's rank.

(c) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 10, Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Failure to timely respond to any notice of Administrative Deficiency will result in a reestablishment of the date of receipt of the Application to the final date at which the cure to the notice was received by the Department. If the date of receipt of the Application is reestablished, an Application could be de-prioritized in favor of another application received prior to the new application submission date.

(1) All applicants for MFDL funds, regardless of whether or not the Development Site is in a Participating Jurisdiction, must include the following language in the purchase contract or site control agreement: "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. The Department shall use its best efforts to conclude the environmental review of the property expeditiously."

(2) Applications also requesting 9% HTC may have the ability to revise financing prior to award should MFDL funds be oversubscribed in a set-aside. The Department will provide notice to all impacted Applicants in the case of over-subscription.

(d) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to the requirements of this Chapter and Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to MFDL loan closing that have an adverse effect on the score and ranking order and that would have resulted in the application being ranked below another application in the ranking, the Department may terminate the Application.

(1) Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under §10.204(6) of this Chapter or by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.

(2) Applications for Developments previously ~~awarded~~given awards from the Department ~~funds under any program~~, or where construction has already started or been completed, regardless of fund source and are not proposing acquisition and rehabilitation, ~~except distressed Developments under §13.3(a)~~, must be

found eligible by the Board. The Board may find other applicants eligible for good cause such as Developments assisted by the Department that have encountered adverse factors beyond their control that could materially impair their ability to provide the affordable housing. An application that requires a finding of eligibility by the Board must identify that fact in their application so that the staff may present the matter to the Board for an eligibility determination. A finding of eligibility under this section does not guarantee an award. In general, these applications will not be funded with HOME or NHTF funds.

(A) Requests for eligibility determinations under this paragraph must be received with the Application, so that staff may present the matter to the Board for an eligibility determination, and will not be considered more than 30 calendar days prior to the first Application acceptance date published in the NOFA.

(B) Criteria for the Board to consider would include (i) - (iii) of this subparagraph:

(i) evidence of circumstances beyond the Applicant's control which could not have been prevented by timely start of construction; or

(ii) Force Majeure events; and

(iii) evidence that no further exceptional conditions exist that will delay or cause further cost increases

(C) Applications for Developments previously given awards from the Department that s have not yet achieved Construction Completion, Department funds will be evaluated at no more than the amount of Developer Fee proposed in the original Application. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

§13.6 Scoring Criteria

The criteria identified in paragraphs (1) - (67) of this section will be used in the evaluation and ranking of applications to the extent that other applications were received on the same date *and* within the same set-aside and prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC layered application will be utilized for scoring for an MFDL Application, and evaluated in the same manner except as specified below. ~~All scoring items derived from the QAP will have the same value for MFDL scoring:~~ Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this Chapter to the extent that an MFDL Application is also concurrently requesting 9% housing tax credits.:

(1) Applicants eligible for points under 10 TAC §11.9(c)(4) related to the Opportunity Index (7 points).

(2) Tenant Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) related to Tenant Services (9 points) Applicants eligible for points under 10 TAC §11.9(c)(3)(B) related to Tenant Services (1 point).

(3) Underserved Area. Applicants eligible for points under 10 TAC §11.9(c)(6) related to Underserved Area (up to 5 points).

(4) Subsidy per Unit. An application that caps the per unit subsidy limit (inclusive of match) for all Direct Loan units regardless of unit size at:

(A) \$100,000 per MFDL unit (4 points).

(B) \$80,000 per MFDL unit (8 points).

(C) \$60,000 per MFDL unit (10 points).

(5) Rent Levels of Tenants. An Application may qualify to receive up to thirteen (13) points for placing

the following rent and income restrictions on the proposed Development for the entire Affordability Period. These Units may not be restricted to 30 percent or less of AMGI by another fund source.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI (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 (12 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

~~(6) Tiebreaker. In the event that one or more applications~~ (6) Tenant Populations with Special Housing Needs. An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (B) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), both of which pertain to the requirements of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") (10 TAC Chapter 8).

(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will do so in order to receive two (2) points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.

(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC §8.3 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.

(7) Tiebreaker. In the event that two or more Applications receives the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMGI MFDL units within the Development that would convert to households at 15% AMGI in the event of a tie in the Tiebreaker Certification.

§13.7 Maximum Funding Requests

(a) The maximum funding request for all applications will be identified in the NOFA, and may vary by development type ~~and/or,~~ set-aside, or fund source.

(b) Maximum Per-Unit Subsidy Limits. The 234 Condo limits with the applicable high cost percentage adjustment in effect at the time of application are the maximum per-unit subsidy limits (inclusive of Match) that an applicant may use to determine the amount of MFDL funds or other federal funds that may subsidize a unit. Stricter per-unit subsidy limits are allowable and incentivized as point scoring items in §13.6 Scoring Criteria. Per-unit subsidy limits as well as subsidy layering cost allocation analysis - ensuring that the amount of MFDL units as a percentage of total units is greater than the percentage of MFDL funds requested as a percentage of total development costs - will determine the amount of MFDL

units required.

§13.8 Loan Structure and Underwriting Requirements

(a) Except for awards made under the SR/SH set-aside, all Multifamily Direct Loans awarded will be underwritten as fully repayable (must pay) at not less than the Discount window primary credit rate published by the Federal Reserve (<https://www.federalreserve.gov/releases/h15/#fn2>) on the date of initial publication of the NOFA, plus 200 basis points and a 30 year amortization with a term that matches the term of any superior loans (within 6 months) at the time of application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the development feasible under all applicable sections of 10 TAC §10.300 related to Underwriting Policy, and §13.8(c). The interest rate, amortization period, and term for the loan will be fixed by the Board at Award, and can only be amended prior to closing by the process in §13.12 of this chapter.

(b) ~~Any material~~ Changes to the total development cost and/or other sources of funds from the publication of the initial Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff ~~and, who~~ may ~~cause~~ recommend changes to principal amount and/or repayment structure for the Multifamily Direct Loan ~~such that will allow~~ the Department ~~is able~~ to mitigate any increased risk. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered ~~as amended by the Board.~~ Increases in the principal or payment amount of any superior loans after the initial Underwriting Report must be approved by the Board.

(c) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - ~~(67)~~ of this subsection if being requested as construction-to-permanent loans:

(1) The term for permanent loans shall be no less than ~~fifteen (15)~~ ten (10) years and no greater than forty (40) years and the amortization schedule shall be thirty (30) years. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

(2) Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage or if a surplus cash flow structure is required for a loan from the SH/SR set-aside, 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.

~~(3)~~ If the proposed first lien is a federally insured HUD or FHA mortgage that requires the Direct Loan to be subject to 75% of surplus cash flow, staff will require the debt service coverage ratio on both the federally insured loan and the Department's loan – as restricted to 75% of surplus cash flow – to continue to meet the minimum 1.15 in accordance with 10 TAC §10.302(d)(4)(D).

(4) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team; and,

(45) 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) - (B) 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; or

(B) 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.

~~(56)~~ If the Direct Loan is the only source of Department funding for the Development;

~~(A)~~ The Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs ~~and must provide.~~

~~(B)~~ For Applicants proposing new construction, an "as completed" appraisal pursuant to 10 TAC §10.304 which results in total repayable loan to value of not greater than 80% ~~must be provided.~~

~~(C)~~ For Applicants proposing rehabilitation, the "as is" appraisal required by 10 TAC §10.205(4) may meet this requirement without needing an "as completed" appraisal provided the loan to value is not greater than 80%.

(7) All Direct Loan applicants where other third-party financing entities are part of the sources of funding must submit a *proforma* and lender approval letter evidencing review of the Development and the Principals in accordance with 10 TAC §11.9(e)(1). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the applicant.

~~(d)~~ Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

~~(1)~~ The term of the construction loan must be coterminous with any superior construction loan. In the event that the Direct Loan is the only construction loan, the term may not exceed 24 months;

~~(2)~~ The minimum interest rate will be 2%; and

~~(3)~~ Up to 75% of the construction loan may be advanced at loan closing should there be sufficient costs to reimburse that amount.

§13.9 Construction Standards

All Developments financed with Direct Loans will be required to meet at a minimum all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC") or International Building Code ("IBC") as applicable. Rehabilitation Developments must meet the requirements in paragraphs (1) - ~~(56)~~ of this section.

(1) recommendations made in the Environmental Assessment and any Physical Conditions Assessment with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(2) for properties originally constructed prior to 1978, the Physical Conditions Assessment and rehabilitation scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the rehabilitation must implement the mitigation recommendations of the testing report;

(3) all accessibility requirements pursuant to 10 TAC Subchapter B must be met;

~~(4)~~ the broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) or 24 CFR §93.301(a)(2)(vi) or 24 CFR 93.301(b)(2)(vi) as applicable;

(5) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for

Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(56) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

§13.10 Development and Unit Requirements

(a) The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested, inclusive of Match, as a percentage of total Direct Loan eligible costs. As a result of this requirement, the Department will always use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15 except as described in (b) of this section. Additionally, the amount of Direct Loan funds requested inclusive of Match cannot exceed the per-unit subsidy limit. For example, in a 20 Unit Development composed of 6 1-bedroom, 10 2-bedroom, and 4 3-bedroom units, where the amount of Direct Loan funds requested is \$1,000,000, ~~the Match being provided is \$100,000,~~ and the total Direct Loan-eligible project costs are \$4,400,000, 25 percent of each unit type must be a Direct Loan Unit (\$1,400,000 Direct divided by \$4,400,000). In the example below, the square footages are the same for each unit that has the same number of bedrooms and all fractional units are rounded up to require the next whole number of MFDL Units. In this example, even though the amount of Direct Loan funds (inclusive of Match) as a percentage of total Direct Loan-eligible costs (25 percent) would result in a minimum 5 units if the percentage was applied on a total unit basis, the 25 percent must be applied to each unit type with partial Units rounded up to the next whole number, resulting in 2 additional units for a total of 7 Direct Loan Units. Please see CPD Notice 16-15 for further guidance.

[Attached Graphic201606666-1.pdf](#) [Attached Graphic](#)

(b) ~~As~~ For HOME, NSP, and TCAP RE, Direct Loan Units must float throughout the Development unless the Development also contains public housing units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100. For NHTF, Direct Loan Units must float throughout the Development except as prohibited by 24 CFR §93.203. Floating Direct Loan units may only float among the Units as described in the Direct Loan Contract and Direct Loan Land Use Restriction Agreement ("LURA"), or as specifically approved in writing by the Department. (c) The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan or 30 years unless a lesser period is approved by the Board and when assisting distressed developments.

(d) If the Department is the only source of funding for the Development, all Units must be restricted.

§13.11 Post-Award Requirements

(a) Direct Loan awardees must execute an Award Letter and Loan Term Sheet provided by the Department within thirty (30) calendar days after receipt of the letter. The Award Letter and Loan Term Sheet will be conditional in nature and provide a basic outline of the terms and conditions ~~currently being contemplated for the Development.~~ approved by the Board.

(b) If a Direct Loan award is returned after Board approval, or if the Applicant or Affiliates fail to meet federal commitment or expenditure requirements, penalties may apply under 10 TAC § 11.9(f) and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of 2 years if they have returned their funds or have failed to take necessary action specified in one or more agreement with the Department where the failure resulted in the Department's failure to meet federal commitment and expenditure requirements.

(c) Direct Loan awardees must obtain environmental clearance (if applicable) and meet all requirements for commitment of funds within 180 days after award. Direct Loan awardees that commit any choice limiting activities prior to obtaining environmental clearance may lead to termination of the Direct Loan

award.

(d) Direct Loan awardees must execute a Contract within ~~nine (9)~~six (6) months of the Board approval date.

(e) Loan closing must occur and construction must begin no later than ~~six (6)~~three (3) months from the effective date of a Contract.

~~(f) The Development Owner is required to submit quarterly construction status reports to the Asset Management Division as described and by the deadlines specified in §10.402(h).~~

(g) In addition to any other requirements as the result of any other Department funding sources, the Development Owner must submit a mid-construction development inspection request once the development has met ~~or exceeded~~ 25% construction completion as indicated on the G703 Continuation Sheet. Inspection staff will issue a mid-construction development inspection letter that confirms that work is being done in accordance with the applicable codes, the construction contract, and construction documents. Up to 50 percent of the Direct Loan award will be released prior to issuance of the mid-construction development inspection letter.

(gh) Construction must be completed, as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704), and a final development inspection request must be submitted to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. The final development inspection letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements

(hi) Receipt of a Closed Final Development Inspection Letter, indicating that all deficiencies identified in the Final Inspection Letter have been corrected, must occur within 24 months of the actual date of loan closing. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards ("UPCS") inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter requirement.

(ij) Extensions to any of the above benchmarks may only be made for good cause and approved by the Department if construction is timely started;

(jk) Initial occupancy of all MFDL assisted Units by eligible tenants shall occur within six (6) months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required for the MFDL fund source;

(kl) Repayment will be required on a per Unit basis for Units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw.

(lm) Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four (4) years of the effective date of a Direct Loan Contract.

(mn) Closing Deadline: Awards will be made subject to ~~hard~~ closing deadlines established at the time of award by the Board subject to the conditions in §13.8(a), which may only be extended ~~by additional Board action~~ in accordance with §13.12 on the basis of delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple source closing. An extension will not be available if an Applicant has:

(1) failed to timely begin or complete processes required to close; including

(A) finalizing all equity and debt financing; or

(B) the environmental review process; or

(2) made changes to the Development that require additional underwriting by the Department without sufficient time to complete the review.

(n) Loan Closing: In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) - (7) of this subsection:

(1) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(2) 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.

(3) Where the Department will have a first lien position and the Applicant provides personal guarantees from all principals ~~and, as well as~~ 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;

(4) 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 or equivalent guarantee in the sole determination of the Department is required. Such assurance of completion will run to the Department as obligee. Development Owners utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(5) Documentation required for closing includes, but is not limited to:

(A) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(B) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(C) plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that ~~will be intended to~~ assist in ~~preparation for identifying early concerns associated with the development's Department's final inspection; construction requirements;~~

(D) if layered with 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);

(E) final Development information, including but not limited to a final development cost schedule, sources and uses, operating *proforma*, annual operating expenses, cost categories for the Direct Loan funds, updated written financial commitments or term sheets and any additional financing exhibits that have changed since the time of application;

~~(F) If the changes to the budget or sources of funds reflect material changes to the transaction approved by the Board, documentation to ensure that the Development continues to meet the requirements of this chapter must be provided and material changes to the application must be approved by the Board. Material changes include but are not limited to any increase in debt payment for superior lien loans and a greater than a 10 percent change in any of the following:-~~

~~(i) Total Housing Development Costs;-~~

~~(ii) deferred developer fee amount;-~~

~~(iii) superior loan amount(s);-~~

~~((6) if required by the fund source, prior to Contract Execution unless an earlier period is described in Chapter 10 of this title, the Development Owner must provide verification of:~~

(A) environmental clearance;

(B) Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Assistance and Property 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.

(7) The Direct Loan Contract as executed, which will be drafted by counsel for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division.

(o) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Department's Legal Division

(1) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. In the event the Development receives funding that requires the Department's funding to be in a subordinate position, the individual who is able to control the Development (all such individuals if more than one possess such power jointly and severally) will execute a personal guaranty in favor of the Department that in the event that the Development fails to fulfill its requirements of affordability for the required period, and as a result the Department is required to repay funds to the U. S. Department of Housing and Urban Development using non-federal funds and the net proceeds available to the Department after a foreclosure, deed in lieu of foreclosure, or similar disposition of the Development are insufficient to make such repayment, the guarantor(s) will jointly and severally guarantee repayment of that amount.

(2) 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 the final Direct Loan draw; termination and repayment of the Direct Loan award in full will be required for any Development that is not completed within four (4) years of the date of Direct Loan Contract execution.

(3) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis underwriting report, and the set-aside under which the award was made.

(p) Disbursement of Funds. The Borrower must comply with the requirements in paragraphs (1) - (9) of this subsection in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements may be required with a request for disbursement:

(1) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require.

(2) 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) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. Disbursement requests for acquisition and closing costs, or requests for soft costs only, are exempt from this requirement;

(34) At least 50 percent of the funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(45) The initial draw request for the development must be entered into the Department's Housing Contract System no later than ten business days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(56) Up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25 percent of funds;

(67) Developer fee disbursement shall be limited by Section 13.11(p)(9) and further 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. 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 except as follows. If all other lenders and syndicator in a Housing Tax Credit development (if applicable) provide written confirmation 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 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 if in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If Disbursement is withheld for any reason, disbursement of any remaining developer fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(7) expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall ~~determine the reasonableness of review~~ each expenditure requested, for reasonableness. 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;

(8) table funding requests will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been completed and submitted to the Department at least ten (10) calendar days prior to ~~anticipated~~planned closing;

(9) Following fifty percent construction completion, any funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) - (G) of this paragraph are received:

(A) Certificate of Substantial Completion (AIA Form G704) with \$0 as the cost estimate of work that is incomplete;

(B) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(C) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(D) For Developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;

(E) Receipt of Certificates of Occupancy;

(F) Development completion reports which includes but is not limited to documentation of full compliance with the Uniform Relocation Act/104(d), Davis-Bacon Act, Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(G) If applicable to the Development, certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

§13.12(10) The final draw request must be submitted within 24 months from loan closing. Extensions to this deadline may only be granted in accordance with §13.12(3) of this Chapter.

§13.12 Pre-Closing Amendments to Direct Loan Terms

The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (76) of this section. Board approval is necessary for any other changes prior to closing.

(1) extensions of up to 6 months to the loan closing date specified by the Board in accordance with §13.8(a)(411(m)) 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 12 months for the construction completion ~~or~~ loan conversion date, and/or final draw deadline 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/increase 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;

(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk; ~~and.~~

~~(7) An Applicant may request a change~~ **§13.13 Post-Closing Amendments to the terms of a loan. Direct Loan Terms**

~~(a) Except for an award of funds to a Development that has had a in cases of Force Majeure event (and such an event necessitates an immediate change to the loan), such,~~ changes ~~for~~to federal awards will only be processed after the Development is reported to the federal oversight entity as completed. ~~Requests for changes to and the last of the MFDL funds have been drawn.~~

~~(b) The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this section. Board approval is necessary for any other changes post closing.~~

~~(1) changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term, provided the changes result in the Direct Loan continuing to meet the requirements of §13.8(c)(1) and (3);~~

~~(2) resubordination of the Direct Loan in conjunction with refinancing provided the conditions in (A) – (E) are met:~~

~~(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;~~

~~(B) The refinance does not propose payment of outstanding debt or profit directly to any of the Development Owner or Developer parties (including the Limited Partners);~~

~~(C) A proposal for partial or full repayment of the MFDL lien is made with the request; and~~

~~(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.~~

~~(E) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be processed as loan modifications and may require additional approval directly applied to property improvements as evidenced by the Department's Asset Management Division. Post-closing loan modifications requiring changes in or security agreements (exclusive of fees associated with the refinance and any required reserves) will be considered on a case by case basis.~~

~~(3) Changes required to the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as that are part of a Department or an approved Asset Management Division work out arrangement or other condition intended to mitigate financial risk to the Department, and will not require additional Executive Director or Board approval except where the amendment request was not allowed under the NOFA, or where the post-closing change could have been anticipated prior to closing as determined by staff.~~

4b

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
OCTOBER 12, 2017

Presentation, Discussion, and Possible Action on the proposed amendment of 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, 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 improve the efficiency of post award and asset management activities of multifamily developments awarded funds under various Department programs;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendment of 10 TAC Chapter 10, together with the preamble presented to this meeting, are hereby 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 Post Award and Asset Management Requirements, 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

The proposed draft of the 2018 Post Award and Asset Management Requirements reflects staff's recommendations for the Board's consideration. The more significant changes to specific sections are summarized below. Changes made only for purposes of grammatical efficiency or clarification, correcting previous grammatical errors, re-numbering or re-aligning requirements with updated references to sections elsewhere in rule are not specifically discussed.

Upon Board approval, the proposed 2018 Asset Management Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between October 27, 2017, and November 27, 2017. The Asset Management Rules, after consideration of public comment, will be brought before the Board in December for final approval and subsequently published in the *Texas Register* for adoption.

Summary of Proposed Changes. Most of the changes proposed by staff are clarifying in nature; however, this section outlines the more significant recommendations made by staff.

1. 10.400 Purpose (page 1). This change clarifies that a request for any post award activity handled by the Asset Management division will not be acted upon unless any and all uncorrected non-compliance outside of the corrective action period has been resolved and/or outstanding fees owed to the Department have been paid, or waived by the Board.
2. 10.401(e) Direct Loan Commitment section under General Commitment or Determination Notice Requirements and Documentation (page 2). Staff has removed this section, as it includes a topic that is now covered in the Multifamily Direct Loan Rule in Chapter 13.
3. 10.402(e) Post Bond Closing Documentation Requirements (page 5). Staff proposes adding the initial construction status report to this section as part of an effort to clarify and encourage timely submission of these reports from our 4% HTC funded developments. Staff continues to experience challenges in receiving the initial construction status reports for 4% HTC developments and hopes that combining this requirement with another well-known Department deadline will serve to highlight the initial submission date for 4% HTC Development Owners, help 4% HTC Development Owners to better calendar their continuing construction status report deadlines, and consolidate Department reporting requirements between Divisions. Clarification regarding this change was also placed into section 10.402(h) relating to Construction Status Reports for purposes of communicating the initial deadlines for all multifamily developments in one section of the rule.
4. 10.402(h) Construction Status Reports (page 8-9). The change to this section seeks to provide additional options to owners to document construction completion. Staff is also proposing to change the initial report submission deadline for Competitive Housing Tax Credit Developments from 90 days following submission of the 10 Percent Test to a fixed October 10th date following the year of award, which will make the initial report deadline congruent with the regular quarterly reporting cycle and avoid an unintended duplicative second report deadline (for example, 90 days following submission of the 10 Percent Test deadline was September 28th for 2016 awardees this year but the second report by rule was due at the next quarterly deadline of October 10th for all multifamily developments under construction, which required that the second report for 2016 awardees be submitted twelve days after the initial report was submitted). In addition, in response to many external questions related to the minimum requirements for third party inspection reports, staff proposes to specify what information the third party inspection reports must include – the proposed rule now requires the reports include current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date, items which generally align with the information generally provided in most third party reports.
5. 10.402(i) LURA Origination (page 9). Language was added clarify that LURAs for Developments funded with Direct Loan funds from the Department do not need to be requested from Asset Management. As is standard Department practice, LURAs for Direct

Loan awardees are prepared by the Department's Direct Loan Program staff or Legal Division at the time of loan closing.

6. 10.402(j) Cost Certification (page 12). Under item (xix) Contractor's Application for Final Payment (G702/G703), staff qualified the expectation for a G702/G703 from the General Contractor and also added the expectation for G702/G703s from all prime subcontractors in an effort to ensure all costs are well-documented. Under item (xxv) staff clarified that a Current Operating Statement must be in the form of a trailing twelve month statement to improve efficiency in evaluating multiple months of operating statements for analysis during cost certification review. Under item (xxxiv), staff added that the cost certification must contain either the TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division to clarify that cost certifications will be accepted and reviewed prior to having the Final Inspection Clearance Letter in the cost certification package, which better reflects current practice.
7. 10.403 Review of Annual HOME/NSP and National Housing Trust Fund Rents (page 13). Staff proposed in 10.403(a) the addition of review of rents where Multifamily Direct Loan funds are used as HOME match at the direction of Legal Counsel and Multifamily HOME Program staff. Staff also changed the deadline for HOME rent review from January 30th to June 1st of each year in order to allow for the publication of new HOME rent limits in May and to align the process more closely with timing that will ensure the receipt of documentation already submitted during the Annual Owner's Compliance Report (AOCR) period on April 30th.
8. 10.405(a) Amendments and Extensions- Notification Items (page 21-23). Staff proposed in 10.405(a)(2)(E) under Notification Items that changes in Developers or Guarantors that do not include the addition of new entities or Principals not previously checked by Previous Participation review at the time of Application that do not result in the removal of all persons used to meet the experience requirement in §10.204(6) be processed as Notification items rather than as Nonmaterial Amendment items in order to create more efficiency in process for Owners proposing the addition of entities and persons that have already been checked under Previous Participation at Application as part of an Ownership, Developer, or Guarantor structure (which is a common proposed change seen with these amendments) and to better protect the time of Compliance staff responsible for overseeing Previous Participation Review processes. Staff has also proposed that though the removal of some persons used to meet the experience requirement is allowed under 10.405(a)(3)(B) that not *all* persons used to meet the experience requirement be allowed to be removed in order to maintain the transparency and intent of the requirement during the Application process.

Staff has also proposed under Nonmaterial amendments in 10.405(3)(B) (page 22) that changes in the persons used to meet the experience requirement result in the provision of an appropriate substitute that has been approved by the Multifamily Division prior to receipt of the amendment request. This change has been made after discussion with Multifamily staff, who conveyed an expectation that a substitution would be made in the rare event that any of the persons meeting the experience requirement have changed from the time of Application.

Lastly in this section, Staff has proposed in 10.405(a)(6) (page 23) to reiterate under Material Amendments that resolution of outstanding non-compliance or payment of outstanding fees

must be resolved to the satisfaction of the Department, or must be waived by the Board. Staff notes that this requirement is already present under the top paragraph of the Asset Management section of the rule in 10.400 Purpose. The reiteration is merely intended to serve as a reminder within the particular section of the rule so as not to be overlooked. A similar reiteration has been recommended in 10.405(b) relating to LURA Amendments and 10.406 relating to Ownership Transfers.

9. 10.405(b) Amendments to the LURA (page 24-25). Staff proposed in 10.405(b)(1)(A) Non-Material LURA Amendments that HUB removal be added as a type of Non-Material LURA Amendment, which has been the Department's practice after the 2017 rules were changed to remove HUB requirements as a Material LURA Amendment. The section related to HUB removal currently placed in the Ownership Transfers section in 10.406 has been moved to this section to more clearly outline the Non-Material LURA Amendment process for HUB removal that may not be attached to a requested Ownership Transfer. As a result, this section now includes the general requirements for HUB removal (none of which are new) and states that where the requested Non-Material LURA Amendment process for HUB removal will result in replacement of the GP or Special LP, that an ownership transfer request must have been submitted or will be concurrently submitted for processing.
10. 10.406 Ownership Transfers (page 28). Staff proposed in 10.406(b)(2) relating to Exceptions that transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible. The section previously stated that the investment limited partner report to the Department the involuntary removal of the GP by way of submission of an Ownership Transfer packet, but this was not intended as the initial report of the involuntary removal. Staff has instead proposed that the section be clarified to state that in the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

Staff proposed in 10.406(g) (page 30) that the HUB removal language related to non-material amendments be removed and placed under 10.405(b)(1)(A) as described under Change 8 listed above. The remaining portion of this section only serves to direct users to the section on Non-material LURA amendments and states that transfer requests where a general or special limited partner that is not a HUB will be replacing a HUB will be allowed provided the Non-material LURA amendment process has been followed and approved.

11. 10.407(a)(7) Right of First Refusal (page 34). Staff proposed to remove the requirement that existing HTC LURAs be amended to reflect updated Right of First Refusal provisions of Tex. Gov't Code in order for the ROFR not to be triggered in cases of re-syndication, and for consistency with Tex. Gov't Code 2306.6713.
12. 10.408 Qualified Contract Requirements (page 43). Staff proposed in 10.408(c)(2)(D) as part of assessing a preliminary qualified contract request that if a copy of the most recent PNA/PCA identifies the need for critical repairs that impact habitability and tenant safety that the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request. Staff has proposed this addition to allow staff to require immediate

corrections in cases where such health and safety items have been identified during the QC process, though the LURA is technically still in effect in these cases and requires an Owner to remain in compliance with all Department standards.

Attachment A: Preamble and Proposed amendment 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 amendments of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408. The proposed amendments provide clarification and correction 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 amendments are in effect, enforcing or administering the amendments 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 amendments are in effect, the public benefit anticipated as a result of the amendments will be 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 amendments.

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 October 27, 2017 until November 27, 2017 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: Raquel Morales, or by email to raquel.morales@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM, Austin local time, on NOVEMBER 28, 2016.

STATUORY AUTHORITY. The amendments are 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. The purpose of this Subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Tex. Gov't 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 subchapter 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 section of this subchapter, 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 to the satisfaction of the Department, or waived by the Board, must be resolved satisfactorily to the Department, EARAC or excepted by the Board, before a request for any post award activity described in this subchapter will be completedacted upon.

§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.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and rule, including but not limited to the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(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(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant, 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, 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, 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 and Loan Term Sheet 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 and National Housing Trust Fund 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 thirty (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 by the Department, a new Award Letter would be issued by the Department to govern the award.~~

§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 the determination 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.

(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 determination of a specific amount of housing tax credits that the Development may be eligible for, 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 by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) Tax Credit Amount. The amount of tax credits reflected in the IRS Form(s) 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 will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice must be approved 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 and 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 sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;

(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 Credit Underwriting 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 and Extensions).

(7) for Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(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 the documentation in subparagraphs ~~(1A)~~ - ~~(4E)~~ of this paragraph.

(A) a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training. The certificate must not be older than two years from the date of submission;

(B) a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training. The certificate must not be older than two years from the date of submission;

(C) evidence that the financing has closed, such as an executed settlement statement; ~~and~~

(D) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a)-); ~~and~~

~~(E) -initial construction status report consisting of items (1) – (5) as outlined in §10.402(h) of this chapter (relating to Construction Status Reports).~~

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 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 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 re-evaluated by the Department for a reduction of credit or change in conditions.

(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, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405.

(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 or as otherwise specified in the applicable year's Qualified Allocation Plan, under §11.2, documentation must be submitted to the Department verifying that the Development Owner has expended 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 Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (8) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (8) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(~~dc~~) of this Subchapter and [10 TAC §13.12\(1\) of this title, as applicable, and](#) a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 Percent Test includes:

(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis

is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 [of this subchapter](#);

(4) a current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) 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 or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) for the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10 Percent Test Documentation;

(7) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors or

Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews); and

(8) a Development Owner's preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.

(h) Construction Status Report (All Multifamily Developments). All multifamily developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by one of the following: certificates of occupancy for each building, the Architect's Certification(s) of Substantial Completion (AIA Document G704) for the entire development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report must be submitted no later than October 10th following the year of award 90 days after submission of the 10 Percent Test (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), ~~for Tax Exempt Bond Developments, the initial report must be submitted 90 days after expiration of the Certificate of Reservation,~~ and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report must be submitted 90 calendar days after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation due no later than 60 calendar days following closing on the bonds as described in §10.402(e) of this section. The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) – (5) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in subparagraphs (3) – (5) of this paragraph and must include any changes or amendments to items in subparagraphs (1) – (2) if applicable:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews);

(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 Application and Certificate for Payment (AIA Document 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. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date;

(5) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734 .

(i) LURA Origination ~~(HTC Only)~~.

(1) The Development Owner must request a copy of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft 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. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. The original or a copy of the 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 or a copy of the, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director.

~~Electronically recorded LURAs provided to the Department will be acceptable in lieu of the original, recorded copy.~~

~~(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.~~

(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (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 needed to complete the review. 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) - (xxxvi) of this subparagraph, and pursuant to the Post Award Activities

Manual. If any item on this list is determined to be unclear, 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 thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions).

- (i) Owner's Statement of Certification;
- (ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;
- (iii) Evidence of Qualified Nonprofit or CHDO Participation;
- (iv)—Evidence of Historically Underutilized Business (HUB) Participation;
- (v) Development Team List;
- (vi) Development Summary with Architect's Certification;
- (vii) Development Change Documentation;
- (viii) As Built Survey;
- (ix) Closing Statement;
- (x) Title Policy;
- (xi) Title Policy Update;
- (xii) Placement in Service;
- (xiii) Evidence of Placement in Service;
- (xiv) Architect's Certification of Completion Date and Date Ready for Occupancy;
- (xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;
- (xvi) Independent Auditor's Report;
- (xvii) Independent Auditor's Report of Bond Financing;

- (xviii) Development Cost Schedule;
- (xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor and all prime subcontractors;
- (xx) Additional Documentation of Offsite Costs;
- (xxi) Rent Schedule;
- (xxii) Utility Allowances;
- (xxiii) Annual Operating Expenses;
- (xxiv) 30 Year Rental Housing Operating Pro Forma;
- (xxv) Current Operating Statement in the form of a trailing twelve month statement;
- (xxvi) Current Rent Roll;
- (xxvii) Summary of Sources and Uses of Funds;
- (xxviii) Financing Narrative;
- (xxix) Final Limited Partnership Agreement with all amendments and exhibits;
- (xxx) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);
- (xxxi) Architect's Certification of Fair Housing Requirements;
- (xxxii) Development Owner Assignment of Individual to Compliance Training;
- (xxxiii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);
- (xxxiv) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division;
- (xxxv) Completion Certificate (TDHCA Issued Bonds Only); and
- (xxxvi) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));

(D) paid all applicable Department fees, including any past due fees;

(E) met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) 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 in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period or that have had a monitoring review where noncompliance was identified, will not be issued IRS Form(s) 8609s until all events of noncompliance are assessed, corrected, or otherwise approved by the Executive Award Review and Advisory Committee;

(G) completed an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.403. Review of Annual HOME/NSP and National Housing Trust Fund Rents.

(a) Applicability. For participants of the Department's Multifamily HOME and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all NHTF participants by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/NSP/NHTF rents on an annual basis. ~~The Department is required by 24 CFR 93.302(c)(2) to review and approve or disapprove NHTF rents on an annual basis. The Department is also is required by 24 CFR §92.219 and §92.252(d)(4) to approve rents where Multifamily Direct Loan funds are used as HOME match.~~ Development Owners must submit documentation for the review of HOME/NSP/NHTF rents by no later than ~~January 30th~~June 1st of each year as further described in the Post Award Activities Manual.

(b) Documentation for Review. The Department will furnish an Annual Rent Approval Request packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll

and an approved utility allowance letter from the Department's Compliance Division. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) Review Process. Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 [of this chapter \(relating to Special Rules regarding Rents and Limit Violations\)](#) and may be subject to penalties under §10.624 [of this chapter \(relating to Events of Noncompliance\)](#). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules in Subchapter F or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§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 Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, 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 request under this subchapter, and the Development does not have an existing replacement reserve account, or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a PCA, the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number 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 and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PCA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(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 if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) 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 separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection:

(A) For New Construction Developments, not less than \$250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from

the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations (but not for the construction standards required by the NOFA or program regulations), or demonstrated financial hardship; or

(B) 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.

(4) For all Developments, a Property Condition Assessment ("PCA") must be conducted at 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 must 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. PCAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the eleventh (11th) year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) 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 paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) 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; and

(D) whether a PCA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense 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.

(7) 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 default with this requirement, may be imposed:

(A) a Reserve Account, as described in this section, has not been established for the Development;

(B) the Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section or submit a copy of a PCA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party Property Condition Assessment or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department 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 be allowed to 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:

(A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; or

(B) 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;

(C) In the event of subparagraph (A) or (B) of this paragraph, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred developer fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.

(9) 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.

(10) In the event of paragraph (7) or (8) of this subsection, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The

Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. 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, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for 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 a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development,

excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. 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 to related parties, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department, Development Owner, and financial institution representative.

(4) Use of the funds in the Special Reserve Account is determined by a plan that is pre-approved 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.

(e) 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). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) 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 rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. 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(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect 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.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (~~EF~~) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request, and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department.

(A) changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5 percent;

(B) minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) increases in net rentable square footage or common areas that will not significantly impact development costs;

(D) changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) changes in Developers or Guarantors that do not include the addition of new entities or Principals not previously checked by Previous Participation review at the time of Application and do not result in the removal of all persons used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission);

(F) any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director may administratively approve all non-material amendments, including, but not limited to:

(A) any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) changes in the natural person(s) used to meet the experience requirement in §10.204(6) of this chapter provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);

(C) changes in Developers or Guarantors (to the extent Guarantors were identified in the Application) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13) and the credit limitation described in §11.4(a).

(4) Material amendments. Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. When an amendment request ~~which~~ requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to 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)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have

adversely affected the selection of the Application in the Application Round. 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 at least 5 percent;
- (G) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications); or
- (H) any other modification considered significant by the Board.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, 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. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, or waived as-by the Board, before a request for amendment will be acted upon~~must be resolved to the satisfaction of the Department prior to approving an amendment request unless otherwise approved by the Executive Award Review and Advisory Committee.~~

(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 Application and 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 to support the amendment. In addition, for such changes prior to issuance of IRS Forms 8609 by the Department, the lender and syndicator must submit written confirmation 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 financial feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of 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 approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information if the change will result in any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, waived as by the Board, before a request for amendment will be acted upon. LURAs will only be amended if non-compliance or outstanding payment is as provided in §10.405(a)(6). 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), 24 CFR Part 93 (NHTF

Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), 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), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act, ~~and~~, For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) below. A non-material LURA amendment may include but is not limited to:

(A) HUB removal

(i) Removal of a HUB will only be processed as a non-material LURA amendment after the issuance of 8609s and requires that the Executive Director find that:

(ba) the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(eb) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing;

(dc) where the HUB will be replaced as a general partner or special limited partner and will sell its ownership interest, an ownership transfer request must be ~~has been or will be~~ concurrently submitted as described in §10.406;

(B) a change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division, or

(C) a correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required

documentation necessary for staff's review of the request to the Department at least forty-five (45) calendar days prior to the Board meeting ~~in~~at 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)). The Board must consider and approve the following material LURA amendments:

(A) reductions to the number of Low-Income Units;

(B) changes to the income or rent restrictions;

(C) changes to the Target Population;

(D) the removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) a change in the Right of First Refusal period as described in amended §2306.6725 of the Tex. Gov't Code;

(F) any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least fifteen (15) business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If an LURA amendment is requested prior to issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph.

(A) each tenant of the Development;

(B) the current lender and investor;

(C) the State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) the chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) the county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph.

(A) the Development Owner's name, address and an individual contact name and phone number;

(B) the Development name, address, city and county;

(C) the change(s) requested; and

(D) the date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three (3) business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and ~~recording~~ recording in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), construction status reports, 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 Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). 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 and a completed Ownership Transfer packet, if applicable, to the Department at least forty-five (45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

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

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

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

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

(4) Changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the same resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of the decision.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation).

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

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

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

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation), prior to recommending any new financing or allocation of credits.

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

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

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

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

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

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

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

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

(g) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it ~~(i) is being removed as the result of a default under the organizational documents of the Development Owner, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB status, in any case,~~ after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as ~~the LURA does not require such continual ownership, or the procedures outlined described in §10.405(b)(1) -(5) of this chapter (relating to Non-Material LURA Amendments that require Board Approval) have has~~ been followed and approved. ~~All such transfers must be approved by the Executive Director and require that the Executive Director find that:~~

~~(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;~~

~~(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and~~

~~(3) the proposed purchaser meets the Department's standards for ownership transfers~~

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

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

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

(3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

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

(5) Previous Participation information for any new Principal as described in §10.204(13)(B) of Subchapter C;

(6) agreements among parties associated with the transfer;

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

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

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

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

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

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

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

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

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

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal ("ROFR") to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. 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 ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section unless otherwise restricted or prohibited and only in the following circumstances:

(A) the LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) the LURA includes a two (2) -year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization ("CHDO") under 24 CFR Part 92, as approved by the Department; or

(C) the LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department. Where the Development Owner is not required to go through the ROFR process, it must go through the ownership transfer process in accordance with §10.406.

(2) 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, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) The ROFR process is triggered upon:

(A) the Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) the simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) that is under common control with the Development Owner; and

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program ~~and~~

~~(C) the original ROFR language in the property's LURA has been amended, if applicable, to reflect updated provisions of Tex. Gov't Code from the 84th legislature.~~

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the

Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded 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 and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) 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. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(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, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule);

(2) a notice of intent to the Department and to such other parties as the Department may direct at that time;

(3) evidence and certification that the residents of the Development have been provided with a notice of intent;

(4) documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) 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 Entity or 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 (relating to 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;

(6) description of the Property, including all amenities and current zoning requirements;

- (7) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;
- (8) a current title policy or a down date endorsement not older than six months prior to the date of submission of the ROFR request;
- (9) the most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party;
- (10) 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);
- (11) the three (3) most recent consecutive audited annual operating statements, if available;
- (12) 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);
- (13) current and complete rent roll for the entire Property;
- (14) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases

(d) Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any 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 buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

- (1) if the LURA requires a 90 day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any

Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property.

(2) If the LURA requires a two (2) -year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) during the first six (6) months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization ("CHDO") under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) during the next six (6) months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization may submit an offer; and

(C) during the final twelve (12) months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer.

(3) If the LURA requires a 180-day ROFR posting period a Qualified Entity may submit an offer to purchase the Property as follows:

(A) during the first sixty (60) days of the ROFR posting period, only a Qualified Entity that is a CHDO under 24 CFR Part 92, or that is controlled by CHDO, as approved by the Department, may submit an offer;

(B) during the second sixty (60) days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer;

(C) during the final sixty (60) days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1,

2015 is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) the Development Owner does not receive any bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(D) an offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit

Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(A) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer;

(B) the LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business;

(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(D) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(E) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(F) an offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above

the posted ROFR offer price, and the Development Owner fails to accept any of such offers.

(3) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) the identified beneficiary is in existence and conducting business;

(B) the Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) if the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) the identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Activities Upon Satisfaction of ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (3) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price.

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within twenty-four (24) months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) 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 offer price that is higher than the originally posted ROFR offer price until twenty-four (24) months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this twenty-four (24) month period.

(h) Sale and closing.

(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 Award Activities Manual, the final settlement statement and final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(i) 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)).

§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 a Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service (§2306.185). Unless otherwise permitted in the LURA, 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 Development 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 Development 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

(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);

(D) copy of the most recent Physical Needs Assessment/Property Condition Assessment, pursuant to Tex. Gov't Code §2306.186(e), conducted by a Third Party. If the PNA/PCA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(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 six months of 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 Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Tex. Gov't Code, §2306.186(e);

(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 six percent of the QC Price.

(3) Within 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 QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. 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; and

(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.

(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 §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(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 any requested information 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. 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 approved 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 Development.

(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 monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this Chapter (relating to Compliance Monitoring).

5a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Emli at Liberty Crossing) Series 2017 Resolution No. 18-008 and a Determination Notice of Housing Tax Credits

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for the Emli at Liberty Crossing, sponsored by Tyler Weir, Richard Ashton, and Adrian Igelsias, was initially submitted to the Department in 2016 and was re-submitted in August 2017;

WHEREAS, the Board adopted the inducement resolution on March 31, 2016, and updated such resolution at the Board meeting of March 23, 2017;

WHEREAS, a Certification of Reservation was issued, in the amount of \$18,000,000, for Emli at Liberty Crossing on August 23, 2017, with a bond delivery deadline of January 20, 2018;

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

WHEREAS, EARAC recommends the issuance of Multifamily Housing Revenue Bonds (Emli at Liberty Crossing) Series 2017 and the issuance of Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of up to \$17,600,000 in tax-exempt Multifamily Housing Revenue Bonds (Emli at Liberty Crossing) Series 2017, Resolution No. 18-008 is hereby approved in the form presented to this meeting;

FURTHER RESOLVED, the issuance of a Determination Notice of \$1,230,776 in 4% Housing Tax Credits for Emli at Liberty Crossing, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website, is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The Bonds will be issued in accordance with Tex Gov't Code Chapter 1371, as amended, and under Tex Gov't Code Chapter 2306, as amended, the Department's Enabling Statute (the "Statute"), which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. The Statute provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Emli at Liberty Crossing is to be located at approximately 307 South Goode in Wilmer, Dallas County, and proposes the new construction of 240 units, serving the general population. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income ("AMFI") that must be served. Fifty-four of the 240 units will be rent and income restricted at 50% AMFI and the remaining 186 will be restricted at 60% AMFI. The development will serve the general population and the property conforms to current zoning. The census tract (0169.03) has a median household income of \$39,563, is in the fourth quartile, and has a poverty rate of 33.5%.

Organizational Structure and Previous Participation: The Borrower is Liberty Crossing TC I, LP and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a Medium Category 3 portfolio and the previous participation was deemed acceptable by EARAC after review and discussion.

Public Hearing/Public Comment: A public hearing for the proposed development was conducted by staff on November 1, 2016, and there were three people in attendance. A copy of the hearing transcript is included herein. The Department has received one letter of opposition from a member of the community and has not received any letters of support.

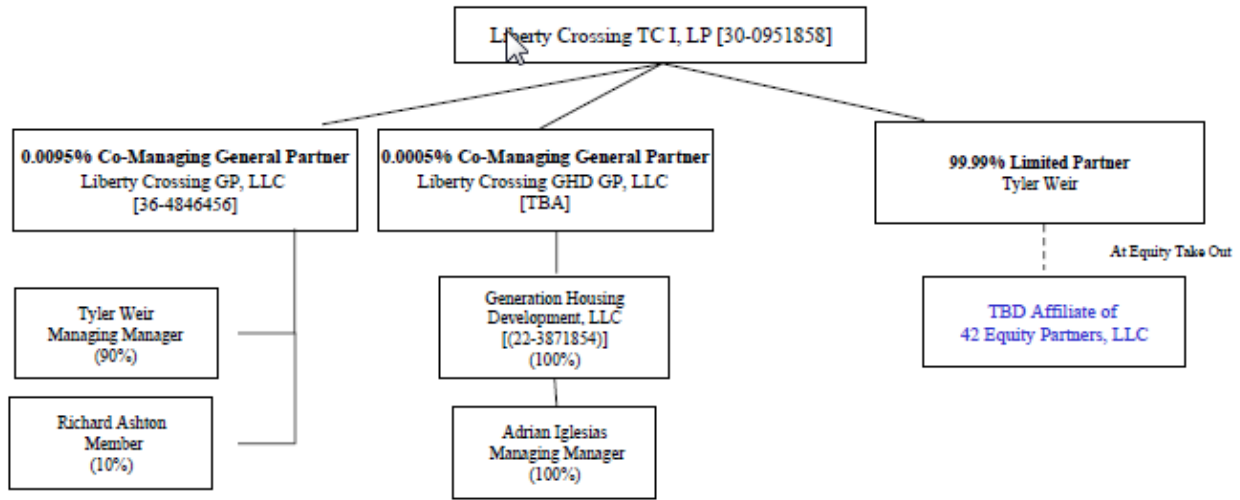
Summary of Financial Structure

This transaction involves an FHA 221(d)(4) loan originated by Barings Multifamily Capital, LLC and underwritten by Raymond James & Associates, Inc. which mirrors the financing structure used by several bond transactions previously approved by the Board. Under the proposed structure, the Department will issue short-term, tax-exempt fixed rate bonds in an amount not to exceed \$17,600,000 that will be collateralized with the proceeds of the taxable FHA mortgage loan. The bond proceeds will be utilized for project costs and as bond proceeds are drawn down, the proceeds from the FHA loan are simultaneously drawn and placed in an escrow account for the benefit of the bondholders. Given the cash collateralization, the transaction minimizes risk to the Department. The mortgage loan will be secured by eligible investments including obligations of the United States or money market mutual funds rated "AA+" at all times which offers protection to the bondholder.

The bond mortgage will be subordinate in lien position to the FHA mortgage but as previously indicated, the bond proceeds will also be cash collateralized as long as the bonds are outstanding. The bonds will remain outstanding during the construction period of approximately 24 months. The bonds will have a maximum interest rate of 2.5% and an initial mandatory tender date of November 1, 2019, at which time the bonds can be redeemed or remarketed until what is to be the expected maturity date of November 1, 2020. As the parties are still in the process of determining exactly what this will be, based on a number of factors, the final outside maturity date, as reflected in the Bond Resolution is November 1, 2022. Upon redemption

of the bonds, the FHA mortgage loan will remain and carry a 4.25% interest rate with a 40-year term and amortization.

Exhibit A



APPLICATION SUMMARY

| PROPERTY IDENTIFICATION | | RECOMMENDATION | | | | | |
|-------------------------|-----------------------|----------------|-------------------|-------------|-------------|--------------|--------|
| Application # | 17600 | TDHCA Program | Request | Approved | | | |
| Development | EMLI Liberty Crossing | | LIHTC (4% Credit) | \$1,230,776 | \$1,230,776 | \$5,128/Unit | \$0.97 |
| City / County | Wilmer / Dallas | | Amount | Rate | Amort | Term | Lien |
| Region/Area | 3 / Urban | TDHCA Bonds | \$17,600,000 | 2.50% | N/A | 2 | 1st |
| Population | General | | | | | | |
| Set-Aside | General | | | | | | |
| Activity | New Construction | | | | | | |

| KEY PRINCIPAL / SPONSOR | | |
|--|------------------|-------------|
| Liberty Multifamily - Richard Ashton Generation Housing Development - Adrian Iglesias | | |
| Related-Parties | Contractor - Yes | Seller - No |



| UNIT DISTRIBUTION | | | INCOME DISTRIBUTION | | |
|-------------------|------------|-------------|---------------------|------------|-------------|
| # Beds | # Units | % Total | Income | # Units | % Total |
| Eff | - | 0% | 30% | - | 0% |
| 1 | 84 | 35% | 40% | - | 0% |
| 2 | 84 | 35% | 50% | 54 | 23% |
| 3 | 60 | 25% | 60% | 186 | 78% |
| 4 | 12 | 5% | MR | - | ✓ |
| TOTAL | 240 | 100% | TOTAL | 240 | 100% |

| PRO FORMA FEASIBILITY INDICATORS | | | |
|----------------------------------|--------------|-----------------------|--------------|
| Pro Forma Underwritten | | Applicant's Pro Forma | |
| Debt Coverage | ✗ 1.15 | Expense Ratio | ✓ 44.6% |
| Breakeven Occ. | ⚠ 88.3% | Breakeven Rent | \$824 |
| Average Rent | \$889 | B/E Rent Margin | ⚠ \$65 |
| Property Taxes | \$875/unit | Exemption/PILOT | 0% |
| Total Expense | \$4,586/unit | Controllable | \$2,764/unit |



| MARKET FEASIBILITY INDICATORS | | | |
|----------------------------------|-------|----------|--------|
| Gross Capture Rate (10% Maximum) | | | ✓ 8.0% |
| Highest Unit Capture Rate | ⚠ 62% | 3 BR/60% | 48 |
| Dominant Unit Cap. Rate | ⚠ 49% | 1 BR/60% | 66 |
| Premiums (↑60% Rents) | N/A | | N/A |
| Rent Assisted Units | N/A | | |

| DEVELOPMENT COST SUMMARY | | | |
|--------------------------|------------|-------------------|--------------|
| Costs Underwritten | | Applicant's Costs | |
| Avg. Unit Size | 973 SF | Density | 11.4/acre |
| Acquisition | | \$07K/unit | \$1,764K |
| Building Cost | \$73.89/SF | \$72K/unit | \$17,255K |
| Hard Cost | | \$88K/unit | \$21,090K |
| Total Cost | | \$143K/unit | \$34,384K |
| Developer Fee | \$3,811K | (16% Deferred) | Paid Year: 4 |
| Contractor Fee | \$2,410K | 30% Boost | Yes |

| DEBT (Must Pay) | | | | | CASH FLOW DEBT / GRANT FUNDS | | | | | EQUITY / DEFERRED FEES | | |
|------------------------------|-------|-------|--------------|------|--------------------------------|------|------|--------|-----|--------------------------|-----------------------------|--------------|
| Source | Term | Rate | Amount | DCR | Source | Term | Rate | Amount | DCR | Source | Amount | |
| Barings FHA 221(d)(4) | 40/40 | 4.25% | \$21,843,500 | 1.15 | | | | | | 42 Equity Partners, LLC | \$11,937,334 | |
| | | | | | | | | | | Liberty Multifamily, LLC | \$603,497 | |
| TOTAL DEBT (Must Pay) | | | \$21,843,500 | | CASH FLOW DEBT / GRANTS | | | | \$0 | | TOTAL EQUITY SOURCES | \$12,540,830 |
| | | | | | | | | | | | TOTAL DEBT SOURCES | \$21,843,500 |
| | | | | | | | | | | | TOTAL CAPITALIZATION | \$34,384,330 |

CONDITIONS

- Receipt and acceptance by Cost Certification:
 - a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
 - b: Documentation that any management fee in excess of 3.5% of EGI will be subordinate to debt service.

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

| BOND RESERVATION / ISSUER | | AERIAL PHOTOGRAPH(S) | |
|--|--------------------------------|----------------------|--|
| Issuer | TDHCA | | |
| Expiration Date | 1/20/2018 | | |
| Bond Amount | \$18,000,000 | | |
| BRB Priority | Priority 3 | | |
| Expected Close | TBD | | |
| Bond Structure | Short-Term Cash Collateralized | | |
| RISK PROFILE | | | |
| STRENGTHS/MITIGATING FACTORS | | | |
| <ul style="list-style-type: none"> ▫ 16602 Gateway at Hutchins (336 unit development) is 100% preleased ▫ Developer experience | | | |
| WEAKNESSES/RISKS | | | |
| <ul style="list-style-type: none"> ▫ Within 6 miles of 16602 Gateway at Hutchins (336 unit development) | | | |
| AREA MAP | | | |
| | | | |

RESOLUTION NO. 18-008

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (EMLI AT LIBERTY CROSSING), SERIES 2017; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; 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, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction 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 described in the Act and determined by the Governing Board of the Department (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, 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, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (EmlI at Liberty Crossing), Series 2017 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and BOKF, NA, as trustee (the "Trustee"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to Liberty Crossing TC I, LP, a Texas limited partnership (the "Borrower") in order to finance the cost of the acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on March 31, 2016 and supplemented on March 23, 2017, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas;

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the cost of the acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Note") in an original principal amount equal to

the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Loan Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the “Bond Mortgage”) from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Borrower will obtain a first lien mortgage loan from Barings Multifamily Capital LLC (the “HUD Lender”), and the Board has determined that the HUD Lender, the Trustee, the Department and the Borrower will execute and deliver a Loan Disbursement Procedures Agreement (the “Disbursement Agreement”) pursuant to which the HUD Lender will deposit a portion of the proceeds of such first lien mortgage loan with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the “Regulatory Agreement”) with respect to the Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Tax Exemption Agreement (the “Tax Exemption Agreement”) to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Bonds, the Development, and the use and investment of Proceeds of the Bonds; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an Official Statement (the “Official Statement”) and to authorize the authorized representatives of the Department to deem the Official Statement “final” for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Official Statement as may be required to provide a final Official Statement for use in the public offering and sale of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Purchase Contract (the “Bond Purchase Agreement”) with Raymond James & Associates, Inc. (the “Underwriter”), and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Disbursement Agreement, the Official Statement and the Bond Purchase Agreement (collectively, the “Issuer Documents”), all of which are attached to and comprise a part of this Resolution and (b) the Bond Mortgage and the Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Bond Mortgage and the Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1

ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, and Chapter 1371, Texas Government Code, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That the Chair or Vice Chair of the Board or the Executive Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Bond Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by the Chair or Vice Chair of the Board or the Executive Director of the Department of the Indenture and the Bond Purchase Agreement; provided, however, that (i) the Bonds shall bear interest at the initial interest rate set forth in the Bond Purchase Agreement and thereafter shall bear interest at the rates determined from time to time by the Remarketing Agent (as such term is defined in the Indenture) in accordance with the provisions of the Indenture; provided that in no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; and provided further that the initial interest rate on the Bonds shall not exceed 2.5%; (ii) the aggregate principal amount of the Bonds shall not exceed \$17,600,000; (iii) the final maturity of the Bonds shall occur not later than November 1, 2022; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Bond Purchase Agreement shall not exceed 100% of the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined in Section 1.14 below) each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Loan Agreement. That the form and substance of the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement, and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.7 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Bond Purchase Agreement is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Bond Purchase Agreement and to

deliver the Bond Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Bond Purchase Agreement, as appropriate.

Section 1.8 Approval, Execution and Delivery of the Disbursement Agreement. That the form and substance of the Disbursement Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Disbursement Agreement, and to deliver the Disbursement Agreement to the HUD Lender, the Trustee and the Borrower.

Section 1.9 Acceptance of the Note and the Bond Mortgage. That the form and substance of the Note and the Bond Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Note to the order of the Trustee without recourse.

Section 1.10 Approval, Execution, Use and Distribution of the Official Statement. That the form and substance of the Official Statement and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Chair and Vice Chair of the Board and the Executive Director of the Department are hereby severally authorized to deem the Official Statement “final” for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution each are authorized hereby to make or approve such changes in the Official Statement as may be required to provide a final Official Statement for the Bonds; that the Authorized Representatives named in this Resolution each are authorized hereby to accept the Official Statement, as required; and that the use and distribution of the Official Statement by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Bond Purchase Agreement and as may be approved by the Executive Director of the Department and the Department’s counsel.

Section 1.11 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department’s seal to, and to deliver to the appropriate parties, all such other agreements, commitments, 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 they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.12 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.13 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

| | | |
|-----------|---|-------------------------|
| Exhibit B | - | Indenture |
| Exhibit C | - | Loan Agreement |
| Exhibit D | - | Regulatory Agreement |
| Exhibit E | | Tax Exemption Agreement |
| Exhibit F | - | Bond Purchase Agreement |
| Exhibit G | - | Note |
| Exhibit H | - | Bond Mortgage |
| Exhibit I | - | Official Statement |
| Exhibit J | - | Disbursement Agreement |

Section 1.14 Authorized Representatives. That the following persons are each 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 Deputy Executive Directors of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance of the Department, the Director of Texas Homeownership 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

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies 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 issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by the Department's Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director of the Department or any successor and the Department's consultants in seeking a rating from S&P Global Ratings, and its successors and assigns, is approved, ratified and confirmed hereby.

Section 2.5 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Raymond James & Associates, Inc., or any other party identified in the Bond Purchase Agreement.

Section 2.7 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the

requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) 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 Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 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.

[Execution page follows]

PASSED AND APPROVED this 12th day of October, 2017.

[SEAL]

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

EXHIBIT A

Description of Development

Borrower: Liberty Crossing TC I, LP, a Texas limited partnership

Development: The Development is a 240-unit affordable multifamily community to be known as Emli at Liberty Crossing, and to be located at approximately 307 S. Goode Road, Wilmer, Dallas County, Texas 75172. It consists of ten (10) residential apartment buildings with approximately 233,532 net rentable square feet. The unit mix will consist of:

| | |
|-------|------------------------------|
| 84 | one-bedroom/one-bath units |
| 84 | two-bedroom/two-bath units |
| 60 | three-bedroom/two-bath units |
| 12 | four-bedroom/two –bath units |
| <hr/> | |
| 240 | Total Units |

Unit sizes will range from approximately 760 square feet to approximately 1,203 square feet.

From: [rebecca.jones](mailto:rebecca.jones@tdhca.state.tx.us)
To: [Shannon.Roth](mailto:Shannon.Roth@tdhca.state.tx.us)
Subject: Re: Emli at Liberty Crossing application information
Date: Thursday, January 12, 2017 4:47:30 PM

This is in regards to the application of Emli at Liberty Crossing in Wilmer, Texas. I have several objections to this project.

My first objection is the fact that two members of the Wilmer Planning and Zoning Board own property within the distance at which people have to be notified if they object to a project. Both members own property across the street from the proposed project and one member has bought and is repairing a house that is also across the street. Both members voted on a stipulation that the project could not have an exit on South Goode Road which borders the east side of the project because that would cause heavier traffic to travel pass their homes. The only entrance and exit would be on the southbound service road of Interstate 45. No entrance or exit on South Goode Road is a safety issue. Neither member recused themselves from voting on the project which is a conflict of interest and also an ethics violation.

Another issue with this project is that the original public hearing that was done, was done not in the city of Wilmer but in the city of Ferris which is located six (6) miles further south on Interstate 45. The public notice hearing notice was placed in the Dallas Morning News and not in the local paper, The Ellis County Press. Citizens of Wilmer Texas were given no notice.

The City of Wilmer Texas is a small community of less than 4000 citizens. There is no public transportation system in the city. There are no plans in place to bring buses or DART to the area. We have one school, a pre-kindergarten only, located in the city. All other students are bused to schools in Hutchins and Dallas as part of the Dallas Independent School District. The next school is 6 miles away in Hutchins. Wilmer has no grocery stores, the closes being 6 miles away. The Emli at Liberty Crossing is being touted as a low income apartment complex. Yet with no public transportation, no close school system, and no grocery stores in the area, these apartments would not help but hinder low income residents.

Thank you for taking the time for reading my concerns.

Rebecca Jones
5712 south interstate highway 45
Wilmer Texas 75172

From: Shannon Roth <shannon.roth@tdhca.state.tx.us>
To: rebecca.jones <rbccjones@yahoo.com>
Cc: Teresa Morales <teresa.morales@tdhca.state.tx.us>
Sent: Thursday, January 5, 2017 7:36 AM
Subject: RE: Emli at Liberty Crossing application information

Hi Rebecca

You can forward any comment to my attention at this email.

Shannon Roth

Multifamily Housing Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3929
Fax: 512.475.1895

About TDHCA

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit www.tdhca.state.tx.us or the [Learn about Fair Housing in Texas](#) page.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

From: rebecca jones [mailto:rbccjones@yahoo.com]
Sent: Wednesday, January 04, 2017 5:39 PM
To: Shannon Roth
Subject: Re: Emli at Liberty Crossing application information

what email address do I use to submit comments to the TDHCA board about the Emlii at liberty crossing application. Thank you for your time

From: Shannon Roth <shannon.roth@tdhca.state.tx.us>
To: "lady.hawk.7@hotmail.com" <lady.hawk.7@hotmail.com>; "rbccjones@yahoo.com" <rbccjones@yahoo.com>
Cc: Teresa Morales <teresa.morales@tdhca.state.tx.us>
Sent: Tuesday, November 22, 2016 11:33 AM
Subject: Emli at Liberty Crossing application information

The Emli at Liberty Crossing application is currently planned to be on the TDHCA Board agenda on January 26, 2017. You may submit public comment in writing up to January 17, 2017. Comment will be accepted via email, US Mail or overnight carriers.

Below is the link to the TDHCA Multifamily Program Rules and Qualified Allocation Plan (QAP):

<http://www.tdhca.state.tx.us/multifamily/docs/16-QAP.pdf>
<http://www.tdhca.state.tx.us/multifamily/docs/16-QAP.pdf>

As I mentioned on the phone the Emli at Liberty Crossing application was submitted under our 4% Housing Tax Credit and Tax Exempt Bond Program, those items marked for Competitive HTC or 9% HTC only would not apply.

I have also included a link to the 2016 Project Income and Rent Tool; which will identify the

maximum income and rent limits for TDHCA administered properties participating in the housing tax credit and tax exempt bond programs. I have also attached a version of the document completed for the Emli at Liberty Crossing application.

<http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>

Thanks and have a good day.

Shannon Roth

Multifamily Housing Specialist

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3929

Fax: 512.475.1895

About TDHCA

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING

ON

EMLI AT LIBERTY CROSSING APARTMENTS

Ferris Public Library
301 East 10th Street
Ferris, Texas

4:00 p.m

Tuesday,
November 1, 2016

PRESIDING: SHANNON ROTH, TDHCA

ON THE RECORD REPORTING
(512) 450-0342

I N D E X

| <u>SPEAKER</u> | <u>PAGE</u> |
|----------------|-------------|
| Richard Ashton | 8 |
| Claire Verchot | 18 |

P R O C E E D I N G S

1
2 MS. ROTH: Okay. We will get started. My name
3 is Shannon Roth. I'm with Texas Department of Housing and
4 Community Affairs.

5 The role of the Department in this process is
6 to allow all interested persons in the surrounding
7 community the opportunity to provide comments on the
8 development we will be discussing this evening. The
9 format of this afternoon's hearing will be as follows.

10 First I will present the programs this
11 developer has applied for. Second, the developer, Mr.
12 Richard Ashton, will give a presentation of the specifics
13 on the development. And then lastly I will read the
14 speech required by the Internal Revenue Service. And at
15 the conclusion of the speech, we will open the floor for
16 public comment.

17 We have handouts back on the table for you.
18 We have a multifamily affordable rental housing handout; a
19 couple of handouts regarding the development specifics,
20 which includes income levels; also a handout containing
21 some deadlines for input and how to submit that input.

22 We have a handout regarding our email listserv
23 subscription, which allows you the opportunity to sign up
24 to receive emails for applications that we have received
25 for funding. We have a handout regarding some fair

1 housing basics, as well as -- I don't believe I got the
2 business cards put out, but I can get those out before we
3 leave here.

4 If you would like to speak, there are witness
5 affirmation forms available on the table. Please fill it
6 out and give it back to me prior to speaking.

7 The sign-in sheets are also on the table.
8 Please be sure you sign in. That's our only way of
9 knowing exactly how many people we have in attendance.

10 Also, there is a column for you to select
11 whether or not you are in support or opposition of the
12 development. And if neither box is checked, then we will
13 assume your opinion is neutral.

14 The entire hearing and all of the comments this
15 evening are being made and transcribed by a court
16 reporter. It's important that you make your comments up
17 close at the microphone so she can record your comments.
18 Any comments and questions made from the audience may not
19 be picked up on the record.

20 And to allow for everybody the opportunity to
21 speak, we will answer any questions or concerns that are
22 raised at the end, after all the comment has been made. I
23 am going to ask that the developer keep a list of
24 questions that comes up as it relates to the development.

25

1 And then I will keep a list of the questions that come up
2 as it relates to the Department and our role. And if I
3 can't answer this for you, I will just take your email
4 address and get back with you tomorrow.

5 According to the IRS Code, the Department is
6 required to hold a public hearing to take public comment.

7
8 The mission of the Department is to help Texans
9 achieve and improve quality of life through the
10 development of better communities. The two programs the
11 developer has applied for include the Private Activity
12 Bond program, and the Housing Tax Credit program.

13 Both programs were created by the federal
14 government to encourage private industry to build quality
15 housing that is affordable to individuals and families
16 with lower-than-average incomes.

17 The private activity bond program refers to the
18 issuance of the tax exempt bonds. Tax exemption is not an
19 exemption of the property tax but rather an exemption to
20 the purchaser of the bonds. The bond purchaser does not
21 have to pay taxes on their investment and the income they
22 make on that investment.

23 The bond purchaser accepts a lower rate of
24 return. Therefore, the lender that is involved will
25 charge a lower interest rate for the mortgage that will be

1 placed on the property. Therefore, the developer can
2 build a market-rate property at a lower cost in
3 development.

4 The Housing Tax Credit program is another
5 program that goes along with the bond program. It was
6 created as a result of the Tax Reform Act of 1986. The
7 Housing Tax Credit is a credit or reduction in tax
8 liability each year for ten years for investors in
9 affordable rental housing.

10 By providing a credit against the tax
11 liability, the housing tax credit is an incentive for
12 individuals and corporations to invest in the construction
13 or rehabilitation of housing for low-income families. The
14 housing tax credit provides additional financing to the
15 development and lowers the building cost, which allows the
16 developer to provide lower rents to affordable tenants.

17 In conclusion, with both these programs, the
18 tax benefit goes to the investors to help finance the
19 development. The two programs result in the developer
20 being able to bring something of higher quality to your
21 area. All of these properties are privately owned and
22 privately managed.

23 There are ongoing oversight responsibilities
24 between the affordable housing developments and the
25 Department. This includes regular monitoring to ensure

1 the development is complying with the rules of the housing
2 tax credit and the private activity bonds program.

3 The term that the developments will be
4 monitored for is the greater of 30 years or as long as the
5 bonds are outstanding. Oversight responsibilities include
6 making sure units are occupied by eligible households, the
7 physical appearance of the properties, rents being capped
8 at appropriate levels, and repair reserve accounts
9 established and funded.

10 Tenant background checks are established by the
11 developer and would apply to all tenants equally.
12 Developer can establish procedures up to and including
13 eviction for various reasons consistent with state
14 eviction laws that would apply to any other apartment
15 complex. TDHCA does not set these requirements.

16 The Department's Compliance Division monitors
17 the development every two years. Desk reviews are done
18 either quarterly or annually by the Department and are a
19 modified version of an onsite visit.

20 The Department will verify the set-asides were
21 met and that the units and income are rent- and income-
22 restricted. After lease-up, a survey is usually done to
23 determine the tenant profile and the types of services
24 that would be of interest to the tenants.

25 These services can include tutoring, honor

1 roll, computer access, ESL or GED classes, financial
2 planning, down payment assistance. So that's kind of just
3 a little brief overview of the programs.

4 Now, Richard, if you want to give a brief
5 presentation of the development, that would be great. And
6 if you will just state your name first, for the record,
7 and then we will be good.

8 MR. ASHTON: Hi. I am Richard Ashton with
9 Liberty Multifamily. And we are developing a master-
10 planned community in Wilmer, along I-45 from Beltline to
11 Mars Road. It's about a 100-acre master-planned
12 community.

13 The first component is what we are here for
14 tonight, which is the apartment complex. It's 252 units
15 in 10 buildings and one separate community center. The
16 community center will have a technology center that will
17 be ran by the Leadership Development Council, which is a
18 nonprofit that provides supportive service programs to the
19 residents free of charge.

20 Once the initial residents move in, we will
21 conduct a survey to see the selection and mix of programs
22 that are recommended by the residents. Typical programs
23 that we have done on comparable properties are career
24 workforce readiness, GED programs, ESL, career workforce
25 readiness, Century 21 After-school programs, cooking, and

1 even parenting classes.

2 The development -- on the first of your package
3 is a rendering -- an actual rendering from the
4 construction plans. It will have a mix of masonry
5 materials and Hardie materials.

6 We have developed comparable properties like
7 this throughout the Metroplex and find that doing a
8 public-private partnership is a very effective way for us
9 to develop a higher-quality product, because we can
10 monetize the tax benefits and get an investment from the
11 private marketplace.

12 We also have quite a bit of oversight, because
13 TDHCA, they oversee the property to make sure that we are
14 compliant, we are following fair housing laws, that the
15 property is in good condition. We also have compliance by
16 the lender, the private lender RockHall Funding. We have
17 compliance and oversight by the equity investors.

18 Tonight we are here for the TEFRA hearing on
19 the bonds. Specifically the bonds will be a cash
20 collateralized mortgage. So at all times while the bonds
21 are outstanding, there will be cash in an account that
22 collateralizes the exact amount of the bond outstanding.
23 When construction is completed and after the development
24 is placed in service, and after a few years, the bonds
25 will be paid off with the FHA loan.

1 MS. WRIGHT: How many years have you got? How
2 many years for the bond?

3 MR. ASHTON: It is probably two to three years
4 that they will be outstanding; maybe a little bit longer.

5 MS. VERCHOT: Is that considered more of a
6 bridge loan, or is that going to be a regular mortgage
7 rates on that, commercial loan?

8 MR. ASHTON: The bonds are used for
9 construction, so it is not technically a bridge loan.

10 MS. VERCHOT: Okay.

11 MS. WRIGHT: How many units is there going to
12 be?

13 MR. ASHTON: 252 units.

14 MS. WRIGHT: 252? Okay. Is this going to be
15 subsidized housing by the Government?

16 MR. ASHTON: We will receive no direct subsidy.

17 MS. WRIGHT: Okay.

18 MS. VERCHOT: Is there going to be any kind of
19 public transportation that you foresee for this
20 development?

21 THE REPORTER: I'm sorry; I can't hear you.

22 MS. ROTH: Yes. Could you -- yes. If you have
23 a question, please come up and state your name, because we
24 need to get that on the record. If you will state your
25 name.

1 MS. VERCHOT: I didn't know if you were doing
2 the presentation yet.

3 MR. ASHTON: Yes.

4 MS. VERCHOT: Oh, you are? Should I ask a
5 couple of questions, now?

6 MR. ASHTON: Yes.

7 MS. VERCHOT: Okay.

8 THE REPORTER: Thank you.

9 MS. VERCHOT: I am Claire Verchot, your basic
10 Ellis County citizen.

11 I got a loud enough mouth --

12 THE REPORTER: What was your first name?

13 MS. VERCHOT: Claire.

14 THE REPORTER: Claire.

15 MS. VERCHOT: Claire Verchot.

16 THE REPORTER: Thank you.

17 MS. VERCHOT: Just a couple of brief questions,
18 if I may, Mr. Ashton. Do you foresee any public
19 transportation down to your development there, from Dallas
20 or --

21 MR. ASHTON: It would be nice if public
22 transportation is developed there. I know that the City
23 of Wilmer has looked into some potential options for
24 transportation. But rather than waiting on the City, we
25 are going to take some steps where we have reached out to

1 area employers such as Proctor and Gamble, and met with
2 them.

3 And they are right across the street from our
4 apartment complex. And some potential discussions are
5 coordinating a bus stop, where we have a bus stop at our
6 property, and then P&G has, you know, a receiving
7 facility.

8 That has not been finalized, but it is
9 something that we are researching to see what is the level
10 of interest of area employers that are in Wilmer, because
11 there isn't any workforce housing in Wilmer.

12 And when we met with P&G, they mentioned that,
13 you know, they have got 600 employees at the Mars Road
14 facility. And they have problems retaining employees
15 because there is not any housing in Wilmer. They have to
16 move down to Ferris, or they have to go to Dallas.

17 But in Wilmer there isn't any housing. And so
18 there is a very high turnover rate. And this is part of a
19 solution that also is a longer-term plan that, in addition
20 to our apartment complex, we will be developing some other
21 services that are needed in Wilmer.

22 For instance, medical, retail, restaurants; you
23 know, hotel. All of the services that really are needed
24 in the city. And once we have the density of housing on a
25 master tract, then all of the other types of real estate

1 can start to fall into place.

2 MS. WRIGHT: Do you have anything to show just
3 where you are going to put this from Wilmer city limits
4 down, or where is going to go? Where are you going to
5 make your development?

6 MR. ASHTON: I don't have a map with me, but
7 it's on I-45 --

8 MS. WRIGHT: Yes.

9 MR. ASHTON: -- starting at Mars Road, going up
10 to Beltline on the east side of the highway. So there are
11 a few out-parcels that are not in the planned development,
12 but the majority of the land is included in it.

13 MS. VERCHOT: I thought I saw some survey
14 markers out there. Did you have a -- is there any kind of
15 preliminary surveys that have been done already? I
16 thought I saw some property staked.

17 MR. ASHTON: Yes. We are surveying it.

18 MS. VERCHOT: Yes. That is what I thought.

19 MR. ASHTON: Yes. We are surveying, topo-ing.
20 And, yes, we've got a lot of work to do.

21 MS. VERCHOT: That's kind of exciting.

22 MS. WRIGHT: I talk to Ralph Frayder [phonetic]
23 almost every day. I do have some knowledge up there, but
24 is this going to be subsidized housing for low income, or
25 is it going to be market value?

1 MR. ASHTON: There is no direct subsidy from
2 the Government, although we are utilizing a public-private
3 partnership program.

4 So Section 8 is a program that has some
5 negative attachment to it, for reasons, and not all
6 Section 8 is bad. But it does have some negative attached
7 to it. This is not a Section 8 program. Section 8 is
8 something where you see when the Government -- 100 percent
9 the Government tries to come up with a solution.

10 This is a public-private partnership. We do
11 receive assistance from TDHCA in housing tax credits. In
12 exchange, we must make commitments. And so our
13 commitments and these promises that we are making is that
14 we will cap the rents and the income to 60 -- the rents
15 are capped. And then the income of the residents that can
16 live at the apartment complex are limited to 60 percent of
17 the area median income at the time. So it is to capture
18 workforce housing.

19 Now, the residents must pay all of the rent.
20 We don't receive any subsidy for the rent, so the resident
21 has to have a job. They have to earn the income, and they
22 have to pay all of the rent. And so, in exchange for
23 doing a public good, which is -- you know, in Wilmer, we
24 cannot charge 12- to \$1400 a month for a one-bedroom.

25 It is just not going to work, because when we

1 met with P&G, the average income of a P&G employee is
2 around in the 30,000s, and so we are developing housing
3 for the workforce that is in the community.

4 MS. ROTH: You have the sample rents in your
5 handout. Right? Yes.

6 MR. ASHTON: Yes. The sample rents are in the
7 handout.

8 MS. ROTH: Yes.

9 MR. ASHTON: The rents range from \$774 to
10 \$1,114.

11 MS. VERCHOT: That is actually very reasonable
12 for a one-one. I know what the rents are around here.
13 Very reasonable, 807 for a one-one. I have another
14 question. Are you done, Carol?

15 MS. WRIGHT: Sure.

16 MS. VERCHOT: Okay. It just has to do with the
17 building itself. And I know this is only an artist's
18 rendering. Do you plan on having any kind of solar
19 energy, putting in solar panels, any kind of green
20 attachment to the buildings, the development?

21 MR. ASHTON: We will have sustainable features
22 with Energy Star rated appliances, low-flow-volume water
23 fixtures and you know, window shades. We may look into
24 some solar alternatives. We have not made any
25 commitments. We have not included that in the design.

1 But that is something that could be a possibility, if not
2 on this development, on some other phases of the master-
3 planned community. Solar may be something that we look
4 into.

5 MS. WRIGHT: So, in other words, we are just
6 talking because there is nothing set out right now. You
7 have nothing. Right?

8 MR. ASHTON: As far as in solar?

9 MS. WRIGHT: Yeah. As far as where you are
10 going to go. What is going to happen?

11 MR. ASHTON: Yes. Solar is not included in our
12 current plans.

13 MS. WRIGHT: Okay.

14 MR. ASHTON: Not that we -- you know, we have
15 looked at it, but it is not included in our current plans.

16 MS. ROTH: Okay. I will go ahead and read the
17 IRS required speech. And then I will open the floor if
18 you guys have any more comment.

19 MS. VERCHOT: I'm sorry. What did you have?

20 MS. ROTH: I am going to go ahead and read the
21 speech that the IRS requires us to read into the record.
22 And then if you have some more questions or public
23 comment, we can open the floor back up.

24 MS. VERCHOT: Okay.

25 MS. ROTH: Good evening. My name is Shannon

1 Roth. I would like to proceed with the public hearing.
2 Let the record show that it is 4:25 p.m., Tuesday November
3 1, 2016. We are at the Ferris Public Library, located at
4 301 East 10th Street, Ferris, Texas 75125.

5 I am here to conduct the public hearing on
6 behalf of the Texas Department of Housing and Community
7 Affairs with respect to an issuance of tax-exempt
8 multifamily revenue bonds for a residential rental
9 community.

10 This hearing is required by the Internal
11 Revenue Code. The sole purpose of this hearing is to
12 provide a reasonable opportunity for interested
13 individuals to express their views regarding the
14 development and the proposed bond issue.

15 No decisions regarding the development will be
16 made at this hearing. The Department's Board is scheduled
17 to meet to consider this transaction on December 15, 2016.

18 In addition to providing your comments at this hearing,
19 the public is also invited to provide comment directly to
20 the Board at any of their meetings. The Department staff
21 will also accept written comments from the public up to
22 5:00 p.m. on December 6, 2016.

23 The bonds will be issued as tax-exempt
24 multifamily revenue bonds in the aggregate principal
25 amount not to exceed \$25 million in taxable bonds, if

1 necessary, in an amount to be determined and issued in one
2 or more series by the Texas Department of Housing and
3 Community Affairs, the issuer.

4 The proceeds of the bond will be loaned to
5 Liberty Crossing, TC 1, LP, or a related person or
6 affiliate entity thereof to finance a portion of the costs
7 of acquiring, constructing and equipping a multifamily
8 rental housing community described as follows: a 252-unit
9 multifamily residential rental development to be
10 constructed on approximately 21.61 acres of land located
11 at approximately 307 South Good Road, Dallas County, Texas
12 75172.

13 The proposed multifamily rental housing
14 community will be initially owned and operated by the
15 borrower or a related person or affiliate thereof. So now
16 we can open the floor for public comment if you ladies
17 have any other questions?

18 (No response.)

19 MS. ROTH: Comments?

20 MS. VERCHOT: I will make a public comment.

21 Thank you for coming. We have been waiting a long time
22 for the development to come down this way. I don't know
23 why it hasn't come sooner.

24 I saw all the shipping, when the intermodal
25 went in, and now we have all those big companies coming

1 in, and I knew they had no place to live.

2 We get calls all the time at the house. My
3 husband has a couple of rent houses, and we just can't get
4 people -- I mean housing anymore. So thank you so much
5 for coming down.

6 MS. ROTH: Great.

7 MS. VERCHOT: I did have another question.

8 MS. ROTH: Okay. Could you just state your
9 name for the record, to go with your comment. I'm sorry.

10 MS. VERCHOT: Claire Verchot, V-E-R-C-H-O-T.

11 THE REPORTER: Did you sign in?

12 MS. VERCHOT: I did.

13 THE REPORTER: I will get it of that. Thank
14 you.

15 MS. VERCHOT: Can I just ask a quick question
16 now? So you have had some other retail developments like
17 this. And you say that you are going to bring in some
18 restaurants and things.

19 What kinds of restaurants are you talking?
20 Popeye's and Burger King? Are you talking something a
21 little more -- have you partnered with any other --

22 MR. ASHTON: The master-planned community is a
23 really large site; it's 108 acres.

24 And so we're looking for a mix of different
25 kinds of restaurants. You know, so everything from fast

1 casual to sit-down restaurants to even something like a
2 Randy Travis barbecue.

3 MS. VERCHOT: Great.

4 MR. ASHTON: He is interested in doing a
5 barbecue place.

6 MS. VERCHOT: Super. Thank you.

7 MS. ROTH: Great. Okay. Thank you for
8 attending this hearing. All of your comments have been
9 recorded. And the meeting is now adjourned. It is
10 4:29 p.m.


11 (Whereupon, at 4:29 p.m., the meeting was
12 concluded.)

C E R T I F I C A T E

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IN RE: EMLI at Liberty Crossing Apartments
LOCATION: Ferris, Texas
DATE: November 1, 2016

I do hereby certify that the foregoing pages, numbers 1 through 21, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Barbara Wall before the Texas Department of Housing and Community Affairs.



(Transcriber) 11/3/2016
(Date)

On the Record Reporting
3636 Executive Cntr Dr., G22
Austin, Texas 78731

5b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Springs Apartments) Series 2017 Resolution No. 18-009 and a Determination Notice of Housing Tax Credits

RECOMMENDED ACTION

WHEREAS, the Board adopted the inducement resolution on June 29, 2017;

WHEREAS, a 4% Housing Tax Credit application for the Springs Apartments, sponsored by LDG Development, was submitted to the Department on June 30, 2017;

WHEREAS, a Certification of Reservation was issued, in the amount of \$20,000,000, on July 27, 2017, with a bond delivery deadline of December 24, 2017; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of Multifamily Housing Revenue Bonds (Springs Apartments) Series 2017 and the issuance of Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of up to \$20,000,000 in tax-exempt Multifamily Housing Revenue Bonds (Springs Apartments) Series 2017, Resolution No. 18-009 is hereby approved in the form presented to this meeting;

FURTHER RESOLVED, the issuance of a Determination Notice of \$1,314,707 in 4% Housing Tax Credits for Springs Apartments, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website, is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The Bonds will be issued in accordance with Tex. Gov’t. Code Chapter 1371, as amended, and under Tex. Gov’t. Code Chapter 2306, as amended, the Department’s Enabling Statute (the “Statute”), which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. The Statute provides that the Department’s revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Springs Apartments is to be located at approximately 4702 Ambassador Way in Balch Springs, Dallas County, and proposes the new construction of 221 units. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (“AMFI”) that must be served. All of the units will be rent and income restricted at 60% AMFI. The development will serve the general population and the property conforms to current zoning. The census tract (0172.02) has a median household income of \$36,674, is in the fourth quartile, and has a poverty rate of 24.4%.

Organizational Structure and Previous Participation: The Borrower is LDG Springs Apartments, LP and includes the entities and principals as illustrated in Exhibit A. The applicant’s portfolio is considered a Large Category 2 and the previous participation was deemed acceptable by EARAC without further review or discussion.

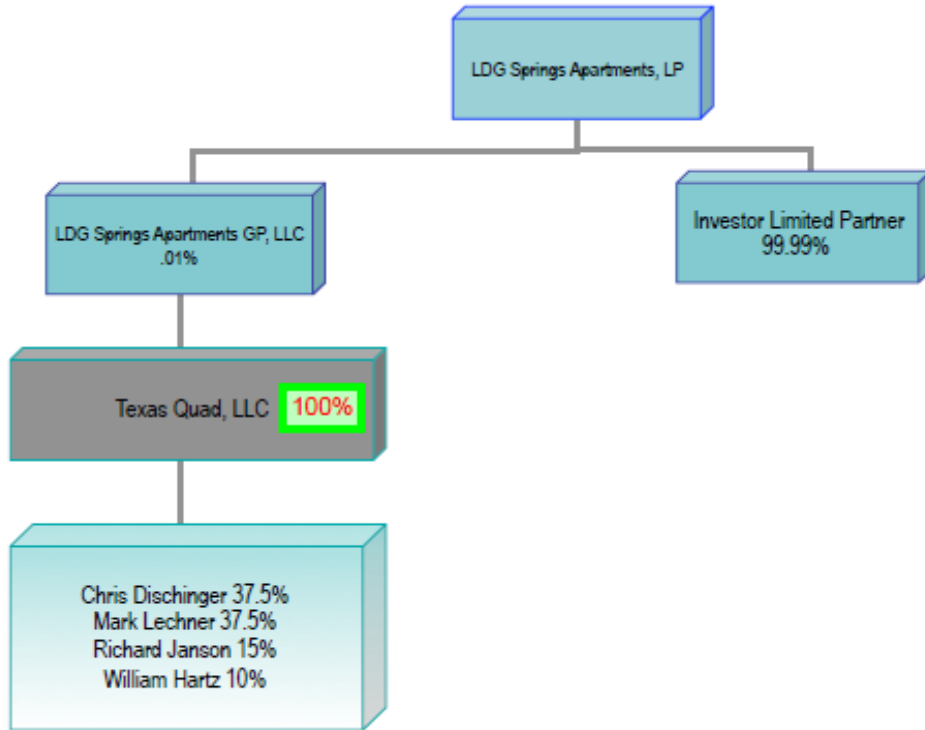
Public Hearing/Public Comment: A public hearing for the proposed development was conducted by staff on September 28, 2017. There were twelve people in attendance, the majority of which signed in as opposed to the development. A copy of the hearing transcript is included herein along with the public comment received.

Summary of Financial Structure

This transaction involves an FHA 221(d)(4) loan originated by Mason Joseph Company, Inc. and subsequently assigned to Red Mortgage Capital as lender, and underwritten by Stifel, Nicolaus & Company, Inc. which mirrors the financing structure used by several bond transactions previously approved by the Board. Under the proposed structure, the Department will issue short-term, tax-exempt fixed rate bonds in an amount not to exceed \$20,000,000 that will be collateralized with the proceeds of the taxable FHA mortgage loan. The bond proceeds will be utilized for project costs and as bond proceeds are drawn down, the proceeds from the FHA loan are simultaneously drawn and placed in an escrow account for the benefit of the bondholders. Given the cash collateralization, the transaction minimizes risk to the Department. The mortgage loan will be secured by eligible investments including obligations of the United States or money market mutual funds rated “AA+” at all times which offers protection to the bondholder.

The bond mortgage will be subordinate in lien position to the FHA mortgage but as previously indicated, the bond proceeds will also be cash collateralized as long as the bonds are outstanding. The bonds will remain outstanding through the expected construction period of 24 months, and will then be redeemed. The bonds will have a maximum interest rate of 2.5% and an outside maturity date of December 1, 2022 with provisions for the bonds to be initially tendered prior to this date. Upon redemption of the bonds, the FHA mortgage loan will remain and carry a 3.80% interest rate with a 40-year term and amortization.

Exhibit A



17602 Springs Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION

October 5, 2017

| PROPERTY IDENTIFICATION | | RECOMMENDATION | | | | | |
|-------------------------|------------------------|----------------------|--------------|-------------|--------------|--------|------|
| Application # | 17602 | TDHCA Program | Request | Recommended | | | |
| Development | Springs Apartments | LIHTC (4% Credit) | \$1,314,707 | \$1,314,707 | \$5,949/Unit | \$0.95 | |
| City / County | Balch Springs / Dallas | | Amount | Rate | Amort | Term | Lien |
| Region/Area | 3 / Urban | | | | | | |
| Population | General | | | | | | |
| Set-Aside | General | | | | | | |
| Activity | New Construction | FHA 221 (d)(4) Bonds | \$20,000,000 | 2.50% | | | |

| KEY PRINCIPAL / SPONSOR | | |
|--|------------------|-------------|
| LDG/William Hartz-Developer | | |
| Xpert Design & Construction/William Hartz-Contractor | | |
| Related-Parties | Contractor - Yes | Seller - No |

TYPICAL BUILDING ELEVATION/PHOTO

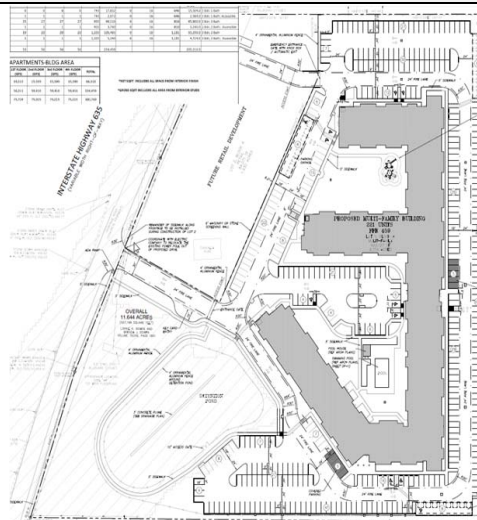


| UNIT DISTRIBUTION | | | INCOME DISTRIBUTION | | |
|-------------------|------------|-------------|---------------------|------------|-------------|
| # Beds | # Units | % Total | Income | # Units | % Total |
| Eff | - | 0% | 30% | - | 0% |
| 1 | 28 | 13% | 40% | - | 0% |
| 2 | 110 | 50% | 50% | - | 0% |
| 3 | 83 | 38% | 60% | 221 | 100% |
| 4 | - | 0% | MR | - | 0% |
| TOTAL | 221 | 100% | TOTAL | 221 | 100% |

PRO FORMA FEASIBILITY INDICATORS

| Pro Forma Underwritten | | Applicant's Pro Forma | |
|------------------------|--------------|-----------------------|--------------|
| Debt Coverage | 1.15 | Expense Ratio | 45.3% |
| Breakeven Occ. | 85.9% | Breakeven Rent | \$866 |
| Average Rent | \$934 | B/E Rent Margin | \$68 |
| Property Taxes | \$955/unit | Exemption/PILOT | 0% |
| Total Expense | \$4,797/unit | Controllable | \$2,820/unit |

SITE PLAN



MARKET FEASIBILITY INDICATORS

| | |
|----------------------------------|-------------------|
| Gross Capture Rate (10% Maximum) | 9.0% |
| Highest Unit Capture Rate | 40% 2 BR/60% 110 |
| Dominant Unit Cap. Rate | 40% 2 BR/60% 110 |
| Premiums (↑60% Rents) | # DIV/0! # DIV/0! |
| Rent Assisted Units | N/A |

DEVELOPMENT COST SUMMARY

| Costs Underwritten | | Applicant's Costs | |
|--------------------|------------|-------------------|---------------|
| Avg. Unit Size | 1,061 SF | Density | 22.8/acre |
| Acquisition | \$06K/unit | | \$1,250K |
| Building Cost | \$76.85/SF | \$82K/unit | \$18,018K |
| Hard Cost | | \$99K/unit | \$21,961K |
| Total Cost | | \$169K/unit | \$37,455K |
| Developer Fee | \$4,084K | (78% Deferred) | Paid Year: 13 |
| Contractor Fee | \$2,985K | 30% Boost | Yes |

| DEBT (Must Pay) | | | | | CASH FLOW DEBT / GRANT FUNDS | | | | | EQUITY / DEFERRED FEES | |
|------------------------------|-------|-------|---------------------|------|--------------------------------|------|------|------------|-----|-----------------------------|---------------------|
| Source | Term | Rate | Amount | DCR | Source | Term | Rate | Amount | DCR | Source | Amount |
| Mason Joseph FHA 221 (d)(4) | 40/40 | 3.80% | \$21,763,400 | 1.15 | | | | | | Boston Financial | \$12,489,715 |
| | | | | | | | | | | LDG Multifamily, LLC | \$3,202,350 |
| | | | | | | | | | | TOTAL EQUITY SOURCES | \$15,692,065 |
| | | | | | | | | | | TOTAL DEBT SOURCES | \$21,763,400 |
| TOTAL DEBT (Must Pay) | | | \$21,763,400 | | CASH FLOW DEBT / GRANTS | | | \$0 | | TOTAL CAPITALIZATION | \$37,455,465 |

CONDITIONS

- 1 Receipt and acceptance before Determination Notice:
- Certification that if the site is in the 100-year floodplain when it places in service, the finished ground floor elevation of the buildings will be at least one foot above the floodplain and that all drives, parking and amenities will be no more than 6 inches below the floodplain; and that the Owner will provide flood insurance coverage for the buildings and for the residents' personal property until such time that the site is officially designated to be no longer in the floodplain.
- 2 Receipt and acceptance by Cost Certification:
- a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
 - b: Certification that testing for asbestos (and/or) lead-based paint was performed on the existing structure(s) prior to demolition, and if necessary, a certification that any appropriate abatement procedures were implemented by a qualified abatement company.
 - c: Architect certification that buildings were tested for the presence of radon and any recommended mitigation measures were implemented.
 - d: Architect or engineer certification (including a Letter of Map Amendment "LOMA" or Letter of Map Revision "LOMR-F") indicating that the development is not within the 100 year floodplain; or 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.
- For any buildings remaining in the floodplain, documentation that flood insurance is in place both for the buildings and for the residents' personal property at the property owner's expense; and certification from the owner that flood insurance for the buildings and for the residents' personal property will remain in force until such time that the buildings are officially designated as no longer in a floodplain.

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

BOND RESERVATION / ISSUER

| | |
|-----------------|----------------|
| Issuer | TDHCA |
| Expiration Date | 12/24/2017 |
| Bond Amount | \$20,000,000 |
| BRB Priority | Priority 3 |
| Close Date | na |
| Bond Structure | FHA 221 (d)(4) |

RISK PROFILE

STRENGTHS/MITIGATING FACTORS

- Developer experience
- Good location to highways/Dallas
- Low expense ratio

WEAKNESSES/RISKS

- Low DCR

AERIAL PHOTOGRAPH(S)



RESOLUTION NO. 18-009

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (SPRINGS APARTMENTS), SERIES 2017; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; 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, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction 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 described in the Act and determined by the Governing Board of the Department (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, 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, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Springs Apartments), Series 2017 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and BOKF, NA, as trustee (the "Trustee"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to LDG Springs Apartments, LP, a Texas limited partnership (the "Borrower") in order to finance the cost of the acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on June 29, 2017, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas;

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the cost of the acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Note") in an original principal amount equal to

the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Loan Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the "Bond Mortgage") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Borrower will obtain a first lien mortgage loan from Red Mortgage Capital, LLC (the "HUD Lender"), and the Board has determined that the HUD Lender, the Trustee, the Department and the Borrower will execute and deliver a Loan Disbursement Procedures Agreement (the "Disbursement Agreement") pursuant to which the HUD Lender will deposit a portion of the proceeds of such first lien mortgage loan with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Tax Exemption Agreement (the "Tax Exemption Agreement") to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Bonds, the Development, and the use and investment of Proceeds of the Bonds; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an Official Statement (the "Official Statement") and to authorize the authorized representatives of the Department to deem the Official Statement "final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Official Statement as may be required to provide a final Official Statement for use in the public offering and sale of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Purchase Contract (the "Bond Purchase Agreement") with Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Disbursement Agreement, the Official Statement and the Bond Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Bond Mortgage and the Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Bond Mortgage and the Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1

ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, and Chapter 1371, Texas Government Code, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That the Chair or Vice Chair of the Board or the Executive Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Bond Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by the Chair or Vice Chair of the Board or the Executive Director of the Department of the Indenture and the Bond Purchase Agreement; provided, however, that (i) the Bonds shall bear interest at the initial interest rate set forth in the Bond Purchase Agreement and thereafter shall bear interest at the rates determined from time to time by the Remarketing Agent (as such term is defined in the Indenture) in accordance with the provisions of the Indenture; provided that in no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; and provided further that the initial interest rate on the Bonds shall not exceed 2.5%; (ii) the aggregate principal amount of the Bonds shall not exceed \$20,000,000; (iii) the final maturity of the Bonds shall occur not later than December 1, 2022; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Bond Purchase Agreement shall not exceed 100% of the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined in Section 1.14 below) each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Loan Agreement. That the form and substance of the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement, and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.7 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Bond Purchase Agreement is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Bond Purchase Agreement and to

deliver the Bond Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Bond Purchase Agreement, as appropriate.

Section 1.8 Approval, Execution and Delivery of the Disbursement Agreement. That the form and substance of the Disbursement Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Disbursement Agreement, and to deliver the Disbursement Agreement to the HUD Lender, the Trustee and the Borrower.

Section 1.9 Acceptance of the Note and the Bond Mortgage. That the form and substance of the Note and the Bond Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Note to the order of the Trustee without recourse.

Section 1.10 Approval, Execution, Use and Distribution of the Official Statement. That the form and substance of the Official Statement and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Chair and Vice Chair of the Board and the Executive Director of the Department are hereby severally authorized to deem the Official Statement “final” for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution each are authorized hereby to make or approve such changes in the Official Statement as may be required to provide a final Official Statement for the Bonds; that the Authorized Representatives named in this Resolution each are authorized hereby to accept the Official Statement, as required; and that the use and distribution of the Official Statement by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Bond Purchase Agreement and as may be approved by the Executive Director of the Department and the Department’s counsel.

Section 1.11 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department’s seal to, and to deliver to the appropriate parties, all such other agreements, commitments, 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 they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.12 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.13 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

| | | |
|-----------|---|-------------------------|
| Exhibit B | - | Indenture |
| Exhibit C | - | Loan Agreement |
| Exhibit D | - | Regulatory Agreement |
| Exhibit E | - | Tax Exemption Agreement |
| Exhibit F | - | Bond Purchase Agreement |
| Exhibit G | - | Note |
| Exhibit H | - | Bond Mortgage |
| Exhibit I | - | Official Statement |
| Exhibit J | - | Disbursement Agreement |

Section 1.14 Authorized Representatives. That the following persons are each 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 Deputy Executive Directors of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance of the Department, the Director of Texas Homeownership 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

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies 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 issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by the Department's Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director of the Department or any successor and the Department's consultants in seeking a rating from S&P Global Ratings, and its successors and assigns, is approved, ratified and confirmed hereby.

Section 2.5 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Stifel, Nicolaus & Company, Incorporated, or any other party identified in the Bond Purchase Agreement.

Section 2.7 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the

requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) 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 Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 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.

[Execution page follows]

PASSED AND APPROVED this 12th day of October, 2017.

[SEAL]

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

EXHIBIT A

Description of Development

Borrower: LDG Springs Apartments, LP, a Texas limited partnership

Development: The Development is a 221-unit affordable multifamily community to be known as Springs Apartments and to be located at 4702 Ambassador Way, Balch Springs Texas 75180. It consists of one (1) residential apartment building with approximately 205,244 net rentable square feet. The unit mix will consist of:

| | |
|-------|------------------------------|
| 28 | one-bedroom/one-bath units |
| 110 | two-bedroom/two-bath units |
| 83 | three-bedroom/two-bath units |
| <hr/> | |
| 221 | Total Units |

Unit sizes will range from approximately 743 square feet to approximately 1,335 square feet.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING
ON
ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS
RELATING TO
SPRINGS APARTMENTS

Auditorium
Balch Springs Library Learning Center
12450 Elam Road
Balch Springs, Texas

Thursday,
September 28, 2017
6:10 p.m.

BEFORE: ELIZABETH HENDERSON, Hearing Officer

ON THE RECORD REPORTING
(512) 450-0342

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MS. HENDERSON: My name is Elizabeth Henderson. I'm a program specialist with the Texas Department of Housing and Community Affairs. My role at the department is to review applications; that's primarily what I and my team do.

And the role of the department in this process is to allow all interested persons in the surrounding community the opportunity to provide comments on the development we will be discussing this evening.

I'm going to be doing a lot of reading, a nice little stack. The format of this evening's hearing will be as follows. First I will present the programs the developer has applied for.

Second, the developer or member of the development team will give a presentation on the specifics of the development, and lastly I will read a speech required by the Internal Revenue Service, and at the conclusion of the speech, the floor will be open for public comment.

There are handouts for you here, and I think most of you have already picked a few of them up. We have the multifamily affordable rental housing handout. We have a couple of handouts regarding the development specifics, which includes income levels; and also a

1 handout containing deadlines for input and how to submit
2 input.

3 We have a handout regarding email listserv
4 subscription, which allows you the opportunity to sign up
5 to receive emails on applications we receive for funding.

6 We have a handout regarding fair housing
7 basics, and we have business cards with Teresa Morales's
8 contact information on them. She is the 4 percent
9 administrator for the Housing Tax Credit Program.

10 If you'd like to speak, there are witness
11 affirmation forms available on the back table right
12 outside the door. Please fill out the form and hand it to
13 me prior to speaking.

14 There are sign-in sheets, also, on the back
15 table, so please be sure to sign in if you have not.
16 That's the only of knowing exactly how many people are in
17 attendance here.

18 Also, there are columns for you to check on the
19 far right-hand side of the sign-in sheet, to indicate
20 whether you support or oppose this development. If
21 neither box is checked, the we will consider your opinion
22 as being neutral, so please make sure a box is checked.

23 The entire hearing and all of the comments made
24 here this evening will be transcribed by a court reporter.

25 It is important that you make your comments at the

1 microphone, which is right up here, so that she can record
2 your comments. Any comments or questions made from the
3 audience may not be picked up on the record.

4 To allow everyone the opportunity to speak, we
5 will answer any questions or concerns that were raised at
6 the end, after all public comment has been made.

7 I ask that the developer keep a list of any
8 questions that come up as it relates to the development,
9 and I will keep a list of questions that come up as it
10 relates to the department and our role.

11 According to the IRS code, the department is
12 required to hold a public hearing and take public comment.

13 The mission of the department is to help Texas achieve an
14 improved quality of life through the development of better
15 communities.

16 The two programs the developer has applied for
17 include the Private Activity Bond Program and the Housing
18 Tax Credit Program. Both programs were created by the
19 federal government to encourage private industry to build
20 quality housing that is affordable to individuals and
21 families with lower-than-average income.

22 The Private Activity Bond Program refers to the
23 issuance of tax-exempt bonds. The tax exemption is not an
24 exemption of property tax but rather an exemption to the
25 purchaser of the bonds.

1 The bond purchaser does not have to pay taxes
2 on their investment and the income they make on that
3 investment. The bond purchaser accepts a lower rate of
4 return; therefore, the lender that is involved will charge
5 a lower rate of interest for the mortgage that will be
6 placed on the property to the developer. Therefore, the
7 developer can build a market-rate property at a lower cost
8 to the development.

9 The Housing Tax Credit is another program that
10 goes along with the bond program. The housing tax credit
11 was created as a result of the Tax Reform Act of 1986.
12 The housing tax credit is a credit or reduction in tax
13 liability each year for 10 years for investors in
14 affordable rental housing.

15 By providing a credit against the tax
16 liability, the housing tax credit is an incentive for
17 individuals and corporations to invest in the construction
18 or rehabilitation of housing for low-income families.

19 The housing tax credit provides additional
20 financing to the development and lowers building costs,
21 which allows the developer to provide lower rents to
22 affordable tenants.

23 In conclusion, with both of these programs, the
24 tax benefit goes to the investors that help finance the
25 development. These two programs result in the developer

1 being able to bring something of high quality to your
2 area. And all of these properties are privately owned and
3 privately managed.

4 There are ongoing oversight responsibilities
5 between the affordable-housing developments and the
6 department. This includes regular monitoring to ensure
7 the development is complying with the rules of the Housing
8 Tax Credit and Private Activity Bond Program.

9 The term that the developments will be
10 monitored for is the greater of 30 years or as long as the
11 bonds are outstanding.

12 Oversight responsibilities include units are
13 occupied by eligible households, physical appearance,
14 rents are kept at appropriate levels, repair reserve
15 accounts are established and funded. Tenant background
16 checks -- credit, criminal, et cetera -- are established
17 by the developer and would apply to all tenants equally.

18 The developer can establish procedures up to
19 and including eviction for various reasons consistent with
20 state eviction laws that would be applicable to any other
21 apartment complex. TDHCA does not set these requirements.

22 The department's Compliance Division monitors
23 the development. Desk reviews are done either quarterly
24 or annually by the department and are a modified version
25 of an onsite visit.

1 The department verifies that the set-asides
2 were met -- i.e., low income and eligible tenants or
3 special needs -- and that units are income- and rent-
4 restricted.

5 After lease-up, a survey is usually done to
6 determine the tenant profile and the types of services
7 that would be of interest to the tenants. These services
8 can include tutoring, honor roll programs, computer
9 access, educational classes, after-school activities,
10 summer camps, healthcare screening, immunizations for
11 school children, ESL and GED certification, financial
12 planning, credit counseling, down-payment assistance.

13 It is important to note that all or most
14 individuals begin in multifamily housing; it is the first
15 step to home ownership. Therefore, some developers could
16 choose to provide down-payment assistance classes to help
17 educate the tenants on steps they can take toward home
18 ownership.

19 And that's our introduction, and this is the
20 IRS statement. And does anyone else have a witness
21 affirmation form that they want to hand in before I read
22 that?

23 (Pause.)

24 MS. HENDERSON: TEFRA hearing, Springs
25 Apartments, September 28, 2017. I've already said my

1 name.

2 I would like to proceed with the public
3 hearing. Let the record show that it is 6:07 p.m.,
4 Thursday, September 28, 2017, and we are in the City of
5 Balch Springs Public Library Learning Center located at
6 12450 Elam Road, Balch Springs, Texas 75180.

7 I am here to conduct a public hearing on behalf
8 of the Texas Department of Housing and Community Affairs
9 with respect to an issue of tax-exempt multifamily revenue
10 bonds for a residential rental community.

11 This hearing is required by the Internal
12 Revenue Code. The sole purpose of this hearing is to
13 provide a reasonable opportunity for interested
14 individuals to express their views regarding the
15 development and the proposed bond issue.

16 No decisions regarding the development will be
17 made at this hearing. The Department's board is scheduled
18 to meet to consider the transaction on October 12, 2017.
19 In addition to providing your comments at this hearing,
20 the public is also invited to provide comment directly to
21 the board at any of their meetings.

22 The bonds will be issued as tax-exempt
23 multifamily revenue bonds in the aggregate principal
24 amount not to exceed \$20 million and taxable bonds, if
25 necessary, in an amount to be determined and issued in one

1 or more series by the Texas Department of Housing and
2 Community Affairs, the Issuer.

3 The proceeds of the bonds will be loaned to LDG
4 Springs Apartments, LP, or a related person or affiliate
5 entity thereof, to finance a portion of the cost of
6 acquiring, constructing, and equipping a multifamily
7 rental housing development described as follows: a 221-
8 unit multifamily residential rental development to be
9 constructed on approximately 9.71 acres of land located at
10 approximately 4702 Ambassador Way, Dallas County, Texas
11 75180. The proposed multifamily rental housing community
12 will be initially owned and operated by the borrower or a
13 related person or affiliate thereof.

14 I would now like to open the floor for public
15 comment after you make your presentation. So I will be
16 collecting more forms. If anyone has one, just hold it
17 up, and I'll be watching the audience to pick it up.

18 Okay.

19 MR. TREVINO: My name is Jason Trevino with LDG
20 Development, and Elizabeth just went through my whole
21 summary.

22 Like she said, it's a 221-unit, four-story,
23 interior-corridor building located at 4702 Ambassador Way.

24 The monthly rents are on your sheet as follows: one-
25 bedroom, 826; two-bedroom, 991; and three-bedroom, 1,145.

1 Income restrictions, this is the most a family for that
2 household can make. I won't read all those out, but y'all
3 can see them there.

4 The closing time line, we expect to close
5 October 31, and construction completion on April 1, 2019.

6 Total cost of the development is \$37 million.

7 The next pages are just examples of our
8 properties. And like I said, that's all I have. I mean,
9 I can answer questions.

10 MS. HENDERSON: Does anybody have a question
11 for him?

12 MS. NORWOOD: This rent amount, is this the --

13 THE REPORTER: I'm sorry. You'll have to get
14 close to a --

15 MS. HENDERSON: Ma'am. Will you come up to the
16 microphone.

17 MR. TREVINO: Do you mind coming up here?

18 MS. HENDERSON: That she can -- it will go into
19 the recording.

20 MS. NORWOOD: Oh, I'm sorry. I just meant this
21 as a little question.

22 THE REPORTER: And what's your name?

23 MS. NORWOOD: Billie Norwood, B-I-L-L-I-E.

24 The rents you have here, is that the rent that
25 any -- that someone who did not have low income would pay,

1 or is that the discounted rent?

2 MR. TREVINO: That's the rent that anybody who
3 qualifies would -- either one-, two-, or three-bedroom --
4 is going to pay.

5 MS. NORWOOD: No matter what their income would
6 be? I'm trying to find out if that's the discounted
7 amount or if that's the rate that anyone who had a good
8 high income --

9 MR. TREVINO: Well, with tax-credit properties,
10 if you look at the next board here --

11 MS. NORWOOD: I see that -- I saw that.

12 MR. TREVINO: Not everybody will qualify.

13 MS. NORWOOD: Okay.

14 MR. TREVINO: So you can have an income up to
15 that amount if you're a one-person household.

16 MS. NORWOOD: So this is the discounted.

17 MR. TREVINO: Correct.

18 MS. NORWOOD: That was my question.

19 MR. TREVINO: Okay. No problem.

20 MS. NORWOOD: Thank you.

21 MS. HENDERSON: Thank you.

22 VOICE: The acoustics are terrible in this
23 room. Everyone's going to have to speak up.

24 THE REPORTER: These don't amplify.

25 MS. HENDERSON: I don't guess there's much we

1 can do. We don't have microphones.

2 MR. TREVINO: I can come forward whenever
3 somebody asks a question.

4 MS. HENDERSON: But it's important that people
5 here you in here, but also that what you're saying goes
6 into the record, because the Board is the one whose ears
7 you really want. So make sure when you get ready to make
8 your comments, as I call you up, that you do come up here
9 so that the information you want to provide will go to the
10 people who are actually going to use it.

11 Did anybody else have a question? I can repeat
12 the question up here if that will help, because my mouth
13 is a little bigger.

14 MS. NORWOOD: Could you go back over after 10
15 years. I didn't quite understand that as far as the taxes
16 that they're not going to be paying. Is that correct? Am
17 I hearing that correctly?

18 MS. HENDERSON: The 10 years is the number of
19 years that they get the benefit of having the tax credit.
20 So what a tax credit actually is a credit against the
21 income tax burden of the person or the entity who owns
22 them.

23 MS. NORWOOD: Correct.

24 MS. HENDERSON: So what the -- so those will be
25 available for use for 10 years for the people who invest

1 and get them.

2 MS. NORWOOD: Okay.

3 MS. HENDERSON: Y'all have good questions. Any
4 other questions?

5 (No response.)

6 MS. HENDERSON: Okay. So now we're going to go
7 to the public comment, and again, if you would, please
8 come up to the podium here. There's a mic here that is
9 dedicated for your comments to be made.

10 Our first person who will be speaking today is
11 James T. Dodson. So if you would, come on up.

12 MR. DODSON: Can you all hear me?

13 VOICE: Yes.

14 MR. DODSON: Good. I'd like to say, from the
15 very beginning, these hearings are very important, and I
16 think it is the responsibility of the city to work with
17 the state agency to notify people that these hearings are
18 going to take place.

19 I mean, this project deserves more people than
20 this. And the only reason I found out about it, because
21 someone saw it on the internet, and he told me about the
22 meeting. And then I tried to spread the word.

23 But it should be more efficient and more
24 official than that.

25 Anyhow, I'm a realtor. I've worked in Balch

1 Springs for 20 years, and over this time I've seen
2 apartments being built as the need arose. There are very
3 few -- I don't know of any spec apartment projects.

4 But up to this point I think that approach has
5 pretty well taken care of the need of apartments in the
6 city.

7 This -- when I first heard about this project
8 in early January, I wrote to the council members, and I
9 told them I didn't think it was a very good idea, and I
10 certainly haven't changed my mind.

11 But right now in Balch Springs, there's
12 probably 2200 apartment units. This project is proposing
13 220 units. That is one-tenth of all the apartment units
14 in the city. That's just this whatever its name is going
15 to be. Spring -- what's the name of the project?

16 MS. HENDERSON: Springs Apartments.

17 MR. DODSON: Spring what?

18 MS. HENDERSON: Springs.

19 MR. DODSON: Springs Apartments. Okay. And I
20 understood this same developer is talking about one up on
21 Beltline with 176.

22 Well, if you add 176 and 220, that is a lot of
23 apartments, and that comes about to 18 percent of all the
24 apartments in the city. Now, how is anybody going to fill
25 those apartments? That should be a prime concern of the

1 city.

2 Right now the occupancy, I understand, is
3 around, oh, 90 percent, give or take a little. And I
4 think that's great. The City should be happy about that,
5 and the developers should be happy about it.

6 But what if you bring 620 units in here? Just
7 the 620, let alone the 176 -- what's that going to do to
8 the occupancy of the other apartments? Where are those
9 500 units -- where are the occupants for the 500 and -- or
10 220 units going to come from?

11 A lot of them are going to come from the
12 nextdoor apartments, Ambassador Apartments. Some will
13 probably come from Spring Oaks. And maybe there'll be a
14 few new people coming in.

15 But Balch Springs doesn't have the reputation
16 of having lots of people. The city really hasn't grown
17 very much at all in the last 10 or 20 years, not anything
18 compared to some of the other suburbs in the Dallas area.

19 So I don't think the developer can expect a
20 great influx of people wanting to live in these units, so
21 a lot of those people are going to be moving from existing
22 units. So that's -- from a city standpoint, that's not
23 going to help at all.

24 We don't want these existing apartment
25 complexes to go bankrupt just because their tenants are

1 moving someplace else.

2 In addition to just the sheer number of
3 apartments, 520, it's the composition of the apartment --
4 I mean, the one-, two-, three-, four-bedroom units -- that
5 really blew my mind.

6 I didn't bring enough of these for everyone,
7 but I did a little chart, and it says that there's 28 one-
8 bedroom units, 108 two-bedroom units, and the three-
9 bedroom units, there's 84. I understand that this
10 developer expects to be housing a lot of younger kids that
11 are going to be going to DISD.

12 But if you turn those -- the number of bedrooms
13 into people, you could get 992 living in that building:
14 992. That's legal people. I mean, that's two persons per
15 bed and one bed in each room. That's a lot of people.
16 It's going to be bedlam.

17 So just the sheer number of apartments and the
18 number of people I think are a big, big problem. I'm sure
19 the City has talked about this; P&Z must have talked about
20 it. But it must not have made a very big impression on
21 them.

22 But to me I think it's a very important
23 consideration to realize how this apartment complex is
24 going to be. It's not just the people -- 992 people.
25 Let's say half of them have cars. The whole problem of

1 parking has already been brought up. They're proposing
2 400-and-some parking spaces.

3 And just think of all those cars moving hither
4 and yon 24 hours a day. It's going to be a real problem.

5 The location of the complex is another big
6 consideration. The complex is at the southern end of
7 Ambassador Way. Ambassador Way is the major north-south
8 street in that -- it's called Fairway East subdivision,
9 and it's almost 50 years old.

10 All the streets are 25 foot from curb to curb.

11 And almost -- I think all of them have front-entry
12 garages, and if you come down at nights and on weekends,
13 you'll see that there are lots and lots of vehicles parked
14 on both sides of the street on Ambassador Way and all the
15 other side streets, from Bishop all the way north up to
16 King and Queen.

17 So I think you not only have the people that
18 are already living in the Ambassador Apartments, but
19 you're going to have lots and lots of people coming down
20 this street right out here, Ambassador Way.

21 And in addition to just the living facilities,
22 they're proposing I think a good-sized convenience store.

23 And there are going to be people coming in from other
24 directions to that convenience store, and that'll just add
25 to the problem of traffic.

1 But I think the City really has to seriously
2 consider the possibility of eliminating parking on
3 Ambassador Way or, at the very least, parking on one side
4 of the street, because, remember, it's only 25 feet wide.

5 MS. HENDERSON: Mr. Dodson, could you wrap up,
6 please.

7 MR. DODSON: The other consideration as far as
8 the location of the apartment goes is where it's situated
9 in reference to Hickory Creek, which is just over to the
10 west of the development.

11 Every spring Ambassador floods, particularly at
12 the southern end. And you don't have a copy of the site
13 plan, but it shows where the 100-year floodplain is.

14 I did this little map and drew it in in blue
15 and it shows exactly where the floodplain is. The
16 floodplain comes up Ambassador to the entrance -- actually
17 it's past the entrance to these apartments.

18 Now, we don't know how many times there are
19 going to be big floods, but we know every spring there is
20 flooding on Ambassador Way. And this development is not
21 going to help the situation.

22 Even if they put in a big retention pond that
23 will catch this water in a big rainstorm, the whole --
24 there -- the whole development is almost 12 acres. That's
25 raw land, and when it's raining, that water has been

1 soaking in and they still had big floods at the end of
2 Ambassador Way.

3 If this development is in, you're going to have
4 rooftops, lots of concrete from sidewalks and the parking
5 lots. All that water is going to go right down Hickory --
6 not Hickory Creek -- Ambassador Way, and even the 100-year
7 floodplain might not be adequate to reflect how high that
8 water is going to be coming north, up towards Elam Road.

9 MS. HENDERSON: Thank you, Mr. Dodson. I'll
10 let somebody else speak now.

11 Is most of that in your writeup that you gave?

12 MR. DODSON: Beg pardon?

13 MS. HENDERSON: Is most of that in your writeup
14 that you provided?

15 MR. DODSON: Uh-huh.

16 MS. HENDERSON: Okay. So the Board will get
17 that. Thank you.

18 MR. DODSON: I got one other thing.

19 MS. HENDERSON: Mr. Dodson, we're going to let
20 Ms. Vinson speak now, please.

21 MR. DODSON: Just one minute.

22 The site plan shows 9.7 acres. That is an
23 incorrect figure, because the 9.7 includes the -- almost
24 2-1/2 acres that's going to be in a floodplain. So
25 actually you're going to have 992 people living on

1 essentially seven acres in a four-story building, which I
2 don't think is good.

3 Thank you.

4 MS. HENDERSON: Thank you.

5 Next we'll have Ms. Stephanie Vinson.

6 MS. VINSON: Good evening. My name is
7 Stephanie Vinson.

8 The reason that I am opposed to the
9 development, for one, it changes the demographic, and it
10 also is going to create what is already overcrowded in the
11 school system, which is also going to increase the crime
12 rate, which I think or I feel that our police department
13 will not be able to handle.

14 I'm going to keep it simple and sweet. And I
15 asked about the taxes, because they're benefitting on the
16 taxes, which means that if you're a homeowner -- I'm a
17 homeowner; my property taxes are going to go up. So
18 that's a big concern for me.

19 And that's all I have at this time.

20 MS. HENDERSON: Thank you.

21 MS. VINSON: Sure.

22 MS. HENDERSON: And I want to clarify, too.
23 The tax credit isn't against property tax. So whether
24 they're having to pay property tax or not will depend
25 on -- are you all using a nonprofit in this?

1 MR. TREVINO: No. We're paying taxes.

2 MS. HENDERSON: So unless they qualify for a
3 specific exemption completely outside of the tax credit,
4 the tax credit goes to income tax, not property tax. So
5 those are two separate -- so they will be responsible for
6 property taxes on that site, unless they get an exemption
7 somehow that we don't know about yet.

8 But at this point in time they're expected to
9 pay property tax on that site.

10 And our last person, unless someone else speaks
11 up, is Ms. Keytha Harris.

12 MS. HARRIS: Hi. My name is Keytha Harris. I
13 am the property manager at Spring Oaks Apartments. Again,
14 I'll be brief as well.

15 I, like Mr. Dodson and Ms. Vinson, oppose this
16 development, and I'll just give a couple of reasons why.
17 My property currently, right now, is suffering as it
18 relates to occupancy.

19 It's the end of the month. We're nearing 90-
20 percent occupation by the beginning of the month, which
21 Monday, the 2nd, I have five move-ins -- move-outs; I'm
22 sorry -- scheduled, which is going to take me well below
23 90 percent.

24 And even with that 90 percent, that 80
25 percent -- we're talking about mid-to-high-80-percent --

1 my property right now is satiated with what I like to call
2 nonquality residents.

3 And what I mean by that is quite a few of my
4 residents are trouble residents, for the reason I say that
5 is because of I'm dealing with issues ranging from
6 nonpayment of rent, drug activity, public disturbances.

7 And I'm in a position at 80 percent, at mid-to-
8 high 80 percent, where I'm having to decide on a month-to-
9 month basis who to evict, which lesser of the evils do I
10 need to evict?

11 Do I keep the guy with the drug activity and
12 keep the nonpayer or do I -- you know what I mean? And so
13 for me, as a property manager who -- I want to service my
14 customer, but I want to make sure that if we're bringing
15 in more units, we have, you know, quality folks that we
16 can house, you know, within those units.

17 The other thing is the turnover. I think I
18 mentioned this month solely -- I mean, next month I have
19 five units that are going to be moving out, but on a
20 regular basis, on average, my property's turnover annually
21 is about 65 percent.

22 So we are regularly moving people out and
23 trying to find qualified residents to house these units
24 that we have. And so these are just a few of the reasons
25 that I, as the property manager of Spring Oaks Apartments,

1 not to be confused with Spring Apartments, am opposed to
2 this development.

3 MS. HENDERSON: Thank you.

4 And our last person is Mr. Steven Gorwood.

5 MR. GORWOOD: Good afternoon. I'm not really
6 opposed or in support of this either way, but I'm kind of
7 a numbers guy, and I do have two comments I really want to
8 get onto the record.

9 One is this particular unit, with the number of
10 bedrooms it has, I do not believe it has enough parking
11 spaces to serve the units. I would expect you're going to
12 get an overflow parking situation that will go onto the
13 street, blocking the street, and into the neighboring
14 Ambassador Apartments.

15 I think that that is going to be a problem
16 coming up for the City. I just don't think it has enough
17 parking units.

18 The other is they're talking about putting two
19 units, and I realize this is just for this one unit. But
20 as alluded to by previous speakers, total occupancy is a
21 problem.

22 As occupancy rate goes down in the various
23 complexes, other complexes -- not necessarily this one,
24 but other complexes -- are going to be required to keep
25 their occupancy up.

1 They will stop screening candidates. We've
2 this happen before. When apartment occupancy drops
3 because of an influx of units or for other reasons, crime
4 rate goes up dramatically, because other units within the
5 city stop screening their tenants.

6 And you can just track occupancy rate of
7 complexes and the crime rate with an inverse relationship.

8 So if you're going to build this one, that's fine, but
9 please don't do both units, because that's going to drop
10 our occupancy rate down below a critical level.

11 Thank you.

12 MS. HENDERSON: Thank you.

13 Did anyone else have comments they wanted to
14 make?

15 (No response.)

16 MS. HENDERSON: Any at all?

17 (No response.)

18 MS. HENDERSON: Okay. All right. And as I'm
19 about to close the meeting out, let me thank you all for
20 being here.

21 The last bond hearing I did, nobody came, so
22 this is actually a record for a bond hearing. Nine
23 percent, which is the other tax credit that we do, usually
24 will get a little more attention, but I've not seen this
25 many people at a bond hearing, and I'm really glad you all

1 made the trip worthwhile coming down here.

2 Thank you for attending this hearing. Your
3 comments have been recorded. The meeting is now
4 adjourned, and the time is now 6:36, by my watch. And
5 everyone is dismissed.

6 (Whereupon, at 6:36 p.m., the public hearing
7 was concluded.)

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C E R T I F I C A T E

IN RE: Springs Apartments

LOCATION: Balch Springs, Texas

DATE: September 28, 2017

I do hereby certify that the foregoing pages, numbers 1 through 27, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Barbara Wall before the Texas Department of Housing and Community Affairs.

/s/ Laurel H. Stoddard 10/4/2017
(Transcriber) (Date)

On the Record Reporting
3636 Executive Ctr Dr., G-22
Austin, Texas 78731



WITNESS AFFIRMATION FORM

Texas Department of Housing and Community Affairs
P.O. Box 13941, Austin, TX 78711-3941 Phone: (512) 475-3800

UPON COMPLETION OF THIS FORM, PLEASE RETURN TO DEPARTMENT STAFF.
PLEASE PRINT LEGIBLY.

I want to appear and offer testimony, in so appearing, I hereby make the following statements:

Date of Statement: Sept. 28, 2017 Location of Hearing: Baldch Springs

My name is: James T. Dodson

My occupation, profession or business is: Realtor

My mailing address is: 3516 Pruitt Ave Phone: 214-275-6360
Dallas, TX 75229

In appearing before this body, I represent: myself or the following persons, firms, corporations, classes or groups:

Their business address is: _____

I wish to make the following written statements: (Attach additional sheet(s) if extra space is needed.)

There is no shortage of apartments in
Baldch Springs. The proposed 200 apartments
are not needed.

If this statement is in regard to a specific TDHCA development or application, also provide the following information:

TDHCA Development #: _____ Development Name: _____

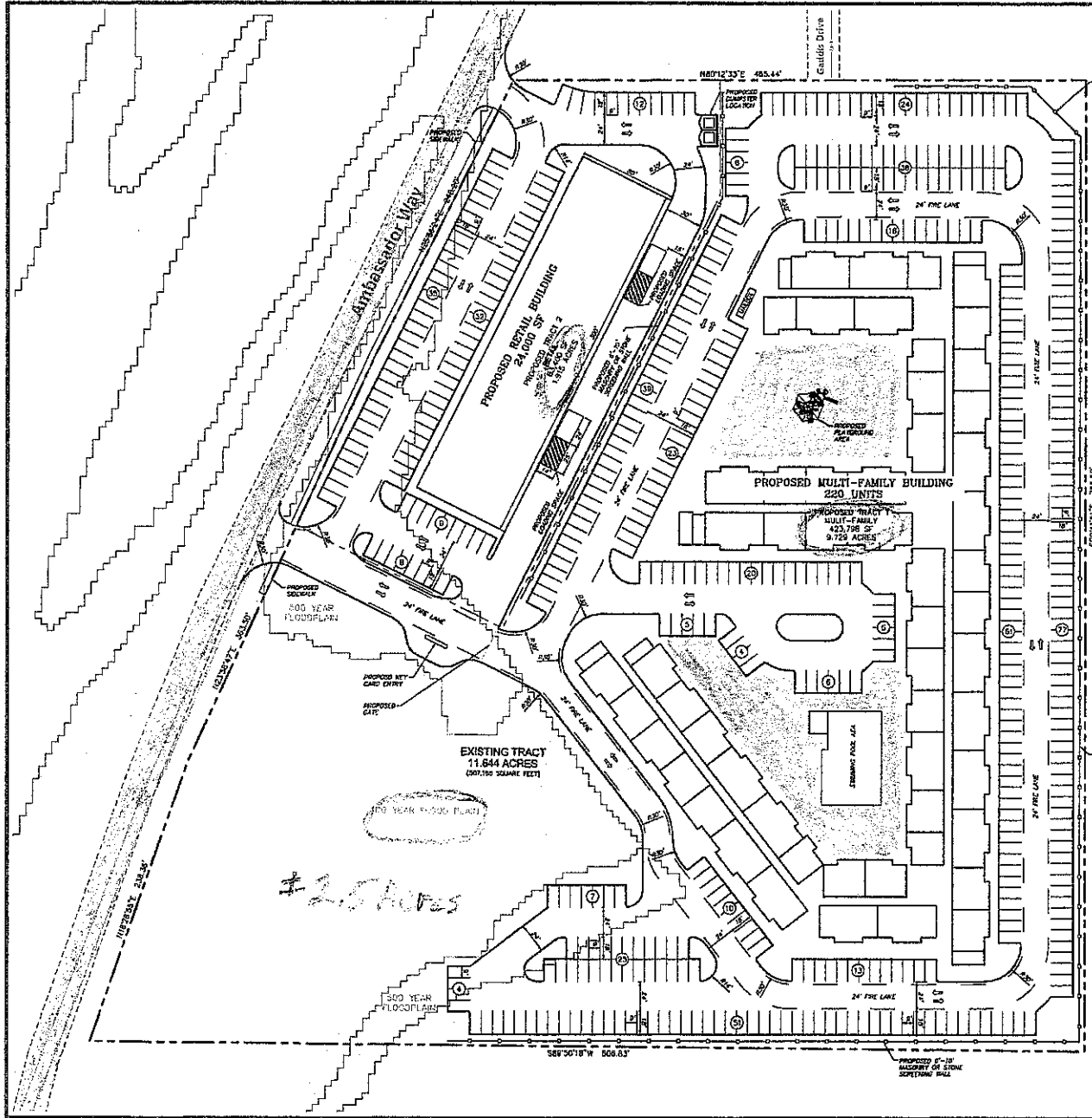
Development City: Baldch Springs I support this development. I oppose this development.

I hereby certify that the above statements by me are true and accurate, and that I have listed all persons, firms, corporations, classes, or groups that I represent in reference to the matters on which I am appearing. I further certify that the testimony I give before this body will be true and accurate.

James T. Dodson
Signature of Witness

Sept. 28, 2017
Date

Note: At the discretion of the Department, the length of time available for each public comment may be limited.



Apartment Units

- 1 Bdrm—28 Beds— 56 persons
 - 2 Bdrm—108 Beds—432 persons
 - 3 Bdrm—84 Beds—504 persons
- =====
- 992

Max. No. of persons with
2 persons per bed

LEGEND

- PROPERTY BOUNDARY
- PROPOSED LOT BOUNDARY
- PROPOSED FIRE LAKE
- PROPOSED SCREENING WALL
- PARKING SPACES

PARKING SUMMARY

| 9.7 ACRE MULTI-FAMILY SITE | | | |
|----------------------------|-------------|-------|---------|
| UNIT TYPE | SPACES/UNIT | UNITS | PARKING |
| 2 BED ROOM | 1.5 | 108 | 162 |
| 3 BED ROOM | 2 | 84 | 168 |
| 1 BED ROOM | 1 | 28 | 28 |
| GUEST PARKING | | 0.2 | 220 |
| TOTAL SPACES REQUIRED | | | 402 |
| PROPOSED SPACES | | | 425 |
| 1.9 ACRE COMMERCIAL SITE | | | |
| TOTAL SPACES REQUIRED | | | 58 |
| PROPOSED SPACES | | | 58 |

Concept Site Plan

DUNAWAY
300 Liberty Avenue • Suite 100 • North Beach, Texas 77629
Tel: 281.485.1111 • Fax: 281.485.1112

11.644 Acre Multi-Family & Retail Tracts
4702 Ambassador Way
Bellaire, Texas

PRELIMINARY FOR REVIEW ONLY
THESE DOCUMENTS ARE FOR PRELIMINARY REVIEW AND NOT FOR CONSTRUCTION. DUNAWAY AND ASSOCIATES, INC. IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. ONLY WORK PREPARED BY OR UNDER THE SUPERVISION OF DUNAWAY AND ASSOCIATES, INC. OR ONE OF ITS EMPLOYEES, ARCHITECTS, ENGINEERS, OR SURVEYORS IS TO BE CONSIDERED AS THE OFFICIAL RECORD.

NO. 000013
DRAWN BY: OHS
CHECKED BY: OHS
DATE: NOVEMBER 02, 2016
SHEET: 1 of 1

MEMO

January 7, 2017

TO: Councilmember

FROM: Jim Dodson

I have studied the Concept Site Plan for the proposed Ambassador Way apartments. If I didn't know otherwise, I would think the city development and zoning staff were working for the apartment developer with the proposed PD.

The proposed facility should be called a "warehouse" rather than an apartment complex. The developer, with the assistance of the city staff, is proposing to cram as many human bodies as legally possible into a minimum amount of living space in an institutional-looking, four story buildings with a minimal 435 parking spaces on a seven-acre tract of land where the buildings are located. I did not include the 2.7 acres in the southwest corner of the property that is in the flood plain and has no apartments. The Concept Site Plan's labeling of the apartment area as 9.729 acres is confusing and incorrect. Is Balch Springs so short of developable land that this type of compact and congested development is necessary? To help you visualize seven acres, think of the old Lew Park on Lake June Road which was 10 acres. This proposed seven acre tract would be just $\frac{3}{4}$ of the size of that!

There would be 220 units in this complex which is bad enough, but the devil is in the details! It is the number of two and three bedroom units that is the killer! They are proposing 28 one bedroom, but 108 two bedroom, and 84 three bedroom units. If you calculate the total number of people that could be living there legally, it comes to 992 people with 2 people per bedroom! That is a small city! In addition, the developer proposes 435 parking spaces which probably is a very inadequate number. The complex would be a beehive of activity with many vehicles coming and going 24 hours a day. The police would get to know the complex well!

I can understand the necessity for the large number of tenants required to make this project financially feasible for the developer but should that feasibility be at the expense of current and future Balch Springs residents and the city generally? I hope you agree that it should not be.

The control of runoff water is already a problem on the site. With so many paved parking spaces and roof tops, where is all that water going to go? (See Concept Plan with roofs and paved areas identified in color). The water will flow to the south and southwest into an area which is in a 100 year flood plain. Why isn't there some requirement for a water retention area there? The water from the proposed complex will only increase the problem of flooding at the west end of Gaiter Dr. at Ambassador Way.

The Concept plan shows only one combined entrance/exit for the complex. If there is a fire or other reason why the one exit cannot be used, how are residents going to get out? There is a proposed 8 to 10 foot masonry wall around most of the property. This would make it even more difficult to get out in an emergency. Other large apartment complexes in the city were required to have a second entrance/exit which can be used in case of an emergency.

This proposed complex has no relevance to satisfying reasonably the current need for additional apartments in the city. A modest complex of 120 to 160 apartments with 1 and 2 bedrooms would fulfill that need. This complex is overkill, and is designed to generate the most income at the lowest possible cost to the developer, period! Little consideration is given to its effect on the quality of life in the city.

Sometimes it's better for the city to say Thanks, but No Thanks to proposed projects that are not in the best interest of the city!

This is the second time in the past two years that developers have proposed excessively large complexes with many 2,3 and 4 bedroom apartments. The city must take action to prohibit the development of these tenement-like facilities.

I urge the City Council to put a moratorium on the development and construction of all large apartment complexes of 160 or more units until the city can enact a zoning ordinance which limits the number and size of apartment units per acre. Mesquite has such an ordinance and it has helped control the population density of new apartment complexes.

While the City staff is considering possible future requirements based on size and number of apartment units per acre, the council must address the immediate question of an acceptable PD for the proposed complex on Ambassador Way. I urge the City Council to require a reduction in the number of stories, the number of 2 and 3 bedroom apartments and the total number of apartments. A Council-Approved PD should provide for a three story complex with 28 one bedroom units, 66 2 bedroom units and 50 3 bedroom units or some combination of unit size with a total of 144 units. A complex with this configuration of apartments would accommodate 620 people which is still a large number but a significant and reasonable reduction to the configuration proposed by the developer.

You are a city resident, unlike the developer, the city manager, and most of the city staff involved with the planning and zoning issues. In addition to your personal concerns about multi-family housing and the effect of this proposed project on the quality of life in the city, I am sure you will consider its effect on the whole community and the city's reputation.



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I want to appear and offer testimony, in so appearing, I hereby make the following statements:

Date of Statement: 28 Sept. 17' Location of Hearing: Balch Springs Tx. Library

My name is: Stephanie Viron

My occupation, profession or business is: City Employee

My mailing address is: P.O. Box 800392 Phone: (214) 450-1704

Balch Springs
Tx. 75180

In appearing before this body, I represent: myself or the following persons, firms, corporations, classes or groups:

Their business address is: _____

I wish to make the following written statements: (Attach additional sheet(s) if extra space is needed.)

I am oppose to the development of Spring Oaks as it would
change the demographics; over crowd an already school
population and increase crime.

If this statement is in regard to a specific TDHCA development or application, also provide the following information:

TDHCA Development #: _____ Development Name: _____

Development City: _____ I support this development. I oppose this development.

I hereby certify that the above statements by me are true and accurate, and that I have listed all persons, firms, corporations, classes or groups that I represent in reference to the matters on which I am appearing. I further certify that the testimony I give before this body will be true and accurate.

[Signature]
Signature of Witness

28 Sept 17'
Date

Note: At the discretion of the Department, the length of time available for each public comment may be limited.

Oppose



WITNESS AFFIRMATION FORM

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PLEASE PRINT LEGIBLY.

I want to appear and offer testimony, in so appearing, I hereby make the following statements:

Date of Statement: 9.28.17 Location of Hearing: Balch Springs Library

My name is: Keytha Harris

My occupation, profession or business is: Property Manager

My mailing address is: 4317 Shepherd Lane Phone: 972.557.7708
Balch Springs, TX 75180

In appearing before this body, I represent: myself or the following persons, firms, corporations, classes or groups:

~~My~~ business address is: Spring Oak Apartments

I wish to make the following written statements: (Attach additional sheet(s) if extra space is needed.)

- ▲ current occupancy is 91%
- ▲ average annual turn over above 65%
- ▲ I currently have 13 vacants
- ▲ I'm working thru a list of current residents that have issues varying from drug, non-payment of rent, and disturbance, and I'm having to chose the lesser of

If this statement is in regard to a specific TDHCA development or application, also provide the following information:

TDHCA Development #: _____ Development Name: _____

Development City: _____ I support this development. I oppose this development.

evens to expect because my occupancy is stable

I hereby certify that the above statements by me are true and accurate, and that I have listed all persons, firms, corporations, classes, or groups that I represent in reference to the matters on which I am appearing. I further certify that the testimony I give before this body will be true and accurate.

[Signature]
Signature of Witness

9.28.17
Date

Note: At the discretion of the Department, the length of time available for each public comment may be limited.

Springs Apts

4
Neutral



WITNESS AFFIRMATION FORM

Texas Department of Housing and Community Affairs
P.O. Box 13941, Austin, TX 78711-3941 Phone: (512) 475-3800

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PLEASE PRINT LEGIBLY.

I want to appear and offer testimony, in so appearing, I hereby make the following statements:

Date of Statement: 9/28/17 Location of Hearing: Balch Springs

My name is: Steven Corwood

My occupation, profession or business is: _____

My mailing address is: 12518 Quail Phone: 214-402-7004

Balch Springs, TX

In appearing before this body, I represent: myself or the following persons, firms, corporations, classes or groups:

Their business address is: _____

I wish to make the following written statements: (Attach additional sheet(s) if extra space is needed.)

Development Does not have enough parking

If this statement is in regard to a specific TDHCA development or application, also provide the following information:

TDHCA Development #: _____ Development Name: Springs Apartments

Development City: _____ I support this development. I oppose this development.

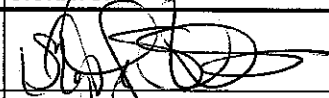

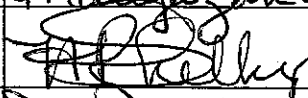

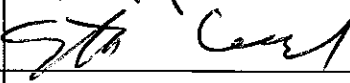
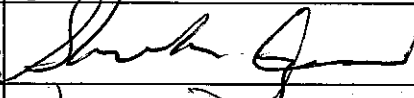
I hereby certify that the above statements by me are true and accurate, and that I have listed all persons, firms, corporations, classes, or groups that I represent in reference to the matters on which I am appearing. I further certify that the testimony I give before this body will be true and accurate.

Steven Corwood
Signature of Witness

9-28-17
Date

Note: At the discretion of the Department, the length of time available for each public comment may be limited.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
 PUBLIC HEARING FOR
 Springs Apartments
 DATE: September 28, 2017

| | PRINTED NAME | SIGNATURE | STREET ADDRESS | SUPPORT DEVELOPMENT | OPPOSE DEVELOPMENT |
|----|-------------------|---|----------------------------------|---------------------|--------------------|
| 1 | Stephany Vinson |  | 4220 SILVERTHORPE DR. | | ✓ |
| 2 | Keytha Harris |  | Peachtree Senior Living | | ✓ |
| 3 | Michele Lewis | M. Lewis | Spring Oaks Apartments | | ✓ |
| 4 | Mariya Zamora | Mariya Zamora | Peachtree Senior Living | | ✓ |
| 5 | H.R. Shelby |  | Peachtree Senior Living | | ✓ |
| 6 | Ron Pegram |  | Shepherd Lane Housing | | ✓ |
| 7 | Steve Gorwood |  | 12578 Quail | | |
| 8 | Billie Howard | Billie Gorwood | " " | | |
| 9 | James Dodson | James T. Dodson | 3516 Pruitt Ave., Dallas | | ✓ |
| 10 | Sheni KWA Jones |  | 11810 Elvick Dr 75180 | | ✓ |
| 11 | Kimberlyn Brandon | Kimberlyn Brandon | 4012 Cochise Dr | | |
| 12 | Tartisha Hill | Tartisha Hill | 4614 Creekview Lane Bald Springs | ✓ | |
| 13 | | | | | |
| 14 | | | | | |

5c

**TO BE POSTED NOT LATER THAN THE
THIRD DAY BEFORE THE DATE OF
THE MEETING**

5d

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action on a request for waiver of rules for Works at Pleasant Valley Phase II (17500)

RECOMMENDED ACTION

WHEREAS, Lifeworks Affordable Housing Corporation (the “Applicant”) has submitted an application for Direct Loan funds under the 2017-1 Multifamily Direct Loan Notice of Funding Availability (“2017-1 NOFA”) for the new construction of 29 multifamily units known as Works at Pleasant Valley Phase II in the City of Austin;

WHEREAS, the Direct Loan is the only source of Department funding for the Development;

WHEREAS, 10 TAC §13.8(c)(5) of the Multifamily Direct Loan Rule requires an Applicant to provide equity in an amount of not less than 20 percent of the Total Housing Development Costs if the Direct Loan is the only source of Department funding for the Development;

WHEREAS, the Applicant has requested a waiver of 10 TAC §13.8(c)(5) in order to move forward with owner equity below the 20 percent threshold, in an amount of 6.7% of Total Housing Development Costs;

WHEREAS, documentation has been submitted that explains how the equity requirement is being met through other grant sources, some of which have already been secured and others that the Applicant hopes to secure over the next several months; and

WHEREAS, staff has found that, because all anticipated sources of funding are either grants or deferred forgivable loans, the waiver request to the owner equity requirement in 10 TAC §13.8(c)(5) is recommended to be waived;

WHEREAS, the Applicant is seeking this waiver provided in 10 TAC §10.207(a)(2), which requires the Development Owner to establish how the waiver request is necessary to address circumstances beyond the Development Owner’s control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law; and

WHEREAS, an award for this Development would help the Department meet the commitment deadlines associated with National Housing Trust Funds in 24 CFR §93.400;

NOW, therefore, it is hereby

RESOLVED, that the requested waiver for Works at Pleasant Valley Phase II as presented at this meeting is approved.

BACKGROUND

Works at Pleasant Valley Phase II is a proposed new construction multifamily development serving a Supportive Housing population in the City of Austin. The Applicant is requesting \$1,500,000 in Direct Loan funds from the Supportive Housing/ Soft Repayment set-aside, and has proposed restricting 12 of the 29 units in the Development to 30% AMI households as a result. Total Housing Development Costs equal \$4,639,086, with the Applicant providing \$312,458 (6.7%) in owner equity. The Applicant has proposed meeting the 20% equity threshold with a combination of owner equity, private foundation funds, and donated Overhead and Profit from the General Contractor. Other grant or grant-like sources during the permanent period include: \$1,850,000 from the City of Austin, \$350,000 from the Federal Home Loan Bank of Atlanta, \$250,000 from the Meadows Foundation, \$100,000 from a private individual/family, and donated contractor overhead and profit in the amount of \$276,628. Additionally, an affiliate of the Applicant owns the land and will lease the land to the Applicant at a favorable price. Should this Application ultimately move forward and be recommended for approval, a condition of the Underwriting Report will require – at a minimum – updated term sheets with substantially final terms from all lenders and grant providers. The Sources and Uses tab provided in the Application is included in the following pages.

10 TAC §13.8(c)(5) is a new requirement for applicants this year and is intended to mitigate the risk that is sometimes present when Direct Loan funds are the only source of Department funding by not allowing overleveraged deals to apply for Direct Loan funds. However, in this particular instance, the Application is not leveraged at all since all of the anticipated funding sources are either grants or deferred forgivable loans. While the question of whether or not 6.7% of Total Housing Development Costs constitutes sufficient “skin in the game” is a reasonable one, the fact that the Applicant is a mission-driven nonprofit with a focus on advocating for youth and families seeking self-sufficiency could potentially assuage those concerns.

A justification for approving the waiver request is helping the Department meet deadlines associated with National Housing Trust Fund, which was not an original source of funding under this NOFA and the Department has not received any other applications for these funds.

Andrew Sinnott
Texas Department of Housing and Community Affairs
211 E 11th Street
Austin, Texas 78701

September 12, 2017

Re: LifeWorks Multi-Family Direct Loan Application #17500 – Waiver Request

Dear Mr. Sinnott,

The Youth and Family Alliance dba LifeWorks, as the Developer, in conjunction with the LifeWorks Affordable Housing Corporation, the Owner, is requesting a waiver of 10TAC 13.8(c)(5). This is the requirement that the owner provide 20% equity as it relates to total development costs. We are proposing that the 20% equity (non-debt) threshold be met through other means.

For our project the required 20% owner equity is an amount of \$927,817. Our proposal and waiver request is that we meet this requirement by using the following non-debt resources to satisfy this requirement:

\$312,458 - Owners Cash Contribution from funds on hand and fundraising activities

\$350,000 - Private Foundation Funds donated to LifeWorks for this project

\$276,628 - General Contractors Donated Overhead and Profit as established in the development cost schedule and documented on submitted invoices throughout the construction period.

This total is \$939,086.

We sincerely appreciate your consideration of this waiver request. Please contact me or Mitch Weynand (mitch.weynand@lifeworksaustin.org, 512-496-7135) if you have any questions or need any additional information.

Sincerely,



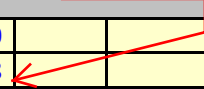
Susan McDowell
Executive Director – Youth and Family Alliance dba LifeWorks
President – LifeWorks Affordable Housing Corporation
Susan.McDowell@lifeworksaustin.org
512-735-2403

Financing Narrative and Summary of Sources and Uses

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

| Financing Participants | Funding Description | Construction Period | | Lien Position | Permanent Period | | | | | Lien Position |
|-----------------------------------|--|---------------------|-------------------|---------------|--------------------|-------------------|-----------------|------------|------------------|---------------|
| | | Loan/Equity Amount | Interest Rate (%) | | Loan/Equity Amount | Interest Rate (%) | Amort - ization | Term (Yrs) | Syndication Rate | |
| Debt | | | | | | | | | | |
| TDHCA | Multifamily Direct Loan (Repayable) | \$0 | 0.00% | | \$ - | 0.00% | 30 | 0 | | |
| TDHCA | Multifamily Direct Loan (Soft Repayment) | \$1,500,000 | 0.00% | 2 | \$ 1,500,000 | 0.00% | 0 | 5 year | | 1 |
| TDHCA | Mortgage Revenue Bond | \$0 | 0.00% | | \$ - | 0.00% | 0 | 0 | | |
| Austin Housing finance Corp | | \$1,850,000 | 0.00% | 3 | \$ 1,850,000 | 0.00% | 0 | 99 | | 2 |
| Federal Home Loan Bank | | \$0 | | 4 | \$ 350,000 | 0.00% | 0 | 15 | | 3 |
| Capital One, National Association | | \$500,000 | | 1 | \$ - | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Third Party Equity | | | | | | | | | | |
| | HTC \$ - | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Grant | | | | | | | | | | |
| Local Foundation Proposals | | \$ 125,000 | | | \$ 275,000 | | | | | |
| LifeWorks Cash Contribution | | \$ 312,458 | | | \$ 312,458 | | | | | |
| General Contractor Contribution | | \$ 276,628 | | | \$ 276,628 | | | | | |
| | | | | | | | | | | |
| Deferred Developer Fee | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Other | | | | | | | | | | |
| Local Foundations | Direct Loan Match | \$ 75,000 | | | \$ 75,000 | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Total Sources of Funds | | \$ 4,639,086 | | | \$ 4,639,086 | | | | | |
| Total Uses of Funds | | | | | \$ 4,639,086 | | | | | |

6.7% owner equity



INSTRUCTIONS: Describe the sources of funds that will finance Development. The description must include construction, permanent and bridge loans, and all other types of funds to be used for development. The information must be consistent with all other documentation in this section. Provide sufficient detail to identify the source and explain the use (in terms of the timing and any specific uses) of each type of funds to be contributed. In addition, describe/explain replacement reserves. Finally, describe/explain operating items. The narrative must include rents, operating subsidies, project based assistance, and all other sources of funds for operations. In the foregoing discussion of both development and operating funds, specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

Describe the sources and uses of funds (specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments):

The Works at Pleasant Valley Phase II proposes the following funding sources mix: \$1,500,000 requested with this application from TDHCA Multi-Family Direct Loan funds; \$1,850,000 In Austin Housing Finance Corporation - Rental Housing Development funds - application to be submitted 12/29/16 - see attached letter; \$350,000 from the Federal Home Loan Bank - Atlanta - application to be submitted June 2018; \$550,000 will be committed by the Youth and Family Alliance dba LifeWorks from private foundations - see attached commitment letter; \$276,628 is the value of the overhead and profit that our builder - Milestone Community Builders will contribute by donated these two items; \$112,458 is cash that LifeWorks has committed to the pre-development costs of Architectural and Engineering services. Capital One, National Association will be providing a construction loan for \$500,000.

Describe the replacement reserves:

We have budgeted \$300 per unit per year for replacement

Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.:

The rent schedule demonstrates that we will have a mix of 30% (9), 50% (14), 60% (4) and 80% (2) units using the TDHCA/HUD rent limites and the TDHCA approved HUD Utility Model allowances. Annual operating cost are based on the actual operating costs of the 45 unit Works at Pleasant Valley Phase I. This development was completed in 2014 with TDHCA NSP funds and has operated at over 95% capacity since filling up.

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

Signature, Authorized Representative, Construction or Permanent Lender

Printed Name

Date

Telephone: _____

Email address: _____

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
OCTOBER 12, 2017

Presentation, discussion, and possible action on a request for waiver of rules for Poesta Creek Apartments (17509)

RECOMMENDED ACTION

WHEREAS, TG 306, Inc. (the “Applicant”) has submitted an application for Direct Loan funds under the 2017-1 Multifamily Direct Loan Notice of Funding Availability (“2017-1 NOFA”) for the rehabilitation of 50 multifamily units known as Poesta Creek Apartments in the City of Beeville;

WHEREAS, the Direct Loan is the only source of Department funding for the Development;

WHEREAS, 10 TAC §13.8(c)(5) of the Multifamily Direct Loan Rule requires an Applicant to provide equity in an amount of not less than 20 percent of the Total Housing Development Costs and an “as completed” appraisal if the Direct Loan is the only source of Department funding for the Development;

WHEREAS, the Applicant and its affiliate have requested a waiver of 10 TAC §13.8(c)(5) in order to move forward with owner equity below the 20 percent threshold, in an amount of 14.9% of Total Housing Development Costs while also providing an “as is” appraisal rather than an “as completed” appraisal;

WHEREAS, in addition to the 14.9% owner equity, the Applicant will be providing a hard repay loan in an amount of \$532,297 – equaling 18% of Total Housing Development Costs – while additional non-debt sources include \$50,000 from the City of Beeville, \$50,000 in donated professional services from the Architect, and \$50,000 in donated professional services from the Consultant;

WHEREAS, the “as is” appraisal reflects a total value of \$2,770,000, meaning that a potential \$2,000,000 loan from the Department would result in a loan-to-value ratio of 72.2%, which meets the loan-to-value requirements of 10 TAC §13.8(c)(5);

WHEREAS, staff has found that, despite only 14.9% of the Total Housing Development Costs coming from owner equity, when combined with debt financing from the Applicant’s affiliate, the total amount of financing from the Applicant and its affiliate equals 27.5%, while the total amount of non-debt sources equals 20%;

WHEREAS, the Applicant is seeking this waiver provided in 10 TAC §10.207(a)(2), which requires the Applicant to establish how the waiver request is necessary to address circumstances beyond the Development Owner’s control and how, if the

waiver is not granted, the Department will not fulfill some specific requirement of law;

WHEREAS, good cause for granting this waiver would allow the Department to meet its annual Community Housing Development Organization (“CHDO”) set-aside commitment deadline in 24 CFR §92.300;

WHEREAS, the Applicant has provided sufficient evidence of circumstances outside of their control; and

WHEREAS, the waiver request to the owner equity requirement and “as completed” appraisal requirement in 10 TAC §13.8(c)(5) is recommended to be waived;

NOW, therefore, it is hereby

RESOLVED, that the requested waiver – submitted in accordance with 10 TAC §10.207(a)(2) – for Poesta Creek Apartments as presented at this meeting is approved.

BACKGROUND

Poesta Creek Apartments is an existing multifamily development serving a General population in the City of Beeville. The Applicant is requesting \$2,000,000 in Direct Loan funds from the CHDO set-aside, and has proposed restricting all 50 units in the development at the following levels as a result: 11 units to 50% AMI households, 35 units to 60% AMI households, and 4 units to 80% AMI households. Total Housing Development Costs equal \$2,963,765, with the Applicant and its affiliate – Prospera Housing – providing \$442,753 (14.9%) in owner equity. The Applicant is providing 20% in non-debt financing with a combination of owner equity, a City of Beeville grant, and donated professional services. Additionally, the Applicant is making a loan to itself for \$532,297, which represents 18% of Total Housing Development Costs. The Sources and Uses tab provided in the Application is included in the following pages.

10 TAC §13.8(c)(5), as well as most of the other rules within the Multifamily Direct Loan Rule at Chapter 13, is a new requirement for applicants this year and is intended to mitigate the risk that is sometimes present when Direct Loan funds are the only source of Department funding by not allowing overleveraged deals to apply for Direct Loan funds. However, in this particular instance, while 80% of the financing is debt, 15.6% of the debt is being provided by the Applicant. Moreover, the loan-to-value (“LTV”) ratio for the Direct Loan based on the “as is” appraisal is 72.2%, which is below the 80% LTV threshold. That LTV ratio should further improve after the property is rehabbed.

This waiver is necessary to address the fact that Direct Loan funds are the only funds available to this transaction to make the needed improvements identified in the Property Condition Assessment. The Applicant described how this Development would not be able to utilize housing tax credits,

leaving Direct Loan funds as the only available solution. Furthermore, to convert any more of the loan from its affiliate – Prospera Housing Community Services – to a grant would violate the underwriting rules in 10 TAC §10.302(d)(4)(D).

Further justification for approving the waiver request includes the fact that, should this Application be recommended for an award, it would satisfy approximately 62% of the annual CHDO set-aside requirement for the Department. 24 CFR §92.300 requires that at least 15% of the Department’s annual allocation of HOME funds be committed to CHDOs, and this \$2 million request would substantially help the Department in meeting this requirement.

Financing Narrative and Summary of Sources and Uses

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

| Financing Participants | Funding Description | Construction Period | | Lien Position | Permanent Period | | | | | Lien Position |
|-------------------------------|---|---------------------|-------------------|---------------|--------------------|-------------------|-----------------|------------|------------------|---------------|
| | | Loan/Equity Amount | Interest Rate (%) | | Loan/Equity Amount | Interest Rate (%) | Amort - ization | Term (Yrs) | Syndication Rate | |
| Debt | | | | | | | | | | |
| TDHCA | <u>Multifamily Direct Loan (Repayable)</u> | \$2,000,000 | 3.25% | 1st | \$ 2,000,000 | 3.25% | 30 | 30 | | 1st |
| TDHCA | <u>Multifamily Direct Loan (Soft Repayment)</u> | \$0 | 0.00% | | \$ - | 0.00% | 0 | 0 | | |
| TDHCA | <u>Mortgage Revenue Bond</u> | \$0 | 0.00% | | \$ - | 0.00% | 0 | 0 | | |
| Prospera Housing | Private Loan | \$371,012 | 5.50% | 2nd | \$ 371,012 | 5.50% | 30 | 30 | | 2nd |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Third Party Equity | | | | | | | | | | |
| | HTC | \$ - | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Grant | | | | | | | | | | |
| Prospera Housing | Private Grant | \$ 161,285 | | | \$ 161,285 | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Deferred Developer Fee | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Other | | | | | | | | | | |
| Beeville Grant Funds | <u>Direct Loan Match</u> | \$ 50,000 | | | \$ 50,000 | | | | | |
| TG 306, Inc | Rehab Cash | \$ 150,000 | | | \$ 150,000 | | | | | |
| TG 306, Inc. | Escrow and RFR Cash | \$ 131,468 | | | \$ 131,468 | | | | | |
| GNB, LAI funds | | \$ 100,000 | | | \$ 100,000 | | | | | |
| | Total Sources of Funds | \$ 2,963,765 | | | \$ 2,963,765 | | | | | |
| | Total Uses of Funds | | | | \$ 2,963,765 | | | | | |

INSTRUCTIONS: Describe the sources of funds that will finance Development. The description must include construction, permanent and bridge loans, and all other types of funds to be used for development. The information must be consistent with all other documentation in this section. Provide sufficient detail to identify the source and explain the use (in terms of the timing and any specific uses) of each type of funds to be contributed. In addition, describe/explain replacement reserves. Finally, describe/explain operating items. The narrative must include rents, operating subsidies, project based assistance, and all other sources of funds for operations. In the foregoing discussion of both development and operating funds, specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

Describe the sources and uses of funds (specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments):

See attached

Describe the replacement reserves:

See attached

Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.:

See attached

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

Signature, Authorized Representative, Construction or Permanent Lender

Printed Name

Date

Telephone: _____

Email address: _____

NARRATIVE DESCRIPTION OF FINANCING

The Poesta Creek Apartments are comprised of 50 apartment homes in a garden style configuration and a community building. The project is proposed to be a renovated. There are 12 residential buildings, with one to three bedroom unit types. The property caters to families.

The property is currently under the HUD project based Section 8 program which scheduled to expire on July 31, 2023. The section 8 contract covers all 50 units. The HUD Section 8 contract makes up to approximately \$450,000 in rental subsidies for eligible residents. The section 8 contract requires that all 50 units are leased to residents whose income is at or below 50% of the area median income adjusted for family size. The unit configuration is four (4) one bedroom units, twenty six (26) two bedroom units, and twenty (20) three bedrooms. The total cost for the project is estimated to be \$2,963,765. This cost will be financed as follows:

Financing

1st Lien - Texas Department of Housing and Community Affairs (TDHCA) - Direct Loan:

The TDHCA will originate a HOME second lien loan in the amount of \$2,000,000 which will provide roughly 67.48% of the financing for the project. The HOME loan will bear interest at a rate of 3.25% and amortize over a period of thirty (30) years. Cash flow from the project is expected to be available to fund the required debt service of \$95745.

2nd Lien – Prospera Housing Community Services, Inc. (PHCS) Private Loan (payoff of Berkadia Commercial Mortgage, LLC - FHA Loan):

The existing FHA loan cannot be subordinated to the TDHCA direct loan, nor can the FHA loan be purchased by PHCS. As a result PHCS will cause the existing FHA first lien to convert to a second lien by paying off the Berkadia Commercial Mortgage, LLC permanent first lien (\$482,297) and originating a subordinate second lien while adding an additional \$50,000 in funding to the project and the loan. Thus PHCS will originate a donation of \$161,285 and will originate a \$371,012 second lien loan representing 12.52% of the financing for the project. The FHA loan rate was 5.5% which be the rate on the second lien. The term will be for 30 years. The cash flow from the project is expected to be available to fund the required debt service of \$25,279 per annum.

3rd Lien – Prospera Housing Community Services, Inc. (PHCS) Private Third Lien – Cash Flow Mortgage.

PHCS is owed a loan that was assigned to it by HUD as part of restructuring of TG 306, Inc.'s original first lien. The loan was originate on 2-20-2003 and the original amount of such loan was \$1,309,697. This loan accrues interest at 1% until maturity on September 1, 2033. This loan will be subordinate to the TDHCA first lien and PHCS second lien. As of December 31, 2016 the loan has a balance of \$934,926. The loan is payable only from cash flow to the extent there is cash flow, receiving 75% of the cash flow annually based upon audited financial statements. The loan is not shown on the sources and uses since it is paid only from surplus cash flow.

Direct Loan Match:

The following are sources of match funding for the TDHCA Direct Loan total \$150,000:

Funding:

Beeville Economic Improvement Board will provide a cash donation of \$50,000.

Donations:

a. Lucas & Associates, LP. the financial consultant will donate their \$50,000 consulting fee.

b. Gonzales New Bender the architect will donate \$50,000 of their services.

These funds represent 5.06% of the financing for the project.

c. Propsera Housing and Community Services will purchase the existing Berkadia note and donate \$161,285 of the original loan amount to the project.

Other Sources of Funds:

TG 306, Inc. is providing the following additional sources of funds totaling \$281,468:

Reserve for Replacement cash funds of \$105,000

Insurance Escrows totaling \$31,468

Project funding from available cash (entity cash) \$150,000

These funds represent 9.50% % if the financing for the project.

The logo for BBG is displayed in a large, white, serif font against a dark blue background. The background features a stylized, geometric pattern of overlapping lines and shapes, resembling a grid or a series of intersecting planes, which is partially obscured by the dark blue overlay.

BBG

AN APPRAISAL REPORT OF

**POESTA CREEK APARTMENTS
AN EXISTING 50-UNIT AFFORDABLE (HAP)
MULTIFAMILY COMMUNITY
1301 SOUTH TYLER STREET
BEEVILLE, BEE COUNTY, TEXAS 78102**

FOR

**MR. BRENT STEWART
DIRECTOR OF REAL ESTATE ANALYSIS
TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS
221 EAST 11TH STREET
AUSTIN, TEXAS 78711-3941**

AND

**TG 306 LTD
C/O MR. RAY LUCAS
LUCAS & ASSOCIATES, L.P.
8610 NORTH NEW BRAUNFELS, SUITE 536
SAN ANTONIO, TEXAS 78217**

Effective Date: March 13, 2017

Date of Report: March 29, 2017

BY

**BBG, INC.
8300 DOUGLAS AVENUE, SUITE 600
DALLAS, TX 75225
877.524.1187**



March 29, 2017

Mr. Brent Stewart
Director of Real Estate Analysis
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78711-3941

And

TG 306 LTD
c/o Mr. Ray Lucas
Lucas & Associates, L.P.
8610 North New Braunfels, Suite 536
San Antonio, Texas 78217

**Re: BBG File No. 0117001733
Poesta Creek Apartments
An Existing 50-Unit Affordable (HAP) Multifamily Community
1301 South Tyler Street
Beeville, Bee County, Texas 78102**

Dear Mr. Stewart and Mr. Lucas:

At your request, we have prepared an Appraisal of the above referenced property, the conclusions of which are set forth in this appraisal report. The purpose of this appraisal was to form an opinion of the Market Value of the fee simple interest of the subject property, as of March 13, 2017, under the following assumptions and conditions:

- “as is, encumbered by HAP”, **\$2,770,000**
- Land Value, “as if vacant”, **\$175,000**

The opinions of value are based upon the extraordinary and general underlying assumptions and hypothetical and limiting conditions stated within this report.

DALLAS
+ CORPORATE OFFICE

P + 214.739.0700
F + 214.361.8168

8300 DOUGLAS AVE. + STE. 600
DALLAS, TX 75225

BBGRES.COM

The intended use of this report is to provide the clients, Lucas & Associates, L.P., and the Texas Department of Housing and Community Affairs with an analysis of the development for submission to TDHCA for proposed renovation of existing project requesting HOME and TCAP funds from the TDHCA. The intended users of this report are Lucas & Associates, L.P. and the Texas Department of Housing and Community Affairs. The intent of this report is conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) as set forth by the Appraisal Foundation, and in accordance with the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute and to conform to the 2017 Qualified Allocation Plan and the 2017 Real Estate Analysis Rules, as published by the Texas Department of Housing and Community Affairs. The Appraisers have read and understand the Department rules specific to the 2017 Qualified Allocation Plan as well as the rules found in §10.304 of the 2017 Real Estate Analysis Rules and Guidelines, as published by the Texas Department of Housing and Community Affairs.

Ryan Wegman has inspected the interior and exterior of the property that is the subject of this appraisal. Mary Ann Barnett, MAI has not inspected the subject property but has reviewed the analyses and concurs with the conclusions contained herein.

The subject property is a one- and two-story, garden development with a brick exterior with vinyl trim and features pitched composition roofs. The improvements are in average condition for their age. Per the rent roll provided to our office, the "as is" net rentable area (NRA) totals 47,592 SF. The subject has all units (50) encumbered by a Section 8 HAP contract. The unit features include the following: frost free refrigerator, oven/stove, washer/dryer connections, and carpet and tile flooring. The project amenities include the following: on-site office, playground, community room and business center.

We have performed our services and prepared this report in accordance with generally accepted appraisal consulting practices, and make no other warranties, either expressed or implied, as to the character and nature of such services and products.

The opinions of value are based upon the extraordinary and general underlying assumptions and limiting and hypothetical conditions stated within this report. **We reserve the right to make any changes needed to this report and the conclusions herein if these are found to be incorrect.**

Extraordinary Assumptions

- The subject is encumbered by an existing Section 8 HAP contract (# TX590025016) that will remain in effect, whereby all 50 units have rental rate subsidies and income restrictions. The most recent renewal contract began on September 1, 2003 and runs for a period of 20 years. The encumbered income analysis is predicated on the assumption that the subject will continue to operate under the existing encumbrances with rental rates at their current levels.

- The subject is currently exempt from taxes due to its non-profit ownership. However, this exemption is granted to the current owners and does not continue with change in ownership. According to the Bee County Appraisal District, a new owner must apply for an exemption if applicable. The “as is, encumbered by HAP” value conclusion is predicated on the assumption that the subject will continue to be granted a 100% tax exemption.

Exposure Time/Marketing Period

Based on exposure times of comparable sales and interviews with active participants in the local multifamily market, the above Market Value opinions could have been achieved with exposure times of less than twelve months prior to the effective date. Furthermore, it is our opinion that a sale could be consummated at the Market Value opinions stated herein within twelve-month marketing periods of the effective date.

This letter must remain attached to the report, which contains 73 pages plus related exhibits, in order for the value opinion set forth to be considered valid.

Our firm appreciates the opportunity to have performed this appraisal assignment on your behalf. If we may be of further service, please contact us.

Respectfully submitted,

BBG, Inc.



Mary Ann Barnett, MAI
State Certified
General Real Estate Appraiser
TX-1326580-G



Ryan Wegman
State Certified
General Real Estate Appraiser
TX-1380301-G

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SUMMARY OF SALIENT FACTS

| | |
|--------------------|---|
| Property | Poesta Creek Apartments An Existing 50-Unit Affordable (HAP) Multifamily Community 1301 South Tyler Street Beeville, Bee County, Texas 78102 |
| Date of Inspection | March 13, 2017 |
| Date of Valuation | March 13, 2017 |
| Date of Report | March 29, 2017 |
| Interest Appraised | Fee Simple Interest (Subject to Existing HAP Contract) |

Physical Data

| | |
|-------------------------|---|
| Land Area | 165,092 SF (3.79 Acres) – Per provided site plan |
| Floodplain | Zones A & AE, Panel No. 48025C0290C, dated May 20, 2010 |
| Utilities | All available to site |
| Year of Construction | 1981 |
| No. Units | 50 |
| Net Rentable Area (NRA) | 47,592 SF |
| Average Unit Size | 952 SF |
| Density | 13.2 Units/Acre |
| Type of Construction | One- and two-story, wood frame construction with brick veneer and wood trim, and pitched composition roofs. |
| Building Asset Class | C |
| Project Amenities | Include: on-site office, playground, community room and business center. |
| Unit Amenities | Include: frost free refrigerator, oven/stove, washer/dryer connections, and carpet and tile flooring. |
| Zoning Classification | R-3 |
| Status | Legal non-conforming use due to lack of required parking |
| Highest and Best Use | |
| “As if Vacant” | Development of an affordable multifamily community. |
| “As Improved” | Continued utilization of the improvements as an affordable housing community until their economic life is realized. |

Income & Expense Data – “As Is, Encumbered by HAP”

| POESTA CREEK APARTMENTS Reconstructed Operating Statement "As Is, Encumbered by HAP" | | | |
|--|-----------|----------|--------|
| Item | Pro Forma | | |
| | | per Unit | per SF |
| INCOME | | | |
| Total Gross Potential Rents | \$536,568 | 10,731 | 11.27 |
| Amenity Income | - | - | - |
| Ancillary Income | 1,330 | 27 | 0.03 |
| Total Gross Potential Income | 537,898 | 10,758 | 11.30 |
| Less: Vacancy & Coll. Loss (6.0%) | (32,274) | (645) | (0.68) |
| Effective Gross Income | 505,624 | 10,112 | 10.62 |
| EXPENSES | | | |
| Fixed Expenses | | | |
| Real Estate Taxes (EXEMPT) | - | - | - |
| Gross Margin Tax (0.331% of EGI) | - | - | - |
| Insurance | 55,404 | 1,108 | 1.16 |
| Total Fixed Expenses | 55,404 | 1,108 | 1.16 |
| Operating Expenses | | | |
| Gas | 500 | 10 | 0.01 |
| Electric | 8,250 | 165 | 0.17 |
| Water/Sewer | 41,250 | 825 | 0.87 |
| Trash | 7,750 | 155 | 0.16 |
| Repairs/Maintenance | 40,000 | 800 | 0.84 |
| Nonresident Management (5.0%) | 25,281 | 506 | 0.53 |
| Payroll | 83,000 | 1,660 | 1.74 |
| Advertising | 1,000 | 20 | 0.02 |
| Administrative | 22,500 | 450 | 0.47 |
| Total Operating Expenses | 229,531 | 4,591 | 4.82 |
| Total Expenses | 284,935 | 5,699 | 5.99 |
| Replacement Reserves (\$300/unit) | 15,000 | 300 | 0.32 |
| Total Expenses & Reserves | (299,935) | (5,999) | (6.30) |
| NET OPERATING INCOME | \$205,689 | 4,114 | 4.32 |

Overall Capitalization Rate 7.50%

Value Indications of Subject – “As Is, Encumbered by HAP”

Sales Comparison Approach \$2,800,000
Income Capitalization Approach \$2,740,000
Cost Approach Not Utilized

Market Value Conclusion – “As Is, Encumbered by HAP”

Units of Comparison \$2,770,000
Value/Unit \$55,400
Value/SF (NRA) \$58.20
EGIM 5.48x
R_o 7.43%

Land Value “As if vacant” \$175,000

Exposure Time 12 months or less

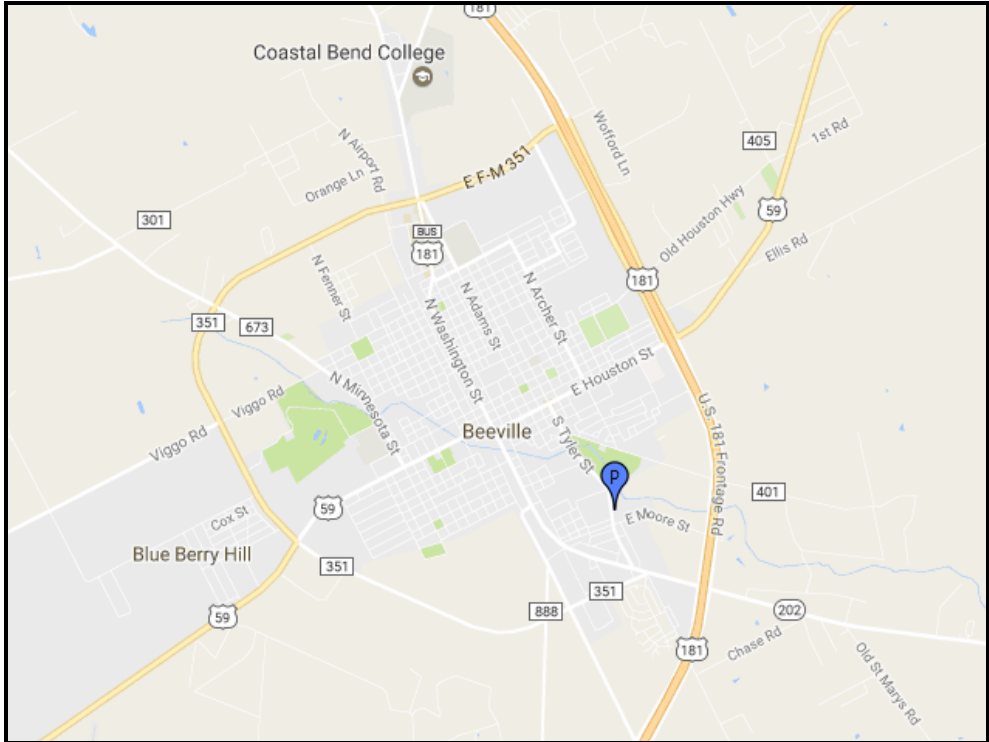
Extraordinary Assumptions

- The subject is encumbered by an existing Section 8 HAP contract (# TX590025016) that will remain in effect, whereby all 50 units have rental rate subsidies and income restrictions. The most recent renewal contract began on September 1, 2003 and runs for a period of 20 years. The encumbered income analysis is predicated on the assumption that the subject will continue to operate under the existing encumbrances with rental rates at their current levels.
- The subject is currently exempt from taxes due to its non-profit ownership. However, this exemption is granted to the current owners and does not continue with change in ownership. According to the Bee County Appraisal District, a new owner must apply for an exemption if applicable. The “as is, encumbered by HAP” value conclusion is predicated on the assumption that the subject will continue to be granted a 100% tax exemption.

SUBJECT PROPERTY AT A GLANCE



Subject Photo



Subject Map

CERTIFICATION

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and is our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment. Our engagement in this assignment was not contingent upon developing or reporting predetermined results. The racial/ethnic composition of the neighborhood surrounding the property in no way affected the appraisal determination.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice and the 2017 Qualified Allocation Plan and Related Laws and Rules and the rules of the 2017 Real Estate Analysis Rules and Guidelines, as published by the Texas Department of Housing and Community Affairs
- Ryan Wegman made a personal inspection of the interior and exterior of the property that is the subject of this appraisal. Mary Ann Barnett, MAI has not inspected but has reviewed the data and analysis and concurs with the value conclusions contained herein.
- No one else provided significant real property appraisal assistance to the undersigned.
- The undersigned have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. This report has also been prepared to meet any further appraisal reporting requirements of the Texas Department of Housing and Community Affairs and Lucas & Associates, L.P., as well as Title XI, 12 CFR Part 323 (FDIC) of FIRREA.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Mary Ann Barnett, MAI has completed the requirements of the continuing education program of the Appraisal Institute. As of the date of this report, Ryan Wegman has completed the Standards and Ethics Education Requirement of the Appraisal Institute for Candidates for Designation. Mary Ann Barnett, MAI and Ryan Wegman have completed the Appraisal licensing requirements of the State in which the subject property is located.



Mary Ann Barnett, MAI
State Certified
General Real Estate Appraiser
TX-1326580-G



Ryan Wegman
State Certified
General Real Estate Appraiser
TX-1380301-G

Andrew Sinnott

From: Canales, Roger (RogerC@prosperahcs.org) [RogerC@prosperahcs.org]
Sent: Thursday, October 05, 2017 1:27 PM
To: Andrew Sinnott
Cc: luke007rhl@aol.com; 'bonnies@lucaslp.com'
Subject: FW: Poesta Creek

If the waiver is approved, the funding is being provided to a CHDO non-profit owner, TG 306, Inc., to maintain and upgrade Poesta Creek Apartments located in Beeville, Bee County, TX. This is a project in existence for 30+ years, in need of modernization, which is located in an area with little financial ability to generate funds and it is not competitive for 9% Tax Credits funding. Poesta Creek is also not eligible for At-risk since it has a Use Agreement that lasts until 2053 as part of the Mark to Market program under which the property was purchased. Beeville, TX does not have a lot of affordable housing and the city was hit by Hurricane Harvey. Bee County is in the declared Disaster areas. The funds the TDHCA board will be contributing will be used to preserve fifty (50) low to extremely-low income households with a decent, safe and affordable living environment. In addition, this funding will provide three (3) fully handicapped accessible units not previously available. This project is being done with the support of the Beeville Economic Improvement Board which has shown their support by providing \$50,000 to the project.

We have exhausted every available funding we can to meet the 20% of Owner equity to provide the following funding:

| | |
|--|------------------|
| · Cash from TG 306, Inc. | \$150,000 |
| · Cash from Escrow and RFR from TG 306, Inc. | \$131,468 |
| · Donation from 3 rd Parties | \$100,000 |
| · Beeville Economic Improvement Board (Which is all the City is able to provide.) | \$ 50,000 |
| · <u>Prospera HCS Grant*</u> | <u>\$161,285</u> |
| · Total | \$592,753 |
| (Which is 20% of the \$2,963,765 development costs.) | |

* Poesta Creek Apartments has an existing first lien position of \$482,297. Prospera Housing Community Services, at closing is going to provide funds to pay off the loan and provide an additional \$50,000 for a total of \$532,297 cash at closing. This payoff of the existing first lien loan will put the TDHCA Direct loan in the first lien position. In addition, \$161,285 of the \$532,297 will be provided in the form of a Grant from Prospera Housing Community Services to help the project receive the Direct Loan Funds leaving \$371,012 as a subordinate second lien in order to provide a 1.35 Debt Coverage ratio to meet TDHCA standards (see rule §10.302(d)(4)(D)).

I hope this information helps with the approval of our request since the project needs the renovation/modernization. Direct Loan Funds are the best option for the projects renovation/modernization.

Thank You,

Roger Canales
Director of Real Estate Development



8610 N. New Braunfels Ave. Suite 500
San Antonio, TX 78217-6397
P 210.821.4300

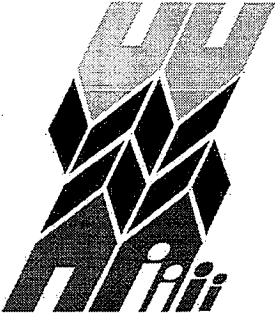
F 210.821.4303

C 210.247.8192

rogerc@prosperahcs.org

ProsperaHCS.org

Welcome to **PROSPERA**, our new name, logo and brand identity reflecting our evolving role of delivering quality affordable housing and services throughout South Texas. Housing and Community Services, Inc. now operates as **Prospera Housing Community Services** and Wedge Management, Inc. operates as **Prospera Property Management**. For nearly a quarter of a century, the work of these organizations has earned the trust and respect of our diverse partners and stakeholders. Although our names and logo are changing to enhance our brand familiarity and expand relationships, our core mission, vision and values, which define who we are and what we stand for, remain constant.



September 19, 2017

Gilbert M. Piette
Executive Director

- o -

Administrative Notice:

TG 306, Inc.

210.821.4300
210.821.4303 Fax
888.732.3394 Toll Free

- o -

Property Location:

1301 South Tyler Street
Beeville, Texas 78102

Texas Department of Housing and Community Affairs (TDHCA)
Attn: Andrew Sinnott
Multifamily Loan Programs Administrator
221 East 11th Street
Austin, TX 78701-2410

Re: Waiver Request for Poesta Creek Apartments, Beeville, TX
Direct Loan Application

Dear Mr. Sinnott:

Regarding our above Direct Loan application, we are requesting a waiver of 10 TAC 13.8 (c)(5) which states:

“ (5) If the Direct Loan is the only source of Department funding for the Development, the Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs and must provide an ‘as completed’ appraisal pursuant to 10 TAC §10.304 which results in total repayable loan to value of not greater than 80%.”

TG 306, Inc. requests a waiver from the above rule based upon the following facts:

1. Owner provided equity:

a. Cash - TG 306, Inc. has provided the following:

| | |
|---|------------------|
| Cash for Rehabilitation | \$150,000 |
| Escrow and Reserve for Replacement Cash | <u>\$131,468</u> |
| Total | \$281,468 |

This amount (\$281,468) equates to approximately 9.5% of the Total Housing Development Costs provided by the non-profit owner.

b. Donation funds and services - TG 306, Inc. has obtained the following cash and services donations for the project:

| | |
|--|------------------|
| Cash donation from the City of Beeville (4B funds) | \$ 50,000 |
| Donated services from architect (Gonzales Newel Bender) | \$ 50,000 |
| Donated services from housing consultant (Lucas & Associates) | <u>\$ 50,000</u> |
| Total | \$ 150,000 |

This amount (\$150,000) equates to approximately 5.1% of the Total Housing Development Costs provided to the project and the non-profit owner.

c. Prospera Housing Community Services, a non-profit corporation, has also agreed to pay-off the existing first lien FHA loan from Berkadia Mortgage in the amount of approximately \$482,297 and subordinate such advance to assure TDHCA is in the first lien position and to support TG 306, Inc. in the rehabilitation work anticipated through the Direct Loan Funds. This amount represents 16.3% of the Total Housing Development Costs provided to the project and the non-profit owner.

The combination of the above represent 30.9% of the Total Housing Development Costs provided the project and the non-profit owner. Though all these amounts may not qualify as a contribution by the owner of equity they do represent real funding or savings to the project. Please approve our request for a waiver of the 20% Owner contribution of equity.

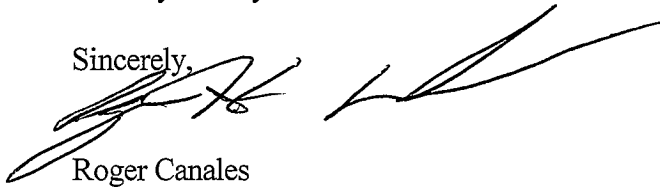
2. The Owner must provide an 'as completed' appraisal pursuant to 10 TAC §10.304 which results in total repayable loan to value of not greater than 80%.

The applicant previously provided the Department with an "as is" appraisal, showing a total value of \$2,770,000. A copy of the cover letter from the appraisal is attached for your reference. The TDHCA direct loan amount is \$2,000,000, making the loan to value ratio 77.20%. The applicant has proposed property upgrades that will include new cabinets, countertops, flooring, microwaves, parking lot repairs, fencing, community center upgrade and new exterior to give the property a more modern look. The total construction contract budget for these upgrades including construction contingency and other construction costs is \$1,975,534 (98.8% of the TDHCA direct loan) which is expected to add to the overall value of the property. With a higher "as completed" value, the loan to value ratio can only improve.

The appraisal meets the requirements of 10 TAC §10.304 and should be considered sufficient for this purpose. The applicant is a charitable organization with a mission of providing affordable housing. Requiring the applicant to incur additional expense and time for a new appraisal will not serve our residents in any positive way. Please approve our request for a waiver from providing an "As Completed Appraisal".

Thank you for your review and consideration of our waiver request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Canales', written over the word 'Sincerely,'.

Roger Canales
Director of Real Estate Development
Owner representative
Office: 210-821-4300
Cell: 210-247-8192

Attachment



TG 306, Inc.

dba Poesta Creek Apartments

TAX ID # 72-1530634

% Housing and Community Services, Inc.

8610 North New Braunfels, Suite 500

San Antonio, Texas 78217-6397

Gilbert M. Piette
Executive Director

- 0 -

Administrative Notice:

*TG 306, Inc. is an affiliate of
Housing and Community
Services, Inc.*

210.821.4300
210.821.4303 Fax
888.732.3394 Toll Free

- 0 -

Property Location:

*1301 South Tyler Street
Beeville, Texas 78102*

August 23, 2017

**Texas Department of Housing and Community Affairs (TDHCA)
Attn: Andrew Sinnott
Multifamily Loan Programs Administrator
221 East 11th Street
Austin, TX 78701-2410**

**Re: Waiver Request for Poesta Creek Apartments, Beeville, TX
Direct Loan Application**

Dear Andrew:

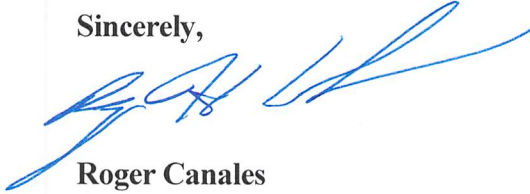
We are requesting a waiver of 10 TAC 13.8 (c)(5) which states:

“(5) If the Direct Loan is the only source of Department funding for the Development, the Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs and must provide an ‘as completed’ appraisal pursuant to 10 TAC §10.304 which results in total repayable loan to value of not greater than 80%.”

The applicant provided the Department with an "as is" appraisal, showing a total value of \$2,770,000. A copy of the cover letter from the appraisal is attached for your reference. The TDHCA loan amount is \$2,000,000, making the loan to value ratio 77.20%. The applicant has proposed property upgrades that will include new cabinets, countertops, flooring, microwaves and new exterior to give it a more modern look. The development budget for these upgrades is \$1,329,874, which is expected to add to the overall value of the property. With a higher "as completed" value, the loan to value ratio can only improve.

The appraisal meets the requirements of 10 TAC §10.304 and should be considered sufficient for this purpose. The applicant is a charitable organization with a mission of providing affordable housing. Requiring the applicant to incur additional expense and time for a new appraisal will not serve our residents in any positive way.

Sincerely,



Roger Canales

Director of Real Estate Development

Owner representative

Office:210-821-4300 Cell:210-247-8192

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**TO BE POSTED NOT LATER THAN THE
THIRD DAY BEFORE THE DATE OF
THE MEETING**