

BOARD MEETING OF FEBRUARY 19, 2015

J. Paul Ozer, Chair



Juan Muñoz, Vice-Chair

Leslie Bingham Escareño, Member

T. Tolbert Chisum, Member

Tom Gann, Member

J. B. Goodwin, Member

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

A G E N D A

9:30 AM

February 19, 2015

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

CALL TO ORDER

ROLL CALL

CERTIFICATION OF QUORUM

J. Paul Oxe, Chairman

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

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

Resolution recognizing February as Black History Month, Resolution No. 15-012

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 Texas Government 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:

EXECUTIVE

- a) Presentation, Discussion, and Possible Action on Board Meeting Minutes Summary for December 18, 2014
- b) Presentation, Discussion, and Possible Action to delegate to the Chair authority to perform the performance evaluation of the Executive Director

Barbara Deane
Board Secretary

J. Paul Oxe
Chair

LEGAL

- c) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Villa Victoria (HTC 93156 / CMTS 1186)
- d) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Orders concerning Tigoni Villas (HTC 03136 / CMTS 3353) and Plainview Vistas (HTC 04154 / CMTS 4073)
- e) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Southmore Park (HTC 94004 / CMTS 1204)

Jeff Pender
Deputy General Counsel

- f) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Port Cities Rescue Mission Ministries (Emergency Solutions Grant Program, Contract 42110001517)

RULES

- g) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter H, Section 8 Housing Choice Voucher Program §5.801 concerning the Project Access Initiative, and directing its publication in the *Texas Register*
- h) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d)(2) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period and directing their publication for public comment in the *Texas Register*

Michael DeYoung
Director of Community
Affairs

Stephanie Naquin
Director of Multifamily
Compliance

ASSET MANAGEMENT

- i) Presentation, Discussion and Possible Action on Ownership Transfers and Material LURA Amendments

Raquel Morales
Director of Asset Mgmt

98089	Franklin Place Townhomes	El Paso
99095	Mesa Place Townhomes	El Paso

COMMUNITY AFFAIRS

- j) Presentation, Discussion, and Possible Action regarding Program Year 2015 Community Services Block Grant, Program Year 2015 Low Income Home Energy Assistance Program, and PY 2014 and 2015 Department of Energy Weatherization Assistance Program (“DOE-WAP”) Awards for Cameron and Willacy counties, currently served by Cameron and Willacy Counties Community Projects, Inc.
- k) Presentation, Discussion, and Possible Action on Award of Program Year 2014 Community Services Block Grant Administrative and Discretionary Funds
- l) Presentation, Discussion, and Possible Action on the Use of Program Year 2015 Community Services Block Grant (“CSBG”) Discretionary Funds
- m) Presentation, Discussion, and Possible Action to Authorize the Use of Funds Contributed to the Texas Interagency Council for the Homeless
- n) Presentation, Discussion, and Possible Action Authorizing Staff to Identify a Provider, through release and subsequent award of a Request for Applications (“RFA”) or through a direct designation, to administer the Comprehensive Energy Assistance Program (“CEAP”) and the Weatherization Assistance Programs (“WAP”) in Cameron and Willacy counties

Michael DeYoung
Director of Community
Affairs

Brooke Boston
Deputy Executive Director

811 PROGRAM

- o) Presentation, Discussion, and Possible Action to award a contract to the Southwest Housing Compliance Corporation pursuant to Texas Government Code, §669.003

Brooke Boston
Deputy Executive Director

MULTIFAMILY FINANCE

- p) Presentation, Discussion, and Possible Action regarding an Award of CHDO Operating Expense Grant Funds for Housing Initiatives Corporation (#14417 Waters at Sunrise)

Jean Latsha
Director Multifamily
Finance

- q) Presentation, Discussion and Possible Action on extensions of 2011 awarded HOME Program Multifamily Contracts which have not yet received their Closed Final Development Inspection Letter
- r) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

14419	Raymond Telles	El Paso
14420	Lt. Palme Baird	El Paso
14421	JE Anderson	El Paso
14422	George Webber	El Paso
14423	Everrett Alvarez	El Paso
14424	Harry S Truman	El Paso
14425	Dwight D Eisenhower	El Paso
14426	Woodrow Bean	El Paso
14427	Kennedy Brothers Community	El Paso
14428	Aloysius Ochoa	El Paso
14429	Lyndon B. Johnson	El Paso (and associated exemption)
14430	Rafael Marmolejo	El Paso
14431	Juan Hart	El Paso

REPORT ITEMS

The Board accepts the following reports:

- 1. Status Report on the Section 811 PRA Program
- 2. TDHCA Outreach Activities, Jan 2015
- 3. Report on the Department’s 1st Quarter Investment Report in accordance with the Public Funds Investment Act (“PFIA”)
- 4. Report on the Department’s 1st Quarter Investment Report relating to funds held under Bond Trust Indentures
- 5. Implementation of 2 CFR Part 200 (“the Omni Circular” or “Super Circular”) relating to Single Audits
- 6. Report on the Department’s Fair Housing Activities

Brooke Boston
Deputy Executive Director

Michael Lyttle
Chief of External Affairs

David Cervantes
Chief Financial Officer

Monica Galuski
Director of Bond Finance

Patricia Murphy
Chief of Compliance

Laura DeBellis
Fair Housing Team Lead

ACTION ITEMS

ITEM 2: BOARD

Presentation, Discussion, and Possible Action on the election of Governing Board Officers for the upcoming biennium pursuant to Texas Government Code §2306.030

J. Paul Oxer
Chairman

ITEM 3: BOND FINANCE

Presentation, Discussion, and Possible Action regarding Optional Par Termination Rights with respect to Interest Rate Swap Transactions related to Single Family Variable Rate Mortgage Revenue Refunding Bonds, 2004 Series B and Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D

Monica Galuski
Director of Bond Finance

ITEM 4: MULTIFAMILY FINANCE

- a) Presentation, Discussion, and Possible Action on Timely Filed Appeals under any of the Department's Program Rules
15053 911 Glenoak Apartments Corpus Christi
- b) Presentation, Discussion, and Possible Action on a Request for the Reissuance of Competitive (9%) Housing Tax Credits to Royal Gardens Mineral Wells (#12074), including any necessary waivers

ITEM 5: WAIVERS

- Presentation, Discussion, and Possible Action on Timely Filed Waivers under any of the Department's Program Rules
- 15043 Cleme Manor Apartments Houston
 - 15128 Bay City Manor Apartments Bay City

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

EXECUTIVE SESSION

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

J. Paul Oser
Chairman

- 1. The Board may go into Executive Session Pursuant to Texas Government 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, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., filed in federal district court, Northern District of Texas, and pending before the Supreme Court of the United States.*
 - b) *McCardell v. HUD et al.*
- 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:
 - a) Any 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.

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.

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

Non-English speaking individuals who require interpreters for this meeting should contact 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.

Texas Department of Housing and Community Affairs
RESOLUTION No. 15-012

WHEREAS, February 2015 is Black History Month, and is being celebrated with the theme of “A Century of Black Life, History, and Culture”, in recognition of African American life, history, and culture in the United States and the world over the past century;

WHEREAS, the Texas Department of Housing and Community Affairs (“TDHCA”) recognizes the significance of Black History Month as an important time to acknowledge and celebrate the contributions of African-Americans in Texas’ history and that of the nation;

WHEREAS, TDHCA encourages the continued celebration of this month as an opportunity for all Texans to learn more about the past and to better understand the experiences of African Americans who have shaped our great State and the nation; and

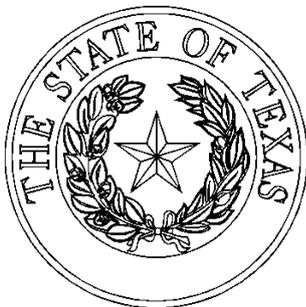
WHEREAS, TDHCA recognizes that the ethnic and racial diversity of Texas enriches and strengthens the nation;

NOW, therefore, it is hereby

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

- (1) recognizes the significance of Black History Month as an important time to acknowledge and celebrate the contributions of African Americans in Texas history, and encourages the continued celebration of this month to provide an opportunity for all peoples of the State of Texas to learn more about the past and to better understand the experiences that have shaped our Lone Star State; and
- (2) recognizes that in the pursuit of the goal and responsibility of providing equal housing opportunities for all, the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate February 2015 as Black History Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in this observance for free and equal housing treatment and opportunity for all.

Signed this Nineteenth Day of February 2015.



J. Paul Ozer, Chair

Dr. Juan Muñoz, Vice Chair

Leslie Bingham Escareño, Member

Tom H. Gann, Member

T. Tolbert Chisum, Member

J. B. Goodwin, Member

Timothy K. Irvine, Executive Director

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Board Meeting Minutes Summary for December 18, 2014.

RECOMMENDED ACTION

Approve Board Meeting Minutes Summary for December 18, 2014

RESOLVED, that the Board Meeting Minutes Summary for December 18, 2014, is hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
December 18, 2014

On Thursday, the eighteenth day of December, 2014, at 9:00 a.m., the regular monthly meeting of the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) was held in Room JHR 140 of the John H. Reagan Building, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J. Paul Oxer
- T. Tolbert Chisum
- Tom Gann
- J.B. Goodwin
- Dr. Juan Muñoz

J. Paul Oxer served as Chair, and Barbara Deane served as secretary.

- 1) Prior to the certification of a quorum, new members Chisum and Goodwin were administered their oaths of office by Justice Jeff Rose from Texas’ Third Court of Appeals.
- 2) Following certification of a quorum, outgoing Board members J. Mark McWatters and Robert Thomas were recognized by the Board and through a gubernatorial proclamation honoring their service to the Department and the State of Texas.
- 3) The Consent Agenda was approved unanimously by the Board with the following items removed from Consent to allow for public comment and/or further discussion: Item 1(l) – Presentation, Discussion and Possible Action regarding authorization of the issuance of a 2014 HOME Program Notice of Funding Availability (“NOFA”) for the Single Family Development Program and publication of the NOFA in the *Texas Register*; Item 1(q) – Presentation, Discussion, and Possible Action regarding Program Year 2015 Low-Income Home Energy Assistance Program Awards; Item 1(r) – Presentation, Discussion, and Possible Action regarding Program Year 2015 Community Services Block Grant Awards. Item 1(u) – Presentation, Discussion, and Possible Action regarding Determination Notices for Housing Tax Credits with other Issuers for #14404 Park at Cliff Creek in Dallas, #14408 Fairmount Crossing in Dallas, and #14415 THF Palladium Midland in Midland was withdrawn.
- 4) No action was taken on Consent Agenda Item 1(u) – Presentation, Discussion, and Possible Action regarding Determination Notices for Housing Tax Credits with other Issuers for #14404 Park at Cliff Creek in Dallas, #14408 Fairmount Crossing in Dallas, and #14415 THF Palladium Midland in Midland – as it was withdrawn from the agenda.
- 5) Consent Agenda Item 1(l) – Presentation, Discussion and Possible Action regarding authorization of the issuance of a 2014 HOME Program Notice of Funding Availability (“NOFA”) for the Single Family Development Program and publication of the NOFA in the *Texas Register* – was presented by TDHCA Chief of Staff Cameron Dorsey. With no public comment, the Board unanimously approved staff recommendation to issue the NOFA.

6) Consent Agenda Items 1(q) – Presentation, Discussion, and Possible Action regarding Program Year 2015 Low-Income Home Energy Assistance Program Awards; and 1(r) – Presentation, Discussion, and Possible Action regarding Program Year 2015 Community Services Block Grant Awards were presented by Michael DeYoung, TDHCA Director of Community Affairs. Mr. DeYoung explained some slight changes to the printed Board book materials and asked the Board to vote on the revised text. With no public comment, the Board unanimously approved staff recommendation to fund qualifying subrecipients in the Low Income Home Energy Assistance Program and Community Services Block Grant programs for 2015.

7) Action Item 2(a) – Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds with TDHCA as the Issuer, Resolution No. 15-010 and a Determination Notice of Housing Tax Credits for Patriot’s Crossing Apartments – was presented by Jean Latsha, TDHCA Director of Multifamily Programs. With no public comment, the Board unanimously approved staff recommendation to issue the bonds.

8) Action Item 2(b) – Presentation, Discussion, and Possible Action regarding the Sufficiency of a Letter Submitted to meet a Condition of a Housing Tax Credit Award for Application #14130, Tays in El Paso – was presented by Ms. Latsha. Following public comment (listed below), the Board unanimously approved to accept the letter as sufficient to satisfy a condition of previously approved terms.

- Mary Gonzalez, Texas State Representative, House District 75, testified in support of accepting the letter
- Bob Voelker, attorney, testified in opposition to accepting the letter
- Scott Marks, attorney with Coats Rose, testified in support of accepting the letter
- Barry Palmer, attorney with Coats Rose, testified in support of accepting the letter
- Gerald Cichon, Housing Authority of the City of El Paso, testified in support of accepting the letter
- Leona Vasquez, representing all public housing residents in El Paso, testified in support of accepting the letter
- Michael Lyttle, TDHCA Chief of External Affairs, read three letters into the record from state elected officials: Sen. Jose Rodriguez, Rep. Marisa Marquez, and Rep. Joe Moody

9) Action Item 3 – Presentation, Discussion, and Possible Action regarding Waiver of §11.8(a)(2) of the Qualified Allocation Plan related to Pre-Application Requirements (Competitive HTC Only) in order to comply with statutory requirements – was presented by Kathryn Saar, TDHCA Multifamily Programs Manager. With no public comment, the Board unanimously approved staff recommendation to approve the waiver.

10) At 10:22 a.m. the Board went into Executive Session and reconvened in open session at 10:52 a.m. No action was taken in or as a result of Executive Session.

11) The following public comment was made on matters other than items for which there were posted agenda items:

- Tanya LaValle, Easter Seals Central Texas, summarized the Integrated Housing Project report and offered comment suggesting a rule change for TDHCA’s administration of the Home Buyer Assistance activity in the HOME Program
- Gerald Cichon, Housing Authority of the City of El Paso (“HACEP”) , summarized HACEP’s planned activity in the future
- Elizabeth Yevich, TDHCA Director of the Housing Resource Center, shared a story regarding a resident of a TDHCA-funded Housing Tax Credit development who expressed deep gratitude for his “new home.”

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 11:50 a.m. The next meeting is set for Thursday, January 15, 2015.

Secretary

Approved:

Chair

1b

BOARD ACTION REQUEST
EXECUTIVE DIVISION
FEBRUARY 19, 2015

Presentation, discussion, and possible action to delegate to the Chair authority to perform the performance evaluation of the Executive Director.

RECOMMENDED ACTION

WHEREAS, the Department's Personnel Policy provides that each employee shall receive an annual evaluation of performance and

WHEREAS, the Executive Director is employed by the Governing Board,

NOW, therefore, it is hereby

RESOLVED, that the Chair be and is hereby authorized, empowered, and directed to oversee the completion and documentation of the annual performance evaluation of the Executive Director.

1c

BOARD ACTION REQUEST

LEGAL DIVISION

FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Orders concerning Villa Victoria (HTC 93156 / CMTS 1186)

RECOMMENDED ACTION

WHEREAS, Villa Victoria (“Property”), owned by Andrew P. Sheehy (“Owner”), has a history of uncorrected compliance findings relating to the applicable land use restriction agreements and the associated statutory and rule requirements;

WHEREAS, on November 18, 2014, owner’s representative met with the Administrative Penalty Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$3,000.00, to be fully forgiven if all violations are resolved on or before April 1, 2015;

WHEREAS, unresolved compliance findings include: household income above limit upon initial occupancy violations relating to 4 units, annual eligibility certification violations relating to 3 units, failure to provide an affirmative marketing plan, failure to provide a Fair Housing Disclosure Notice to 51 households, failure to provide required notices of amenities and services to 2 households, failure to develop and maintain written tenant selection criteria, and two units unavailable for rent; 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 \$3,000.00, subject to forgiveness as outlined above for noncompliance at Villa Victoria (HTC 93156 / CMTS 1186), 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

Andrew P. Sheehy is the owner of Villa Victoria, a low income apartment complex comprised of 91 units, located in Waco, McClennan County. Villa Victoria is subject to a Land Use Restriction Agreement ("LURA") signed by the prior owner in 1994 in consideration for an allocation of housing tax credits in the amount of \$53,693.00 to rehabilitate the Property.

The following compliance violations were referred for an administrative penalty and remain unresolved:

1. Household income above limit upon initial occupancy violations for units 135, 209, 223, and 246.
2. Annual Eligibility Certification violations for units 209, 223, or 246.
3. Failure to maintain an affirmative marketing plan.
4. Failure to issue a Fair Housing Disclosure Notice for units 104, 105, 106, 107, 112, 113, 114, 115, 117, 123, 124, 125, 126, 129, 134, 136, 138, 142, 143, 144, 149, 150, 202, 207, 208, 209, 212, 213, 215, 216, 217, 222, 223, 225, 226, 227, 229, 230, 232, 233, 234, 235, 236, 238, 240, 241, 242, 243, 248, 249 and 250.
5. Failure to provide required notices of amenities and services to units 142 and 235 during the leasing process.
6. Failure to develop and maintain written tenant selection criteria.
7. Failure to make units 116 and 140 available for rent. Unit 116 is used as an office and unit 140 was not timely restored after sustaining severe water damage.

Owner met with the Administrative Penalty Committee on November 19, 2014, and agreed to sign an Agreed Final Order with the following terms:

1. A \$3,000.00 administrative penalty, subject to forgiveness in stages as indicated below;
2. Property manager and her supervisor to attend First Thursday Income Eligibility Training and Housing Tax Credit Training, then submit certificates of completion on or before April 1, 2015;
3. Owner must correct the file monitoring violations as indicated in Attachments 2, 3, and 4 of the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before April 1, 2015.
4. If Owner complies with all requirements and addresses all violations as required by Attachments 2, 3, and 4 of the Agreed Final Order, the full administrative penalty will be forgiven.

5. If Owner addresses the unit availability violation for unit 116 as indicated in Attachment 2 of the Agreed Final Order, a \$2,500.00 portion of the administrative penalty will be deferred and forgiven regardless of performance under the remainder of the Agreed Final Order. If however, the Owner fails to address the unit availability violation for unit 116 as required, that \$2,500 portion of the administrative penalty would immediately become due and payable.

Owner has indicated that the office has always been in unit 116 and that it cannot be converted to a residential unit because there is no other appropriate office location on-site. The penalty structure relating to this unit was recommended as an incentive for the property owner to submit a material LURA amendment request to reduce the number of restricted units and keep the office, which includes a \$2,500.00 processing fee. Using this penalty structure, it will cost Owner the same amount to comply with the Agreed Final Order and submit a material LURA amendment request as it would cost to violate the terms of the Agreed Final Order.

6. If Owner violates any other provision of the Agreed Final Order, the remaining \$500.00 portion of the administrative penalty would immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a fully forgivable administrative penalty in the amount of \$3,000.00 is recommended.

ENFORCEMENT ACTION AGAINST
ANDREW P. SHEEHY WITH
RESPECT TO VILLA VICTORIA
(HTC FILE # 93156 / CMTS # 1186)

§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 19th day of February, 2015, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **ANDREW P. SHEEHY**, a (“Sheehy” or “Respondent”).

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

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

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. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60¹.

¹ Within this Agreed Final Order, all references to administrative penalty authority under 10 TEX. ADMIN. CODE, CHAPTERS 1 AND 60 refer to the versions of the code in effect at the time of the 11/18/2014 administrative penalty informal conference when an administrative penalty was recommended.

2. In 1993, Beverly Partners Ltd. ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an amount of \$53,693.00 to rehabilitate Villa Victoria ("Property") (HTC file No. 93156 / CMTS No. 1186 / LDLD No. 358).
3. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective November 14, 1994, and filed of record at Volume 1833, Page 741 of the Official Public Records of Real Property of McLennan County, Texas ("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.
4. Respondent took ownership of the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Assume and Comply), effective May 19, 2008, and filed the same in the Records at Document Number 2008016285, thereby binding Respondent to the terms of the LURA.
5. Respondent is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations²:

6. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on February 23, 2012. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Notifications of noncompliance were sent and a July 31, 2012, corrective action deadline was set. The violations at *Attachment 1* were not corrected before the deadline.

Multiple submissions were received after intervention by the Administrative Penalty Committee, and final acceptable evidence of correction was submitted on 10/25/2013, 451 days after the deadline.
7. An on-site monitoring review was conducted on January 18, 2012, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an April 25, 2012, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 135 or 238, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of

² Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 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.

Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.

Partial corrective documentation for the above findings was received after intervention by the Administrative Penalty Committee, resolving the violation for unit 238 as of June 11, 2013, 412 days past the deadline. The finding for unit 135 remains unresolved, but the noncompliant household moved out on 2/15/2013 and the unit is currently vacant.

- b. Respondent failed to provide an Annual Eligibility Certifications for units 111, 117, 132, 204, 208, 209, 223, 245, or 246, a violation of 10 TEX. ADMIN. CODE §60.111 (Annual Recertifications), which requires developments to annually collect an Annual Eligibility Certification form from each household.

Partial corrective documentation for the above findings was received after intervention by the Administrative Penalty Committee, resolving the violation for units 111, 117, and 132 as of June 11, 2013, 412 days past the deadline. The violation for unit 208 was corrected on January 23, 2014, 736 days past the deadline, during a subsequent file monitoring review conducted by TDHCA. The violations for units 209, 223, and 246 remain unresolved, but the noncompliant households moved out on 12/1/2013, 8/2/2013, and 10/1/2013, respectively. New households have moved into all three units and Respondent must submit full tenant files to prove their eligibility in order to resolve the findings.

8. An on-site monitoring review was conducted on January 23, 2014, to perform regular TDHCA monitoring and to determine whether Respondent had resolved prior violations of LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Notifications of noncompliance were sent and a September 10, 2014, corrective action deadline was set, however, the following violations were not corrected before the deadline and remain uncorrected as of the date of this Agreed Final Order:

- a. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing Requirements), which requires developments to approve and distribute an affirmative marketing plan and to distribute marketing materials to selected organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing letter to an organization that assists the disabled was provided, but an Affirmative Marketing Plan was not.
- b. Respondent failed to provide the Fair Housing Disclosure Notice for units 104, 105, 106, 107, 112, 113, 114, 115, 117, 123, 124, 125, 126, 129, 134, 136, 138, 142, 143, 144, 149, 150, 202, 207, 208, 209, 212, 213, 215, 216, 217, 222, 223, 225, 226, 227, 229, 230, 232, 233, 234, 235, 236, 238, 240, 241, 242, 243, 248, 249 and 250, a violation of 10 TEX. ADMIN. CODE § 10.612 (Tenant File Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period.

- c. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 142 and 235, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires all developments to provide to each household, at the time of execution of an initial lease and whenever there is a subsequent change in common amenities, unit amenities, or required services, a notice describing those amenities and services.
- d. Respondent failed to maintain written tenant selection requirements, a violation of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which requires Respondent to maintain written tenant selection criteria.
- e. Respondent failed to make two units available for rent, using unit 116 as an office, and failing to timely restore unit 140 after it was damaged by water, a violation of the representations on page 1 of the LURA that require 100% of the units to be leased to individuals or families whose income is 60% or less of the area median gross income, and Section 4(c) and Appendix A of the LURA that require 100% of units to be available to members of the public who qualify for the program.
- f. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 135, 209, 223, and 246, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.
- g. Respondent failed to resolve the prior Annual Eligibility Certification findings for units 209, 223, or 246, violating 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.

9. The following violations remain outstanding at the time of this order:

- a. Household income above limit upon initial occupancy violations described in FOF #'s 7a and 8.g, and 8f.
- b. Annual Eligibility Certification violation described in FOF #'s 7b and 8g.
- c. Affirmative marketing plan violation described in FOF # 8.a.
- d. Fair Housing Disclosure Notice violation described in FOF # 8.b.
- e. Lease language violation described in FOF # 8.c.
- f. Tenant selection requirement violation described in FOF 8.d.
- g. Unit unavailable for rent violations described in FOF # 8.e.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2014, by failing to provide an affirmative marketing plan;
5. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 104, 105, 106, 107, 112, 113, 114, 115, 117, 123, 124, 125, 126, 129, 134, 136, 138, 142, 143, 144, 149, 150, 202, 207, 208, 209, 212, 213, 215, 216, 217, 222, 223, 225, 226, 227, 229, 230, 232, 233, 234, 235, 236, 238, 240, 241, 242, 243, 248, 249 and 250.
6. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2014, by failing to execute required lease provisions regarding amenities and services for units 142 and 235.
7. Respondent violated 10 TEX. ADMIN. CODE §10.610 in 2014, by failing to develop and maintain written tenant selection requirements.
8. Respondent violated representations made on page 1 of the LURA, Section 4(c) of the LURA, and Appendix A of the LURA, in 2014, by failing to make 100% of units available for rent.
9. Respondent violated Section 4 of the LURA in 2012 and 2014, 10 TEX. ADMIN. CODE §60.108 in 2012, and 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 135, 209, 223, and 246.
10. Respondent violated 10 TEX. ADMIN. CODE §60.111 in 2012 and 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to provide Annual Eligibility Certifications for units 209, 223, and 246.
11. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.

12. 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.
13. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
14. An administrative penalty of \$3,000.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §§60.307 and 60.308.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$3,000.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that the property manager and her supervisor must attend First Thursday Income Eligibility Training and Housing Tax Credit Compliance Training, then submit completion certificates to the Agency on or before April 1, 2015.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachments 2, 3, and 4, and submit full documentation of the corrections to TDHCA on or before April 1, 2015.

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 at Attachments 2, 3, and 4, 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 addresses the unit availability violation for unit 116 as indicated in Attachment 2, satisfactory performance of that corrective action under this order will be accepted in lieu of a \$2,500.00 portion of the assessed administrative penalty, and that \$2,500.00 portion will be deferred and forgiven regardless of performance under the remainder of this Agreed Final Order.

IT IS FURTHER ORDERED that if Respondent fails to address the unit availability violation for unit 116 as indicated at Attachment 2, then a \$2,500.00 portion of the administrative penalty shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order pertaining to unit 116.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any other conditions or otherwise violates any other provision of this order, then the remaining \$500.00 portion of the administrative penalty shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

IT IS FURTHER ORDERED that corrective documentation must be 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>. 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 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 _____, 2015.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxer, 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 _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

Attachment 1

UPCS Violations

(see attached)

The Inspection Group, Inc.

Report Date: Feb 23, 2012

List of Deficiencies Found

LicName

Def. Found	Def. Found			Deficiency Title	Ret	Exp	Notes
	L1	L2	L3				
CMTS 1186 - Villa Victoria							
728 Neil Dr Waco, Tx 76710							
Grounds	X			Overgrown/Penetrating Vegetation	0	0	trees touch bldg 1 roof
Health & Safety		X		Hazards - Tripping	0	0	offset in walkway - in front of 150
Parking/Drives	X			Potholes/Loose Material	0	0	surface degradation and potholes
Unit 246							
Doors		X		Deteriorated/Missing Seals (Entry Only)	0	0	entry
Health & Safety		X		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	0	0	bdm - furniture blocks window
Unit 248							
Bathroom		X		Ventilation/Exhaust System - Inoperable	0	0	inop due to electric disconnect
Electrical		X		GFI Inoperable	0	0	inop due to electric disconnect
Health & Safety		X		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	0	0	bdm - furniture blocks egress
Hot Water Heater		X		Inoperable Unit/Components	0	0	inop due to electric disconnect
HVAC System		X		Inoperable	0	0	inop due to electric disconnect
Kitchen		X		Dishwasher/Garbage Disposal - Damaged/Inoperable	0	0	inop due to electric disconnect
		X		Range Floods/Exhaust Fans - Excessive Grease/Inoperable	0	0	inop due to electric disconnect
		X		Range/Stove - Missing/Damaged/Inoperable	0	0	inop due to electric disconnect
		X		Refrigerator-Missing/Damaged/Inoperable	0	0	inop due to electric disconnect
Lighting		X		Missing/Inoperable Fixture	0	0	inop due to electric disconnect
Unit 250							
Bathroom		X		Water Closet - Damaged/Clogged/Missing	0	0	seat hinge broken
Building Exterior							
Walls		X		Missing Pieces/Holes/Spalling	0	0	dry rot on northsiding
Unit 162							
Health & Safety		X		Air Quality - Mold and/or Mildew Observed	0	0	around windows
		X		Infestation - Insects	0	0	roaches
Kitchen		X		Countertops - Missing/Damaged	0	0	surface damaged
Windows	X			Cracked/Broken/Missing Panes	0	0	liv rm - cracked
Unit 258							

The Inspection Group, Inc.

Report Date: Feb 23, 2012

List of Deficiencies Found

LicName

	Def. Found			Deficiency Title	Roll	Exp	Notes
	L1	L2	L3				
CMTS 1186 - Villa Victoria							
728 Neil Dr Waco, Tx 76710							
Unit 738							
Doors			X	Deteriorated/Missing Seals (Entry Only)	0	0	entry
Halls/Couritors/Stairs							
			X	Graffiti	0	0	east breezeway
Lighting		X		Missing/Inoperable Fixture	0	0	east breezeway
Unit 109							
Doors			X	Damaged Surface (Holes/Paint/Rusting)	0	0	hole in bath door
Health & Safety			X	Hazards - Tripping	0	0	hall cable
Building Exterior							
Health & Safety			X	Electrical Hazards - Exposed Wires/Open Panels	0	0	exterior wall plug by 104 - missing
Building Systems							
Electrical System			X	Missing Breakers/Fuses	0	0	office back storage - open port

Attachment 2

File Monitoring Correction Instructions

1. File Violations for Units 135, 140, 209, 223, and 246: Follow the instructions below and submit documentation on or before April 1, 2015:

Circumstance with respect to units listed above	Required Action
If units 135, 209, 223, and/or 246 were occupied by qualified households at the time of the 1/23/2014 monitoring review and the same households are currently occupying the unit(s)	Follow the instructions that are outlined for each unit at Attachment 3. If the circumstances outlined in the instruction letter at Attachment 3 no longer exist, follow the instructions below.
If units 135, 140, 209, 223, and/or 246 are occupied by a new qualified household with a move-in date after 1/23/2014	Submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and tenant rights and resources guide acknowledgment.
If units 135, 140, 209, 223, and/or 246 are 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. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and tenant rights and resources guide acknowledgment. Receipt after 4/1/2015 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
If units 135, 140, 209, 223, and/or 246 are 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 to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and tenant rights and resources guide acknowledgment. Receipt after 4/1/2015 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
If units 135, 140, 209, 223, and/or 246 are vacant	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and tenant rights and resources guide acknowledgment. Receipt after 4/1/2015 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>

2. Affirmative Marketing Plan: Follow instructions at the “Noncompliance with Affirmative Marketing requirements described in 10.61” bullet point at Attachment 3 and submit required documentation to the Department.

3. Lease requirements for Units 142 and 235 - and - Fair Housing Disclosure Notice violations for units 104, 105, 106, 107, 112, 113, 114, 115, 117, 123, 124, 125, 126, 129, 134, 136, 138, 142, 143, 144, 149, 150, 202, 207, 208, 209, 212, 213, 215, 216, 217, 222, 223, 225, 226, 227, 229, 230, 232, 233, 234, 235, 236, 238, 240, 241, 242, 243, 248, 249 and 250. Perform the following:

1. Post a laminated copy of the Tenant Rights and Resources Guide in the common area of the leasing office. Link to Guide:
<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.
2. Submit a letter to TDHCA listing which of the above households that resided in the above units as of 1/23/2014, have since moved out. If they moved out without signing the acknowledgment, the associated Fair Housing Disclosure Notice and/or lease finding(s) will be uncorrectable.
3. If the households residing in the above units as of 1/23/2014 remain in those units, provide a copy of the Tenant Rights and Resources Guide to each household and have them sign the Tenant Rights and Resources Guide Acknowledgment. A copy of the Acknowledgment form is available at <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.
4. Submit the above referenced letter and signed acknowledgments.

4. Written Tenant Selection Criteria: Follow instructions at the “Noncompliance with tenant selection requirements described in 10.610” bullet point on Attachment 3, and submit written criteria to the Department.

5. Unit 116: One of the following must be performed on or before 4/1/2015 in order to reduce the administrative penalty by \$2,500.00 as ordered above:

- a. Convert unit back to residential use and submit a letter to the Department on or before 4/1/2015 certifying that the unit is ready for occupancy. Then, once as the unit is occupied by a qualified household, submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and tenant rights and resources guide acknowledgment. Receipt of a tenant file after 4/1/2015 is acceptable for this circumstance provided that the certification indicating that the unit is ready for occupancy is submitted on or before 4/1/2015; – OR –
- b. Submit all necessary parts of a material LURA amendment request, including the \$2,500.00 processing fee, in order to request a reduction in the number of restricted units and retain unit 116 as an office. Material LURA Amendment Request instructions are available at page 17 of: <http://www.tdhca.state.tx.us/asset-management/docs/PostCarryoverActivitiesManual.pdf>. Any questions regarding the amendment process can be directed to Lee Ann Chance at leeann.chance@tdhca.state.tx.us or 512.936.7835.

Attachment 3

**TDHCA file monitoring letter dated 9/25/2014, providing detailed instructions regarding
how to resolve file monitoring violations**

(see attached)

NOTE: Fair Housing Disclosure Notice findings at bullet point #2 remain unresolved, but the corrective instructions in this letter are outdated. See Attachment 2 instructions instead for that item.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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Leslie Bingham-Escareño
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J. Mark McWatters

September 25, 2014

512-475-3995
patricia.villarreal@tdhca.state.tx.us

Andrew Sheehy
Woodway, TX
Andy@SheehyTeam.com

RE: VILLA VICTORIA APARTMENTS

CMTS ID: 1186

Dear Mr. Sheehy:

The Texas Department of Housing and Community Affairs, "Department" monitored the above referenced development on January 23, 2014. The Monitoring Letter was issued stating a corrective action deadline of September 10, 2014. To date, a response has not been received to correct the following noncompliance:

- **Noncompliance with Affirmative Marketing requirements described in 10.61:** An Affirmative Marketing Plan was not provided to the Department -. However, a marketing letter to an organization that assist persons with disabilities was provided. Per 10TAC §10.617, all developments are required to maintain an Affirmative Marketing Plan. The Affirmative Marketing Plan must identify which group(s) the owner believes are least likely to apply for housing at the development without special outreach. All Developments must select Persons with Disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the property will market to, factors such as the characteristics of the housing's market area should be considered. Implement an Affirmative Marketing Plan (the HUD Form 935.2A is recommended). The plan must identify 1) the groups least likely to apply based on a comparison of the property demographics to the housing market demographics; 2) persons with disabilities as a group least likely to apply; and, 3) organizations and groups in the area that serve the groups identified. Once identified, execute marketing efforts to those groups. Submit a copy of the plan and documentation to evidence the affirmative marketing efforts made.
- **Failure to provide Fair Housing Disclosure:** affecting units 104, 105, 106, 107, 112, 113, 114, 115, 117, 123, 124, 125, 126, 129, 134, 136, 138, 142, 143, 144, 149, 150, 202, 207, 208, 209, 212, 213, 215, 216, 217, 222, 223, 225, 226, 227, 229, 230, 232, 233, 234, 235, 236, 238, 240, 241, 242, 243, 248, 249 and 250 - During the review the owner stated the notice had not been implemented. Per 10TAC 10.612(a)(4), the Department's Fair Housing Disclosure Notice must be presented to the household at the time of application for occupancy and must be executed no more than one

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



hundred twenty (120) days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a low-income unit on a Development administered by the Department including households transferring within the same Development. The household must execute the form no more than one hundred twenty (120) days and no less than thirty (30) days prior to the date that the household is legally obligated to provide written notice of their intention to terminate or renew their current lease. Once the notice has been executed for the units cited (See attachment for specific noncompliance details) at the time of the review submit the form and a copy of the initial lease contract the Department for review. If a household has vacated the unit, but signed the notice within 120 to 30 days prior to the date that they were legally obligated to provide written notice submit a copy of the initial lease contract and an executed Fair Housing Disclosure Notice to the Department for review. The Department has a Fair Housing Disclosure Notice Corrective Action Calculator located on the Texas Department of Housing and Community Affairs website. Here is the link to the calculator: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>

- **Noncompliance with lease requirements described in 10.613:** affecting units 142 and 235 - During the review the owner stated the notice had not been implemented. Per 10TAC 10.613(k), a development owner shall provide each household, at the time of execution of an initial lease and whenever there is a subsequent change in common amenities, unit amenities, or required services, a notice describing those amenities and services. This unit was not provided the amenity notice at the time of execution of the initial lease. If the household is not provided this notice prior to move in, the Department will consider the event corrected if the amenity notice is provided to the household to execution. Have the household execute the notice and provide to the Department for review. Do not back date the form.
- **Noncompliance with tenant selection requirements described in 10.610:** Per §10.610 (a) and (b), owners must maintain written tenant selection criteria. During the monitoring visit, the Department was informed that the development does not have a written tenant selection criteria. Please see the technical assistance section of the monitoring report for more details on maintaining tenant selection criteria. Develop and implement a written tenant selection criteria. Submit to the Department for review
- **Unit not available for rent:** affecting units 116 and 140
 - **Unit 116:** Unit 116 is being utilized as an office (per the unit status report it has been an office since August 1, 1997) and is not available for lease to a low income household. Per the development's Land Use Restriction Agreement (LURA), the development is required to lease 100% of the units in the development to individuals for families whose income is 60% or less of the area median gross income. In addition, the Department has verified with the developments final cost certification that funding was provided for 91 residential units. The Department acknowledges that the unit has been used as an office since that time without being issued a finding of noncompliance; however, in order to comply with the current Texas Administrative Rules the unit must be converted into a residential unit and be made available for lease. Unit 116 must be converted into a residential unit and be made available for lease to a low income household. When the unit is made available for lease, submit to the Department the documents used to certify the household using current income and asset sources and current income limits. Otherwise, as stated in 10TAC §10.405, a change in the number of low income units is a material amendment to the LURA. Please contact Lee Ann Chance, the asset manager for the development, at 512-936-7835 for more information on a material amendment to the LURA.

- **Unit 140:** Per the Development's Land Use Restriction Agreement, the Development is required to lease 100% of the units in the Development to individuals for families whose income is 60% or less of the area median gross income. The Department determined that unit 140 was not available for occupancy due to water damage issues, therefore, not available for occupancy by a low income household. Make the unit available for rent and lease to an eligible household. Submit to the Department the following for review: the first and signatory pages of the lease, the fair housing choice disclosure notice, the amenities notice, the income certification, all documentation used to verify income and assets.
- **Household income above income limit upon initial occupancy / Program unit not leased to Low – Income household:** affecting units 135, 209, 223, and 246
 - **Unit 135:** The Department selected this household file for review as the Unit Status Report reflected that a new household had moved in to the unit on July 12, 2012. Upon review of the household file, the Department noted that the household appears to have moved into the unit without all adults being screened and without income being verified. A main application was not completed and the TAA Supplemental application was not fully completed. The only income verification in the file was a 2012 tax return that was filed on February 23, 2013, which is seven months after the household moved in. In addition, it is unclear if the head of household receives any income as the Income Certification lists her name in the annual income section, yet she completed a certification of zero income. Furthermore, aside from the provided 2012 tax return for the co-head, he did not complete or execute any documents prior to move in. The monitor was unable to determine if the household was eligible upon move in. As a result, the noncompliance for this unit remains outstanding. To correct: either 1) if household's circumstances have changed, the property can perform a new certification using current income and asset sources and current income limits to show eligibility; or, 2) occupy the unit with an eligible household. In either case, submit copies of the current application, income/asset verification(s), Income Certification, Lease/Lease Addendum.
 - **Unit 209:** This household was not appropriately screened for income and assets and documents were either not executed and/or not dated by all the adults in the household. While an application was included in the file, it was not fully completed and no other screening document was used. In addition, the income verification documents for the head of household exceeds the 3 person, 60% income limit of \$30,900 upon initial occupancy. If the household is not eligible either 1) if household's circumstances have changed, the property can perform a new certification using current income and asset sources and current income limits to show eligibility; or, 2) occupy the unit with an eligible household. In either case, submit copies of the current application, income/asset verification(s), Income Certification, Lease/Lease Addendum.
 - **Unit 223:** The Department was unable to determine if the household was eligible upon move in. This household was not appropriately screened for income and assets and employment income disclosed by the wife was not verified. Aside from the TAA application, there were no documents were not executed by the two adults. If the household is not eligible either 1) if household's circumstances have changed, the property can perform a new certification using current income and asset sources and current income limits to show eligibility; or, 2) occupy the unit with an eligible household. In either case, submit copies of the current application, income/asset verification(s), Income Certification, Lease/Lease Addendum.
 - **Unit 246:** The household exceeds the 1 person, 60% income limit of \$23,760 at the time of initial occupancy. It appears that management verified and annualized income correctly and permitted the household to move in despite the income exceeding the limit. If the household is not eligible either 1) if household's circumstances have changed, the property can perform a new certification using current income and asset sources and current income limits to show eligibility;

or, 2) occupy the unit with an eligible household. In either case, submit copies of the current application, income/asset verification(s), Income Certification, Lease/Lease Addendum.

- **Failure to maintain or provide Annual Eligibility Certification:** affecting units 209, 223 and 246 This finding will remain outstanding as the Department reviewed the three files for the new households and determined they were not income eligible. To correct: either 1) if household's circumstances have changed, the property can perform a new certification using current income and asset sources and current income limits to show eligibility, or, 2) occupy the unit with an eligible household. In either case, submit copies of the current application, income/asset verification(s), Income Certification, Lease/Lease Addendum.

Please note, findings that are not corrected within the corrective action period will be considered in future funding decisions. Please see 10TAC§1.5 for details.

Villa Victoria Apartments has been referred to the Department's Administrative Penalties Committee for uncorrected noncompliance associated with the onsite monitoring review. Please see 10 TAC §60.307 for a listing of specific penalty amounts. A representative of our legal department will be contacting you for an informal conference in the near future to resolve this issue. If you implement the required corrective action, the compliance division will recommend the referral be cleared. If you have any questions, please feel free to contact me at (512) 475-3995 or toll free in Texas at (800) 643-8204 or via email patricia.villarreal@tdhca.state.tx.us.

Sincerely,



Digitally signed by
Patricia Villarreal
Date: 2014.09.25
13:35:23 -05'00'

Patricia Villarreal
Compliance Monitor

Attachment 4

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. 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 this form available for that purpose. It is required that households 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.
2. **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;
 - 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.

3. **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 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.
4. **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 (and be signed by) each adult household member.
5. **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 Tex. Admin. Code §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 Tex. Admin. Code §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. The Texas Apartment Association 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.

6. **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 or Tenant Amenities and Services Notice, correction 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>.

1d

BOARD ACTION REQUEST

LEGAL DIVISION

FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Orders concerning Tigoni Villas (HTC 03136 / CMTS 3353) and Plainview Vistas (HTC 04154 / CMTS 4073)

RECOMMENDED ACTION

WHEREAS, Tigoni Villas, owned by Tigoni Villas, L.P., and Plainview Vistas, owned by Plainview Vistas, L.P., have a history of uncorrected compliance findings relating to the applicable land use restriction agreements and the associated statutory and rule requirements;

WHEREAS, on December 16, 2014, the owner's representative met with the Enforcement Committee and agreed, subject to Board approval, to enter into two Agreed Final Orders, each assessing an administrative penalty of \$250.00, to be fully forgiven if all violations are resolved on or before April 20, 2015;

WHEREAS, the only remaining compliance violations at either property are their failures to provide evidence of an ownership interest and material participation by a qualified Historically Underutilized Business ("HUB"); and

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

NOW, therefore, it is hereby

RESOLVED, that the two Agreed Final Orders, each assessing an administrative penalty of \$250.00 subject to forgiveness as outlined above for noncompliance at Tigoni Villas (HTC 03136 / CMTS 3353) and Plainview Vistas (HTC 04154 / CMTS 4073), substantially in the forms presented at this meeting, and authorizing any non-substantive technical corrections, are hereby adopted as the orders of this Board.

BACKGROUND

Tigoni Villas, L.P. is the owner of Tigoni Villas, a low income apartment complex comprised of 140 units, located in San Antonio, Bexar County, Texas. Tigoni Villas is subject to a Land Use Restriction Agreement ("Tigoni LURA") signed in 2005 in consideration for an annual allocation of housing tax credits in the amount of \$851,994.00 to build and operate the property. The property and owning entity are controlled by Cathy Graunard.

Plainview Vistas, L.P. is the owner of Plainview Vistas, a low income apartment complex comprised of 76 units, located in Plainview, Hale County. Plainview Vistas is subject to a Land Use Restriction Agreement ("Plainview LURA") signed in 2006 in consideration for an annual allocation of housing tax credits in the amount of \$668,428.00 to build and operate the property. The property and owning entity are controlled by Cathy Graunard.

Both organizations listed above received points at the time of their tax credit applications for the involvement of a Historically Underutilized Business ("HUB") that would hold an ownership interest and materially participate in the development and operation of the properties. At the time that the Tigoni LURA and Plainview LURA were filed, the HUB holding an ownership interest in each property was Lone Star Housing Corporation.

When file monitoring reviews were performed for the above referenced properties on April 20, 2012 and August 14, 2013, respectively, owner representatives were able to show that Lone Star Housing Corporation, now known as Bexar Lone Star Housing Corporation ("Lone Star"), was materially participating as required by each LURA and that the organization was controlled by Cathy Graunard, and would qualify it for HUB certification, however:

1. They were unable to demonstrate that Lone Star held the required ownership interest in Tigoni Villas, L.P. or Plainview Vistas, L.P.;
2. Lone Star's HUB certification had lapsed; and
3. Lone Star's corporate status had been revoked by the Texas Secretary of State for failure to maintain reporting requirements.

Lone Star has since resolved its problems with the Texas Secretary of State and is back in good standing, however, the organization has not submitted evidence of its ownership interest, nor have they restored its status as a HUB.

Cathy Graunard met with the Enforcement Committee on December 16, 2014, and agreed to sign one Agreed Final Order per property, with each calling for a \$250.00 administrative penalty that is to be fully forgiven if all compliance violations listed above are resolved on or before April 20, 2015.

Consistent with direction from the Department's Enforcement Committee, a fully forgivable administrative penalty in the amount of \$250.00 is recommended for each property listed above, for a total administrative penalty of \$500.00.

ENFORCEMENT ACTION AGAINST
TIGONI VILLAS, L.P. WITH
RESPECT TO TIGONI VILLAS
(HTC FILE # 03136 / CMTS # 3353)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 19th day of February, 2015, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **TIGONI VILLAS, L.P.**, 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 Administrative Penalties 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. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.
2. In 2003, Tigoni Villas, L.P. (“Respondent”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$851,994 to build and operate Tigoni Villas (“Property”) (HTC file No. 03136 / CMTS No. 3353 / LDLD No. 408).

3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 14, 2005, and filed of record under Document Number 20060062552 of the Official Public Records of Real Property of Bexar County, Texas (“Records”), as amended by a First Amendment executed on February 25, 2010, and filed in the Records at Document Number 20110056344.
4. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on April 20, 2012, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility, and comply with other LURA requirements outlined in its Appendices. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a August 7, 2012, corrective action deadline was set, however, the following violation was not corrected before the deadline and remains unresolved as of the date of this Agreed Final Order:
 - a. Respondent failed to provide evidence of material participation and an ownership interest by a Historically Underutilized Business (“HUB”) that maintains regular, continuous, and substantial participation in the development and operation of the Property, a violation of Appendix A of the LURA and 10 TEX. ADMIN. CODE §60.117 (Monitoring for Non-profit Participation or HUB Participation). At the time that the LURA was filed, the HUB holding an ownership interest in the Property was Lone Star Housing Corporation. When the monitoring review was performed, owner representatives were able to show that Lone Star Housing Corporation, now known as Bexar Lone Star Housing Corporation (“Lone Star”), was materially participating as required and that the entity was controlled by a woman, however, they were unable to demonstrate that it held the required ownership interest, the entity’s HUB status had lapsed, and its corporate status had been revoked by the Texas Secretary of State for failure to maintain reporting requirements. Lone Star has since resolved its problems with the Texas Secretary of State and is back in good standing, however, the organization has not submitted evidence of their ownership interest, nor have they restored their status as a HUB.

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¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTER 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 TEX. ADMIN. CODE §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 Appendix A of the LURA and 10 TEX. ADMIN. CODE §60.117 by failing to provide evidence of an ownership interest and material participation by a qualified HUB.
5. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
6. 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.
7. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
8. An administrative penalty of \$250.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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 \$250.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall complete all requirements to restore Tigoni Villas, L.P. to good standing with the Texas Secretary of State and Texas Comptroller, and provide evidence of that good standing to the Department on or before April 20, 2015.

IT IS FURTHER ORDERED that Respondent shall submit all application materials required by the Texas Comptroller in order to apply to re-qualify Lone Star as a HUB, and provide evidence to the Department on or before April 20, 2015, to demonstrate that the application has been submitted in full.

IT IS FURTHER ORDERED that Respondent shall submit evidence to the Department on or before April 20, 2015, to prove that Lone Star holds an ownership interest in Tigoni Villas, L.P. See Attachment 1 for an excerpt from the LURA regarding this requirement.

IT IS FURTHER ORDERED that Respondent shall submit evidence to the Department on or before April 20, 2015, regarding how Lone Star materially participates in the operation of the development. See Attachment 2 for a copy of a section from Chapter 11 of the 8823 Guide for Completing Form 8823, which is a document that TDHCA uses as a basis to determine whether a nonprofit or HUB is materially participating.

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 assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$250.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

IT IS FURTHER ORDERED that corrective documentation must be 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>. 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 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 _____, 2015.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF _____§

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxer, 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 _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

Given under my hand and seal of office this _____ day of _____, 2015.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1:

Excerpt from Appendix A of the LURA, regarding HUB requirement

Historically Underutilized Businesses (HUB)

Throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall hold an ownership interest in the Project. The HUB must also maintain regular, continuous, and substantial participation in the development and operation of the Project. At the time this Declaration is filed, the HUB which holds an ownership interest in the Project is Lone Star Housing Corporation. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified HUB.

Attachment 2:

Chapter 11, Category 11q from the 8823 Guide for Completing Form 8823, providing details regarding TDHCA material participation expectations

(see attached)

Note – although the guide only discusses material participation by a nonprofit, the Department uses the same guidance to monitor for material participation by a HUB

Chapter 22
Category 11q
Other Noncompliance
Qualified Nonprofit Organization Failed to Materially Participate

Definition

IRC §42(h)(5) requires that each state set aside at least 10% of its state housing credit ceiling for allocations to projects in which qualified nonprofit organizations own an interest, and materially participate in the development and operation of the projects. "Qualified nonprofit organization" is defined as an IRC §501(c)(3) or 501(c)(4) organization exempt from tax under IRC §501(a) that is determined by the state agency as not being affiliated with or controlled by a for-profit organization, and one of the exempt purposes of the organization includes the fostering of low-income housing.

For purposes of this allocation, a nonprofit organization must have an ownership interest in the low-income housing project throughout the 15-year compliance period and materially participate in the *development* and *operation* of the project. Whether a nonprofit sponsor materially participates will depend on the application of IRC §469(h) to the facts and circumstances of a given project.

Under IRC §469(h)(1), the nonprofit must participate on a *regular, continuous, and substantial* basis in the development and operation of the project.¹ Although this standard is vague, the legislative history suggests the following guidelines in defining material participation in a business activity:

1. Material participation is most likely to be established in an activity that constitutes the principal business/activity of the taxpayer,
2. Involvement in the actual operations of the activity should occur. That is, the services provided must be integral to the operations of the activity. Simply consenting to someone else's decisions or periodic consultation with respect to general management decisions is not sufficient.
3. Participation must be maintained throughout the year. Periodic consultation is not sufficient.
4. Regular on-site presence at operations is indicative of material participation.
5. Providing services as an independent contractor is not sufficient.

Accordingly, a nonprofit entity will be considered to materially participate where it is regularly, continuously, and substantially involved in providing services integral to

¹ Treas. Reg. §1.469-5T provides rules for determining the material participation for individuals. IRC §469(h)(4) and Treas. Reg. §1.469-5T(g)(3) provide rules for determining the material participation of certain corporations. Because neither of these provisions applies to nonprofit organizations, they should be reviewed for illustrative purposes only. The general facts and circumstances test of IRC §469(h)(1) is the test applicable to nonprofit organizations.

the development and operations of a project.

Pursuant to IRC §42(h)(5)(D), the ownership and material participation test can be met by the organization if it owns stock in a qualified corporation that satisfies the ownership and material participation test. A qualified corporation must be a corporation that is 100 percent owned at all times during its existence by one or more qualified nonprofit organizations.

In Compliance

For purposes of reviewing projects for compliance with the requirements of IRC §42(h)(5) during the 15-year compliance period, the state agencies' responsibility is limited to consideration of whether the qualified nonprofit entity is *materially participating* in the operation of the project; i.e., both management decision making and the day-to-day operations. In order to materially participate, the qualified nonprofit must be engaged in the activities on a basis that is regular, continuous, and substantial.

Example 1: Qualified Nonprofit Organization Materially Participates

A for-profit organization and a qualified nonprofit organization are general partners for an LIHC project. The state agency sent the review notification letter to the nonprofit and the nonprofit's executive director was on site at the time of the review to answer questions and participate in the physical inspection. The nonprofit received the compliance report, corrected a noncompliance issue and reported back to the state agency.

The owner has demonstrated management involvement.

Example 2: Property Managed by Nonprofit Representatives

A qualified nonprofit organization owns an LIHC project. Not having the expertise to operate an LIHC property on a day-to-day basis, the nonprofit hires an affordable housing management company. The management company reports to, and is paid by, the qualified nonprofit organization.

The application of the material participation rules under IRC §469 should be flexible. In this case, the owner has demonstrated both management decision making and control of the day-to-day operations through their oversight of the management company.

Out of Compliance

A taxpayer is out of compliance if:

1. The qualified nonprofit organization does not materially participate (as determined under IRC §469(h)(1)), or

2. The qualified nonprofit organization does not materially participate in both the *development and operation* of the project; i.e., both management decisions and day-to-day activities.

A property is out of compliance for any taxable year where the entity does not participate on a basis that is regular, continuous and substantial within the meaning of IRC §469(h)(1) for that year. Noncompliance can be identified by interviewing the qualified nonprofit organization's management representatives and observation while at the property site.

Example 1: Qualified Nonprofit Does Not Participate in Management Decisions

A for-profit organization and qualified nonprofit organization are general partners for an LIHC project. The nonprofit organization fully participated in the development of the project, but has not participated in (directly or through a representative) any monthly management meetings in year 3 of the compliance period and does not otherwise participate on a regular, continuous, or substantial basis.

The property is out of compliance for year 3 of the compliance period.

Example 2: Management Company Employee Provides Volunteer Services

A for-profit organization and qualified nonprofit organization are general partners for an LIHC project. The third party management company operating the project reports to the for-profit general partner. The management company employs a property manager who signed an agreement to be a "volunteer" for the non-profit and provide services for the nonprofit organization.

The property is not in compliance because the property manager's agreement to be a volunteer is part of its employment responsibilities to the for-profit organization.

Should a state agency become aware of noncompliance with other requirements imposed under IRC §42(h)(5), Form 8823 should be filed noting the issue. Areas of noncompliance may include:

1. The qualified nonprofit organization loses its exempt status. As part of the preparation for a review of an LIHC property owned by a qualified nonprofit organization under IRC §42(h)(5), state agencies may confirm that the nonprofit is a qualified tax-exempt organization by using the IRS website (www.irs.gov). Enter "78" into the "Search IRS site for" feature; the response will be "Chances are you are looking for Publication 78, Search for Exempt Organizations"; clicking on the underline portion will provide an alphabetical listing of exempt organizations. The state agency should request documentation of tax-exempt status if the organization is not included on the list.
2. The qualified nonprofit organization does not have an ownership interest in the low-income housing project.

Back in Compliance

LIHC projects are considered back in compliance in a taxable year when a qualified nonprofit organization owns an interest in the project and satisfies the material participation test set forth in IRC §469(h)(1) for that taxable year.

Example 1: Qualifying Nonprofit Organization Begins Attending Management Meetings

A for-profit organization and a qualified nonprofit organization are general partners for an LIHC project. The nonprofit organization materially participated in the on-going operation of the project in years 2, 3, and 4. They did not materially participate in year 5. It was determined that in year 7 of the compliance period, the nonprofit organization materially participated.

The property is out of compliance as of December 31st of year 5 and back in compliance as of December 31st of year 7.

Reference

1. IRC §42(h)(5)
2. Senate Report. 99-313, 99th Cong. 2nd Session, 1986-3 C.B. (Vol. 3) 732

ENFORCEMENT ACTION AGAINST
PLAINVIEW VISTAS, L.P. WITH
RESPECT TO PLAINVIEW VISTAS
(HTC FILE # 04154 / CMTS # 4073)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 19th day of February, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **PLAINVIEW VISTAS, L.P.**, 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 Administrative Penalties 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. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.

2. In 2004, Plainview Vistas, L.P. ("Respondent") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$668,428.00 to build and operate Plainview Vistas ("Property") (HTC file No. 04154 / CMTS No. 4073 / LDLD No. 514).
3. Respondent signed a Land Use Restriction Agreement ("LURA") regarding the Property. The LURA was effective June 30, 2006, and filed of record under Volume 1039, Page 5045 of the Official Public Records of Real Property of Hale County, Texas ("Records").
4. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on August 14, 2013, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility, and comply with other LURA requirements outlined in its Appendices. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a December 22, 2013, corrective action deadline was set, however, the following violation was not corrected before the deadline and remains unresolved as of the date of this Agreed Final Order:
 - a. Respondent failed to provide evidence of material participation and an ownership interest by a Historically Underutilized Business ("HUB") that maintains regular, continuous, and substantial participation in the development and operation of the Property, a violation of Appendix A of the LURA and 10 TEX. ADMIN. CODE §10.615 (Monitoring for Non-profit Participation or HUB Participation). At the time that the LURA was filed, the HUB holding an ownership interest in the Property was Lone Star Housing Corporation. When the monitoring review was performed, owner representatives were able to show that Lone Star Housing Corporation, now known as Bexar Lone Star Housing Corporation ("Lone Star"), was materially participating as required and that the entity was controlled by a woman, however, they were unable to demonstrate that it held the required ownership interest, the entity's HUB status had lapsed, and its corporate status had been revoked by the Texas Secretary of State for failure to maintain reporting requirements. Lone Star has since resolved its problems with the Texas Secretary of State and is back in good standing, however, the organization has not submitted evidence of their ownership interest, nor have they restored their status as a HUB.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 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 TEX. ADMIN. CODE §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 Appendix A of the LURA and 10 TEX. ADMIN. CODE §10.615 by failing to provide evidence of an ownership interest and material participation by a qualified HUB.
5. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
6. 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.
7. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
8. An administrative penalty of \$250.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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 \$250.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall complete all requirements to restore Plainview Vistas, L.P. to good standing with the Texas Secretary of State and Texas Comptroller, and provide evidence of that good standing to the Department on or before April 20, 2015.

IT IS FURTHER ORDERED that Respondent shall submit all application materials required by the Texas Comptroller in order to apply to re-qualify Lone Star as a HUB, and provide evidence to the Department on or before April 20, 2015, to demonstrate that the application has been submitted in full.

IT IS FURTHER ORDERED that Respondent shall submit evidence to the Department on or before April 20, 2015, to prove that Lone Star holds an ownership interest in Plainview Vistas, L.P. See Attachment 1 for an excerpt from the LURA regarding this requirement.

IT IS FURTHER ORDERED that Respondent shall submit evidence to the Department on or before April 20, 2015, regarding how Lone Star materially participates in the operation of the development. See Attachment 2 for a copy of a section from Chapter 11 of the 8823 Guide for Completing Form 8823, which is a document that TDHCA uses as a basis to determine whether a nonprofit or HUB is materially participating.

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 assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$250.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

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

[Remainder of page intentionally blank]

Given under my hand and seal of office this _____ day of _____, 2015.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1:

Excerpt from Appendix A of the LURA, regarding HUB requirement

Historically Underutilized Businesses (HUB)

Throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall hold an ownership interest in the Project. The HUB must also maintain regular, continuous, and substantial participation in the development and operation of the Project. At the time this Declaration is filed, the HUB which holds an ownership interest in the Project is Lone Star Housing Corporation.

The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified HUB.

Attachment 2:

Chapter 11, Category 11q from the 8823 Guide for Completing Form 8823, providing details regarding TDHCA material participation expectations

(see attached)

Note – although the guide only discusses material participation by a nonprofit, the Department uses the same guidance to monitor for material participation by a HUB

Chapter 22
Category 11q
Other Noncompliance
Qualified Nonprofit Organization Failed to Materially Participate

Definition

IRC §42(h)(5) requires that each state set aside at least 10% of its state housing credit ceiling for allocations to projects in which qualified nonprofit organizations own an interest, and materially participate in the development and operation of the projects. "Qualified nonprofit organization" is defined as an IRC §501(c)(3) or 501(c)(4) organization exempt from tax under IRC §501(a) that is determined by the state agency as not being affiliated with or controlled by a for-profit organization, and one of the exempt purposes of the organization includes the fostering of low-income housing.

For purposes of this allocation, a nonprofit organization must have an ownership interest in the low-income housing project throughout the 15-year compliance period and materially participate in the *development* and *operation* of the project. Whether a nonprofit sponsor materially participates will depend on the application of IRC §469(h) to the facts and circumstances of a given project.

Under IRC §469(h)(1), the nonprofit must participate on a *regular, continuous, and substantial* basis in the development and operation of the project.¹ Although this standard is vague, the legislative history suggests the following guidelines in defining material participation in a business activity:

1. Material participation is most likely to be established in an activity that constitutes the principal business/activity of the taxpayer,
2. Involvement in the actual operations of the activity should occur. That is, the services provided must be integral to the operations of the activity. Simply consenting to someone else's decisions or periodic consultation with respect to general management decisions is not sufficient.
3. Participation must be maintained throughout the year. Periodic consultation is not sufficient.
4. Regular on-site presence at operations is indicative of material participation.
5. Providing services as an independent contractor is not sufficient.

Accordingly, a nonprofit entity will be considered to materially participate where it is regularly, continuously, and substantially involved in providing services integral to

¹ Treas. Reg. §1.469-5T provides rules for determining the material participation for individuals. IRC §469(h)(4) and Treas. Reg. §1.469-5T(g)(3) provide rules for determining the material participation of certain corporations. Because neither of these provisions applies to nonprofit organizations, they should be reviewed for illustrative purposes only. The general facts and circumstances test of IRC §469(h)(1) is the test applicable to nonprofit organizations.

the development and operations of a project.

Pursuant to IRC §42(h)(5)(D), the ownership and material participation test can be met by the organization if it owns stock in a qualified corporation that satisfies the ownership and material participation test. A qualified corporation must be a corporation that is 100 percent owned at all times during its existence by one or more qualified nonprofit organizations.

In Compliance

For purposes of reviewing projects for compliance with the requirements of IRC §42(h)(5) during the 15-year compliance period, the state agencies' responsibility is limited to consideration of whether the qualified nonprofit entity is *materially participating* in the operation of the project; i.e., both management decision making and the day-to-day operations. In order to materially participate, the qualified nonprofit must be engaged in the activities on a basis that is regular, continuous, and substantial.

Example 1: Qualified Nonprofit Organization Materially Participates

A for-profit organization and a qualified nonprofit organization are general partners for an LIHC project. The state agency sent the review notification letter to the nonprofit and the nonprofit's executive director was on site at the time of the review to answer questions and participate in the physical inspection. The nonprofit received the compliance report, corrected a noncompliance issue and reported back to the state agency.

The owner has demonstrated management involvement.

Example 2: Property Managed by Nonprofit Representatives

A qualified nonprofit organization owns an LIHC project. Not having the expertise to operate an LIHC property on a day-to-day basis, the nonprofit hires an affordable housing management company. The management company reports to, and is paid by, the qualified nonprofit organization.

The application of the material participation rules under IRC §469 should be flexible. In this case, the owner has demonstrated both management decision making and control of the day-to-day operations through their oversight of the management company.

Out of Compliance

A taxpayer is out of compliance if:

1. The qualified nonprofit organization does not materially participate (as determined under IRC §469(h)(1)), or

2. The qualified nonprofit organization does not materially participate in both the *development and operation* of the project; i.e., both management decisions and day-to-day activities.

A property is out of compliance for any taxable year where the entity does not participate on a basis that is regular, continuous and substantial within the meaning of IRC §469(h)(1) for that year. Noncompliance can be identified by interviewing the qualified nonprofit organization's management representatives and observation while at the property site.

Example 1: Qualified Nonprofit Does Not Participate in Management Decisions

A for-profit organization and qualified nonprofit organization are general partners for an LIHC project. The nonprofit organization fully participated in the development of the project, but has not participated in (directly or through a representative) any monthly management meetings in year 3 of the compliance period and does not otherwise participate on a regular, continuous, or substantial basis.

The property is out of compliance for year 3 of the compliance period.

Example 2: Management Company Employee Provides Volunteer Services

A for-profit organization and qualified nonprofit organization are general partners for an LIHC project. The third party management company operating the project reports to the for-profit general partner. The management company employs a property manager who signed an agreement to be a "volunteer" for the non-profit and provide services for the nonprofit organization.

The property is not in compliance because the property manager's agreement to be a volunteer is part of its employment responsibilities to the for-profit organization.

Should a state agency become aware of noncompliance with other requirements imposed under IRC §42(h)(5), Form 8823 should be filed noting the issue. Areas of noncompliance may include:

1. The qualified nonprofit organization loses its exempt status. As part of the preparation for a review of an LIHC property owned by a qualified nonprofit organization under IRC §42(h)(5), state agencies may confirm that the nonprofit is a qualified tax-exempt organization by using the IRS website (www.irs.gov). Enter "78" into the "Search IRS site for" feature; the response will be "Chances are you are looking for Publication 78, Search for Exempt Organizations"; clicking on the underline portion will provide an alphabetical listing of exempt organizations. The state agency should request documentation of tax-exempt status if the organization is not included on the list.
2. The qualified nonprofit organization does not have an ownership interest in the low-income housing project.

Back in Compliance

LIHC projects are considered back in compliance in a taxable year when a qualified nonprofit organization owns an interest in the project and satisfies the material participation test set forth in IRC §469(h)(1) for that taxable year.

Example 1: Qualifying Nonprofit Organization Begins Attending Management Meetings

A for-profit organization and a qualified nonprofit organization are general partners for an LIHC project. The nonprofit organization materially participated in the on-going operation of the project in years 2, 3, and 4. They did not materially participate in year 5. It was determined that in year 7 of the compliance period, the nonprofit organization materially participated.

The property is out of compliance as of December 31st of year 5 and back in compliance as of December 31st of year 7.

Reference

1. IRC §42(h)(5)
2. Senate Report. 99-313, 99th Cong. 2nd Session, 1986-3 C.B. (Vol. 3) 732

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BOARD ACTION REQUEST

LEGAL DIVISION

FEBRUARY 19, 2015

Presentation and Discussion and Possible Action regarding the adoption of an Agreed Final Order concerning Southmore Park (HTC 94004 / CMTS 1204)

RECOMMENDED ACTION

WHEREAS, Southmore Park Apartments in Pasadena, Harris County, Texas, owned by Southmore Park Apartments, Ltd, has a history of uncorrected violations of the applicable land use restriction agreement (“LURA”) and associated statutory and rule requirements;

WHEREAS, the Executive Director issued a Report to the Board on May 5, 2011, regarding a recommended administrative penalty and TDHCA’s intention to initiate a contested case hearing with respect to uncorrected compliance violations;

WHEREAS, additional uncorrected violations accrued and the Executive Director issued an Amended Report to the Board on June 26, 2014, to meet statutory requirements at TEX. GOV’T. CODE §2306.043 so that the Department could include those additional violations as part of the scheduled contested case hearing, thus avoiding the time and expense of conducting two separate hearings;

WHEREAS, Southmore Park Apartments is set for a contested case hearing before the State Office of Administrative Hearings (“SOAH”) on March 27, 2015;

WHEREAS, Southmore Park Apartments, Ltd. has agreed, subject to Board approval, to withdraw its request for a contested case hearing and enter into an Agreed Final Order assessing an administrative penalty of \$5,000.00 to be paid on or before March 20, 2015, and requiring full corrective documentation to be submitted to TDHCA according to a series of deadlines;

WHEREAS, remaining compliance violations to be resolved under the Agreed Final Order include: Household income above income limit upon initial occupancy for 14 units, failure to provide an affirmative marketing plan; failure to submit pre-onsite documentation; failure to correct Uniform Physical Condition Standards violations, and failure to pay 2006 through 2013 compliance fees in the total amount of \$11,160.00; and

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

NOW, therefore, it is hereby

RESOLVED, that the Agreed Final Order requiring full correction of all unresolved violations outlined above and assessing an administrative penalty of \$5,000.00 for noncompliance at Southmore Park Apartments (HTC 94004 / CMTS 1204), 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

Southmore Park Apartments, Ltd. received an allocation totaling \$2,375,230 in low income housing tax credits in 1994 for the rehabilitation of a 93-unit apartment complex in Pasadena, Harris County, Texas. Southmore Park Apartments are in material noncompliance with the applicable Land Use Restriction Agreement (“LURA”) and the associated statute and rules. The property has been consistently noncompliant for over ten years and neither the Compliance Division nor the Department’s Administrative Penalty Committee (“Committee”) has been able to bring the property into full compliance.

A Report to the Board was issued May 5, 2011, regarding a recommended administrative penalty and TDHCA’s intention to initiate a contested case. The property was set for a contested case hearing before SOAH regarding those previously reported violations, and the hearing has been continued multiple times. Additional uncorrected violations accrued and an Amended Report to the Board was issued on June 26, 2014, including those additional violations as part of the previously scheduled hearing, thus avoiding the time and expense of conducting two separate contested case hearings. The case is currently scheduled for March 27, 2015.

Violations reported to the Board on May 5, 2011, for which a \$16,125 administrative penalty was sought:

- Uniform Physical Condition Standards (“UPCS”) violations from 2006 inspection;
- UPCS violations from 2009 inspection;
- Household income above limit upon initial occupancy violations for 13 units;
- Failure to submit annual owner’s compliance reports for the years 2006, 2007, 2008, 2010;
- Failure to affirmatively market;
- Gross rents that exceeded limits for 66 units;
- Failure to meet minimum set-aside.

Of the previously reported violations listed above, only 4 household income violations remain unresolved. The rest of the previously reported violations have been corrected by owner.

Additional violations reported to the Board on June 26, 2014:

- Failure to submit annual owner’s compliance report for the year 2011;
- UPCS violations from the 2012 inspection;
- Household income above limit upon initial occupancy violations for 10 units;
- Failure to affirmatively market;
- Failure to properly calculate utility allowance;
- Failure to pay annual compliance fees; and
- Failure to submit pre-onsite documentation.

The utility allowance violation was resolved on January 28, 2015, but other violations listed above remain uncorrected.

Opposing counsel has been working with TDHCA Legal staff to negotiate the terms of an Agreed Final Order to avoid the further time and expense associated with continuing to pursue a contested case hearing. Both sides have agreed to the following terms, subject to Board approval:

1. \$5,000 administrative penalty to be paid on or before March 20, 2015;
2. Monthly payments to begin on March 20, 2015, and continue until final payment on February 16, 2016, to pay delinquent 2006 through 2013 Compliance fees in the amount of \$11,160.00; and
3. Fully acceptable documentation to be submitted on or before April 15, 2015, to resolve all uncorrected violations listed in the table above, with the exception of the compliance fee violations that are subject to a payment plan.

Consistent with direction from the Department's Legal staff, a reduced penalty in the amount of \$5,000.00 is recommended.

ENFORCEMENT ACTION AGAINST
SOUTHMORE PARK APARTMENTS,
LTD. (HTC FILE # 94004)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 19th day of February, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **SOUTHMORE PARK APARTMENTS, LTD.**, a Texas Limited Partnership ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order.

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.

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

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60.
2. On November 20, 1996, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$237,523.00 to build and operate Southmore Park Apartments ("Property") (HTC file No. 94004 / CMTS No. 1204 / LDLD No. 141).

3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective November 20, 1996, and filed of record at Document Number S250798 of the Official Public Records of Real Property of Harris County, Texas ("Records"), as amended by a First Amendment executed on April 5, 2004.
4. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

1. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on February 2, 2006. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.13 (Inspection Standard). Reports were mailed to Southmore Park and, in conformance with 10 TEX. ADMIN. CODE § 60.14 (Notices to Owner), as amended, a 90-day corrective action deadline of July 2, 2006 was set to provide Southmore Park a reasonable opportunity to respond to the report and bring the property into compliance. An additional letter was sent on August 6, 2009 providing notice that administrative penalties would be assessed if the remaining violations were not corrected within thirty days. Partial corrective action was received but the following violations were not corrected before the ultimate September 15, 2009 deadline:
 - a. Health and safety violation caused by blocked fire exit in unit 206;
 - b. Holes, deteriorated paint and spalling on exteriors of Buildings 1, 2, 3, 4, 5, 6, 7 and 8;
 - c. Damaged shower/tub in units 117, 119;
 - d. Missing/inoperable refrigerators in units 420, 507;
 - e. Leaking faucet and pipes in the bathroom of unit 507;
 - f. Stains and peeling on exterior of Building 8; and
 - g. Missing and damaged components from gutter downspout of Building 8.

Proof that all corrections were made was submitted on March 4, 2011, 535 days past the deadline. As of the date of this order this violation is considered cured.

2. On May 14, 2007, TDHCA sent notice that Southmore Park had failed to timely submit their 2006 Annual Owner's Compliance Report that was due on April 30, 2007, a violation of 10 TEX. ADMIN. CODE §60.10 (Annual Owner's Compliance Report Certification and Review), which requires each development to submit an Annual Owner's Compliance Report.

The final parts were submitted on November 27, 2009, 942 days past the deadline. As of the date of this order this violation is considered cured.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 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.

3. On March 10, 2008, TDHCA sent notice that Southmore Park had failed to timely submit their 2007 Annual Owner's Compliance Report that was due on April 30, 2008, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report.

The final parts were submitted on November 27, 2009, 576 days past the deadline. As of the date of this order this violation is considered cured.

4. An on-site monitoring review was conducted on February 18, 2009, to determine whether Southmore Park Apartments were in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility and keep the properties in good condition. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and additional deadlines were set however, the following violations were not corrected before the final September 15, 2009 corrective action deadline:

- a. Southmore Park failed to meet the property set-aside requirement, a violation of the LURA which requires the development to lease or set aside 93 units to residents with income levels at or below 60% of the area median income in accordance with the property's set-aside election in the LURA, a violation of the LURA and 10 TEX. ADMIN. CODE § 60.111 which outlines minimum set-aside requirements for tax credit properties. The minimum set-aside election was made pursuant to IRC §42(g)(1) which requires tax credit properties to make a minimum set-aside election regarding how the property shall be monitored by TDHCA in accordance with 10 TEX. ADMIN. CODE § 60. Southmore Park failed to maintain that minimum setaside election;
- b. Southmore Park collected gross rents that exceeded income limits as a result of an unsupported \$25 application fee charged to the following 45 units: 103, 104, 106, 107, 108, 110, 113, 120, 201, 202, 205, 303, 304, 305, 306, 401, 402, 406, 407, 409, 411, 413, 414, 415, 416, 417, 419, 504, 505, 507, 508, 512, 513, 514, 518, 702, 703, 801, 804, 806, 808, 812, 813, 814 and 816, a violation of 10 TEX. ADMIN. CODE § 60.118 (Special Rules Regarding Rents and Rent Limit Violations). TDHCA publishes maximum rent limits for the tax credit program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Southmore Park was unable to provide invoices supporting their application fees;
- c. Southmore Park collected gross rents that exceeded income limits as a result of a \$75 mandatory redecoration fee charged to the following 9 units: 105, 120, 302, 508, 516, 601, 804, 805 and 810. TDHCA publishes maximum rent limits for the tax credit program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. The mandatory redecoration fee is a violation of 10 TEX. ADMIN. CODE §60.118 (Special Rules Regarding Rents and Rent Limit Violations) which restricts the maximum applicable limit for rents. The fee also violates IRC § 42(i)(3)(B)(i) and 26 C.F.R § 1.42-5(g), as interpreted by the IRS Guide for

Completing Form 8823, Chapter 11, Category 11g² which states that fees to prepare a unit for occupancy may not be charged because owners are responsible for keeping units suitable for occupancy;

- d. Southmore Park collected gross rents that exceeded income limits as a result of excessive mandatory utility fees charged to units 107 and 113 in January and February of 2009. TDHCA publishes maximum rent limits for the tax credit program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. For Unit 107, the maximum rent allowed was \$953, but Southmore charged \$1,015.02 in January and \$1,023 in February of 2009. For Unit 113, the maximum rent allowed was \$952, but Southmore charged \$1,048.04 in January and \$1,034.33 in February of 2009. Exceeding the maximum rent is a violation of 10 TEX. ADMIN. CODE §60.118 (Special Rules Regarding Rents and Rent Limit Violations). It is also a violation of 26 C.F.R § 1.42-11, as interpreted by the IRS Guide for Completing Form 8823, Chapter 11, Category 11g, which stipulates that all required costs or fees be included in the rent computation;
- e. Southmore Park failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.112 (Requirements Pertaining to Households with Rental Assistance); and
- f. Southmore Park failed to provide documentation that household incomes are within prescribed limits upon initial occupancy for units 107, 205, 402, 407, 504, 508, 518, 702, 703, 801, 804, 806 and 812, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA.

The property set-aside and the gross rent violations were corrected on January 1, 2010, 108 days past the deadline. As of the date of this order this violation is considered cured.

The affirmative marketing finding was corrected March 4, 2011, 535 days past the deadline. As of the date of this order this violation is considered cured.

The household income above limit upon initial occupancy findings for units 205, 402, 407, 504, 508, 518, 804, 806 and 812 were corrected on various dates between August 15, 2009 and October of 2010. The violations for units 107, 702, 703 and 801 were never corrected.

5. On March 16, 2009, TDHCA sent notice that Southmore Park had failed to submit their 2008 Annual Owner's Compliance Report that was due on April 30, 2009, a violation of 10 TEX. ADMIN. CODE § 60.105 (Reporting Requirements) which requires each development to submit an Annual Owner's Compliance Report.

² References to the IRS Guide for Completing Form 8823, Chapter 11, Category 11g are to the version of the guide in place at the time of the monitoring review conducted on February 18, 2009

The final parts for the 2008 report were submitted on September 21, 2009, 144 days past the deadline. A UPCS inspection was conducted on April 14, 2009. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standards). Reports were mailed to Southmore Park and, in conformance with 10 TEX. ADMIN. CODE § 60.117 (Notice to Owners), a 90-day corrective action deadline of May 24, 2010 was set to provide Southmore Park a reasonable opportunity to respond to the report and bring the property into compliance. Deadlines were extended to October 27, 2010 but no response was received by the deadline.

Proof that corrections were made was received on March 4, 2011, 128 days past the deadline. As of the date of this order this violation is considered cured.

6. On March 25, 2011, TDHCA sent notice that Southmore Park had failed to submit their 2010 Annual Owner's Compliance Report that was due on April 30, 2011, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements) which requires each development to submit an Annual Owner's Compliance Report. Parts A, B and C were received, but Part D, the Owner's Financial Certification, remains outstanding.
7. An on-site monitoring review was conducted on March 15, 2012, to determine whether Southmore Park Apartments were in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility and keep the properties in good condition. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and the following violations were not corrected before the June 13, 2012 corrective action deadline. The violations remain uncorrected.
 - a. Southmore Park failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 112, 120, 201, 203, 204, 409, 418, 503, 805 and 813, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA, both of which require developments to ensure that tenants meet income eligibility requirements;
 - b. Southmore Park failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114 (Requirements Pertaining to Households with Rental Assistance) which requires developments to create a plan to be used to attract applicants of all minority and non-minority groups in the housing market area, regardless of their race, color, religion, sex, national origin, disability, familial status or religious affiliation;
 - c. Southmore Park failed to properly calculate utility allowance, a violation of 10 TEX. ADMIN. CODE §60.109 (Utility Allowances) which requires that all properties comply with published rent limits which include an allowance for tenant paid utilities;

- d. Southmore Park failed to pay compliance fees, a violation of Section 7 of the LURA which requires owner to pay an annual compliance fee to the Department in the amount of \$15 per unit, for a total of \$1,395 per year. It is also a violation of TEX. GOV'T. CODE §2306.176 and §2306.266 which permit the Department to set, charge, and collect fees. At the time, Annual Compliance fees had not been paid for the years 2006 through 2011, leaving a total unpaid balance of \$8,370 for those years; and
 - e. Southmore Park failed to submit pre-onsite documentation, a violation of 10 TEX. ADMIN. CODE §60.115 (Onsite Monitoring) which allows TDHCA to perform onsite monitoring of any TDHCA funded low income development and requires owners to submit requested information.
8. A UPCS inspection was conducted on March 19, 2012. The inspection report, attached hereto as **Exhibit 1**, showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Reports were mailed to Southmore Park and, in conformance with 10 TEX. ADMIN. CODE § 60.119 (Notice to Owners), a 90-day corrective action deadline of July 12, 2012, was set to provide Southmore Park a reasonable opportunity to respond to the report and bring the property into compliance. No corrections have been received.
 9. On May 23, 2012, TDHCA sent notice that Southmore Park had failed to submit their 2011 Annual Owner's Compliance Report that was due April 30, 2012, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements) which requires each development to submit an Annual Owner's Compliance Report. Part B was submitted, but no response has been received.

Part B was received, but the following parts remain outstanding: Part A, the Owner's Certification of Program Compliance; Part C, the Housing for Persons with Disabilities Report; and Part D, the Owner's Financial Certification.
 10. On November 1, 2012, TDHCA sent an invoice for annual compliance fees that had come due. Southmore Park failed to pay the invoice within thirty days, a violation of Section 7 of the LURA which requires owner to pay an annual compliance fee to the Department in the amount of \$15 per unit, for a total of \$1,395 per year. At the time, Annual Compliance fees had not been paid for the years 2006 through 2012, leaving a total unpaid balance of \$9,765.
 11. On November 1, 2013, TDHCA sent an invoice for annual compliance fees that had come due. Southmore Park failed to pay the invoice within thirty days, a violation of Section 7 of the LURA which requires owner to pay an annual compliance fee to the Department in the amount of \$15 per unit, for a total of \$1,395 per year. It is also a violation of TEX. GOV'T. CODE §2306.176 which permits the Department to set, charge, and collect fees. Annual Compliance fees have not been paid for the years 2006 through 2013, leaving a total unpaid balance of \$11,160.
 12. TDHCA has not received evidence of correction of the following violations:

- a. Household Income Above Income Limit Upon Initial Occupancy: Units 107, 112, 120, 201, 203, 204, 409, 418, 503, 702, 703, 801, 805 and 813;
- b. Failure to provide an affirmative marketing plan;
- c. Failure to submit pre-onsite documentation;
- d. Failure to correct UPCS violations listed at **Exhibit 1**;
- e. Failure to pay 2006 through 2013 compliance fees in the total amount of \$11,160.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to TEX. GOV'T CODE § 2306.041-.0503, 10 TAC § 1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in TEX. GOV'T CODE § 2306.004(14).
3. Pursuant to IRC § 42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance;
4. Southmore Park violated 10 TEX. ADMIN. CODE § 60.13 in 2006, 10 TEX. ADMIN. CODE § 60.116 in 2009, 10 TEX. ADMIN. CODE § 60.118 in 2012, and I.R.C. § 42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected;
5. Southmore Park violated 10 TEX. ADMIN. CODE § 60.10 in 2007 and 10 TEX. ADMIN. CODE § 60.105 in 2008, 2009, 2010, 2011 and 2012 by failing to submit Annual Owner's Compliance Reports for the years 2006, 2007, 2008, 2009, 2010 and 2011;
6. Southmore Park violated the LURA in 2009 by failing to meet the property set-aside requirement on or before the associated deadline in violation of the LURA, 10 TEX. ADMIN. CODE § 60.111, and IRC § 42(g)(1);
7. Southmore Park violated 10 TEX. ADMIN. CODE § 60.118 in 2009 by charging excessive application fees resulting in gross rents exceeding the allowable limits, and not making timely corrections once the violations were discovered;
8. Southmore Park violated 10 TEX. ADMIN. CODE § 60.118 in 2009 and violated IRC § 42(i)(3)(B)(i) and 26 C.F.R § 1.42-5(g), as interpreted by the IRS Guide for Completing Form 8823, by charging mandatory redecoration fees and not making timely corrections once the violations were discovered;
9. Southmore Park violated 10 TEX. ADMIN. CODE § 60.118 and 26 C.F.R § 1.42-11 in 2009 by charging rents that exceeded income limits as a result of excessive mandatory utility charges and not making timely corrections once the violations were discovered;
10. Southmore Park violated 10 TEX. ADMIN. CODE § 60.112 in 2009 and 10 TEX. ADMIN. CODE § 60.114 in 2012 by failing to provide an affirmative marketing plan;
11. Southmore Park violated 10 TEX. ADMIN. CODE § 60.108 and § 60.111 in 2009 and 10 TEX. ADMIN. CODE § 60.108 and § 60.111 in 2012 by failing to provide documentation

that household incomes were within prescribed limits upon initial occupancy and to maintain periodic tenant income certifications;

12. Southmore Park violated 10 TEX. ADMIN. CODE § 60.109 in 2012 by failing to properly calculate a utility allowance;
13. Southmore Park violated Section 7 of the LURA and TEX. GOV'T. CODE §2306.176 and §2306.266 by failing to pay required annual compliance fees for the years 2006 through 2013 in the total amount of \$11,160;
14. Southmore Park violated 10 TEX. ADMIN. CODE § 60.115 in 2012, by failing to submit pre-on-site documentation and/or permit access to the Property premises and records;
15. The penalty amount of \$5,000.00 is appropriate under the penalty matrix that was in place under 10 TEX. ADMIN. CODE § 60.309³, if the respondent corrects all outstanding violations in a timely manner and reimburses the annual compliance fees due in the amount of \$11,160.

Based upon the foregoing findings of fact, conclusions of law, and an assessment of the factors in Tex. Gov't Code §2306.042, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent shall pay and is hereby directed to pay the administrative penalty in the amount of \$5,000.00 by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before March 20, 2015..

IT IS FURTHER ORDERED that Respondent shall pay the 2006 through 2013 compliance fees, as discussed in Finding of Fact 12(f), in the total amount of \$11,160 to the "Texas Department of Housing and Community Affairs" via cashiers' checks by March 20, 2016. Payments shall be made on or before the 20th of each month, for 11 months, in the amount of \$700.00 per month starting on or before March 20, 2015, with the last payment of \$700.00 to be made on or before January 16, 2016. A final payment in the amount of \$3,460.00 shall be paid to the Department on or before February 16, 2016. The full amount due may be paid in full at any time before the expiration of the one year due date.

IT IS FURTHER ORDERED that all payments 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 correct the violations that remain outstanding as listed in Finding of Fact 12(a-d), and submit clear and complete documentation of the corrections to TDHCA on or before April 15, 2015.

³ Reference to the administrative penalty matrix at 10 TEX. ADMIN. CODE § 60.309 (Penalty Table) refers to the version of the code in place on May 5, 2011, when the TDHCA Executive Director gave a report to the Governing Board of TDHCA regarding administrative penalties to be pursued.

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>.

IT IS FURTHER ORDERED that Respondent shall repair all UPCS violations as discussed in Finding of Fact 12(e) that remain outstanding and are listed in Exhibit 1 and submit work orders, including all necessary parts thereof that clearly and completely document the corrections to TDHCA on or before July 15, 2015.

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 _____, 2015.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxer, 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 _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS _____ §
COUNTY OF HARRIS _____ §

BEFORE ME, JAIME M RODRIGUEZ, a notary public in and for the State of TEXAS, on this day personally appeared Charles V. Miller Sr., known to me or proven to me through TDL 06065285 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 Charles V. Miller Sr.; I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of President for Respondent. I am the authorized representative of Respondent, owner of Southmore Park Apartments, 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."

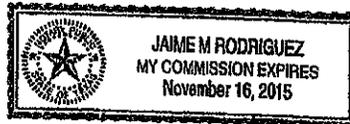
RESPONDENT:

SOUTHMORE PARK APARTMENTS, LTD., a Texas Limited Partnership

By: [Signature]
Name: Charles V. Miller Sr.
Title: President

Given under my hand and seal of office this 7 day of FEB, 2015.

[Signature]
Signature of Notary Public
JAIME M RODRIGUEZ
Printed Name of Notary Public



NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My Commission Expires: Nov 16 2015

TDHCA Exhibit 1

Outstanding UPCS Violations

	Def. Found			Deficiency Title	Notes
	L1	L2	L3		
General Property:					
Fencing and Gates			X	Damaged/Falling/Leaning	GATE INOPERABLE
Health & Safety			X	Hazards - Other	ELEVATORS HAVE BEEN REMOVED AND COVERED
Building: 1					
Building Systems					
Fire Protection			X	Missing/Damaged/Expired Extinguishers	EXPIRED
Sanitary System			X	Missing Drain/Cleanout/Manhole Covers	MISSING CAP
Unit: 101					
Kitchen		X		Dishwasher/Garbage Disposal - Damaged/Inoperable	INOPERABLE
Unit: 108					
Smoke Detector			X	Missing/Inoperable	HALLWAY INOPERABLE
Unit: 119					
Kitchen		X		Dishwasher/Garbage Disposal - Damaged/Inoperable	DISPOSAL INOPERABLE
Building: 2					
Building Systems					
Fire Protection			X	Missing/Damaged/Expired Extinguishers	MISSING
Unit: 203					
Lighting	X			Missing/Inoperable Fixture	KITCHEN INOPERABLE
Unit: 205 VACANT					
Electrical			X	GFI Inoperable	BATHROOM INOPERABLE
Health & Safety			X	Infestation - Insects	ROACHES
Building: 3					
Building Exterior					
Health & Safety			X	Electrical Hazards - Exposed Wires/Open Panels	A/C COVER MISSING EXPOSED CONNECTION

Unit: 305					
	Ceiling	X		Water Stains/Water Damage/Mold/Mildew	BEDROOM 2 - WATER STAINS
	Doors	X		Damaged Hardware/Locks	KITCHEN
			X	Damaged Surface (Holes/Paint/Rusting)	HALL CLOSET DAMAGED
		X		Missing Door	BATHROOM INOPERABLE
	Electrical		X	GFI Inoperable	BATHROOM INOPERABLE
	Health & Safety		X	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	BR3 DRESSER BLOCKING EGRESS, BR2 HEADBOARD BLOCKING EGRESS , DOUBLE EY BR2
	Outlets/Switches		X	Missing/Broken Cover Plates	DINING MISSING
Building: 4					
Unit: 403 VACANT					
	Health & Safety		X	Infestation - Insects	ROACHES
Unit: 409					
	Doors		X	Damaged Hardware/Locks	BATHROOM HINGES DAMAGED
	Smoke Detector		X	Missing/Inoperable	HALLWAY INOPERABLE
Unit: 420					
	Health & Safety		X	Infestation - Insects	ROACHES
Building: 5					
Unit: 502					
	Health & Safety		X	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	BR2 HEADBOARD BLOCKING EGRESS
Unit: 507					
	Doors		X	Damaged Frames/Threshold/Lintels/Trim	BR1 DAMAGED
			X	Damaged Surface (Holes/Paint/Rusting)	BR2 DAMAGED
			X	Deteriorated/Missing Seals (Entry Only)	FRONT ENTRY DAMAGED
	Kitchen	X		Refrigerator-Missing/Damaged/Inoperable	GASKET
Building: 6					
Unit: 602					
	Health & Safety		X	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	BR1 BR2 HEADBOARD BLOCKING EGRESS

Unit: 604					
Kitchen	X			Refrigerator- Missing/Damaged/Inoperable	GASKET
Building: 7					
Unit: 704					
Kitchen		X		Dishwasher/Garbage Disposal - Damaged/Inoperable	DISPOSAL INOPERABLE
Building: 8					
Unit: 806 FOR 802					
Health & Safety			X	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	BRI HEADBOARD BLOCKING EGRESS
Lighting	X			Missing/Inoperable Fixture	BATHROOM
Unit: 810 VACANT					
Doors			X	Damaged Surface (Holes/Paint/Rusting)	DAMAGED DOORS X5
Floors		X		Floor Covering Damage	LIVING DAMAGED

1f

BOARD ACTION REQUEST

LEGAL DIVISION

FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Port Cities Rescue Mission Ministries (Contract #.42110001517)

RECOMMENDED ACTION

WHEREAS, Port Cities Rescue Mission Ministries (“Subrecipient”), has multiple uncorrected compliance findings of the above referenced Emergency Solutions Grant (“ESG”) Program contract and the associated statutory and rule requirements;

WHEREAS, remaining compliance findings include failure to ensure that all program participants receiving rental assistance were income eligible; failure to properly reconcile reported expenditures to actual expenditures, resulting in unallowable expenditures; and purchasing furniture, an expenditure which is not permitted under the program;

WHEREAS, disallowed costs associated with the above findings total \$9,282.00;

WHEREAS, Subrecipient is liable to repay the \$9,282.00 in disallowed costs to the Department and there is no other corrective remedy for the findings;

WHEREAS, on January 27, 2015, a representative of the subrecipient joined an Enforcement Committee informal conference by phone and agreed, subject to Board approval, to enter into an Agreed Final Order calling for a forgivable penalty of \$1,000.00 and a monthly plan to repay the above referenced disallowed costs totaling \$9,282.00; and

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

NOW, therefore, it is hereby

RESOLVED, that the Agreed Final Order assessing a fully forgivable \$1,000.00 administrative penalty as outlined above for noncompliance by Port Cities Rescue Mission Ministries with respect to ESG Contract 42110001517, substantially in the form presented at this meeting, and including any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

During TDHCA Fiscal Year 2011, Port Cities Rescue Mission Ministries (“Respondent”) was awarded by the Board an allocation of Emergency Solutions Grants (“ESG”) Program funds in the total amount of \$105,557.00, to provide approved services necessary to help persons that are either homeless or at risk of homelessness. The award is subject to ESG Contract Number 42110001517, which was signed on November 3, 2012 (the “Contract”). The period of performance under the Contract was October 1, 2012, through September 30, 2013.

An on-site monitoring review was conducted during 2014 to determine whether Subrecipient was in compliance with the Contract and all applicable state and federal statutes, regulations, and rules. The monitoring review resulted in the three findings indicated below, for which the only corrective action available is for Subrecipient to reimburse disallowed costs in the amount of \$9,282.00 as required under the Contract. Findings:

1. Failure to ensure that three participants who received rental assistance were income eligible. Subrecipient provided rental assistance to three participants who exceeded income limits for the program, resulting in disallowed costs of \$6,132.00.
2. Failure to properly reconcile reported expenditures to actual expenditures, resulting in unallowed expenditures. Subrecipient provided rental assistance to a household and the check was voided due to insufficient funds, then reissued a month later. According to the check register provided to TDHCA as support documentation, the checks were reported on and reimbursed from both the March 2013 Monthly Expenditure Report and the April 2013 Monthly Expenditure Report, resulting in Respondent claiming an extra \$1,350.00 in disallowed costs.
3. Failure to ensure that expenditures were allowable costs in accordance with program requirements. Subrecipient purchased furniture for a participant in the amount of \$1,800.00, even though furniture purchases are not an allowed cost under the program.

Representative of the subrecipient joined an informal conference with the Enforcement Committee by phone on January 27, 2015, and agreed to the following terms:

1. Disallowed costs totaling \$9,282.00 to be repaid to TDHCA according to the payment plan defined below.
2. Administrative penalty of \$1,000.00, subject to deferral and forgiveness as indicated below. The forgiveness schedule includes incentives to submit full reimbursement more quickly.
 - a. If full amount of disallowed costs (\$9,282.00) are submitted on or before 9/1/2015, the administrative penalty will be fully forgiven.
 - b. If full amount of disallowed costs (\$9,282.00) are submitted on or before 12/1/2015, 50% of the administrative penalty will be forgiven, leaving a \$500.00 administrative penalty due and payable upon demand by TDHCA.
 - c. If full amount of disallowed costs (\$9,282.00) are submitted after 12/1/2015 or any scheduled payments are missed, the full \$1,000.00 administrative penalty will become due and payable upon demand by TDHCA.

3. Payment Plan requirements are as follows:

- a. A \$2,500.00 portion of the disallowed costs shall be submitted to TDHCA on or before 3/2/2015.
- b. Regular monthly payments of at least \$753.56 must be submitted to TDHCA beginning 4/1/2015. Larger payments may be submitted in order to reach the 9/1/2015 repayment date associated with a fully forgivable penalty. Payment schedule details:

Month	Date due	Monthly Payment Amount Full penalty forgiveness goal	Monthly Payment Amount 50% penalty forgiveness goal
1	3/2/2015	\$ 2,500.00	\$ 2,500.00
2	4/1/2015	\$ 1,130.33	\$ 753.56
3	5/1/2015	\$ 1,130.33	\$ 753.56
4	6/1/2015	\$ 1,130.33	\$ 753.56
5	7/1/2015	\$ 1,130.33	\$ 753.56
6	8/1/2015	\$ 1,130.33	\$ 753.56
7	9/1/2015	\$ 1,130.37	\$ 753.56
8	10/1/2015	N/A	\$ 753.56
9	11/1/2015	N/A	\$ 753.56
10	12/1/2015	N/A	\$ 753.54
		\$ 9,282.02	\$ 9,282.02

Consistent with direction from the Department's Enforcement Committee, a fully forgivable penalty in the amount of \$1,000.00 is recommended for Port Cities Rescue Mission Ministries.

ENFORCEMENT ACTION AGAINST
PORT CITIES RESCUE MISSION
MINISTRIES WITH RESPECT TO
EMERGENCY SOLUTIONS GRANT
PROGRAM CONTRACT
42110001517)

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§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 19th day of February, 2015, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **PORT CITIES RESCUE MISSION MINISTRIES**, a Texas nonprofit corporation (“Respondent”).

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

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

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 TDHCA Fiscal Year 2011, Port Cities Rescue Mission Ministries (“Respondent”) was awarded by the Board an allocation of Emergency Solutions Grants (“ESG”) Program funds in the total amount of \$105,557.00, to provide approved services necessary to help persons that are either homeless or at risk of homelessness.

2. Respondent signed ESG Contract Number 42110001517 on November 3, 2012 (the "Contract"). The period of performance under the Contract was October 1, 2012 through September 30, 2013.

Compliance Violations:

3. An on-site monitoring review was conducted on January 7 and 8, 2014, to determine whether Respondent was in compliance with the Contract and all applicable state and federal statutes, regulations, and rules. The monitoring review resulted in three findings. Notifications of noncompliance were sent and a February 28, 2014, corrective deadline was set, however, the following findings were not corrected before the deadline:
 - a. Respondent failed to ensure that three participants who received rental assistance were income eligible, a violation of Section 11 of the Contract, which requires Respondent to maintain documentation to establish and verify each participant's income in accordance with 24 C.F.R. §576.500(e). It is also a violation of 10 TEX. ADMIN. CODE §5.2009 (Recordkeeping), which requires Respondent to maintain records sufficient to determine compliance with the requirements of the ESG Program. Respondent provided rental assistance to three individuals with incomes that exceeded income limits; accordingly, the financial assistance provided to those individuals, totaling \$6,132.00, is considered a disallowed cost and must be reimbursed to TDHCA in accordance with Sections 3 and 21.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under this Contract.
 - b. Respondent failed to properly reconcile reported expenditures to actual expenditures, a violation of Section 6.A of the Contract, which requires Respondent to comply with the uniform administrative requirements for non-profit organizations set forth in Office of Management and Budget ("OMB") Circular A-110 as implemented by 2 C.F.R. Part 215, and the uniform cost principles for non-profit organizations set forth in OMB Circular A-122 as implemented by 2 C.F.R. Part 230. It is also a violation of 10 TEX. ADMIN. CODE §5.2009 (Recordkeeping), which requires Respondent to maintain records sufficient to determine compliance with the requirements of the ESG Program, and 10 TEX. ADMIN. CODE §5.3 (Cost Principles and Administrative Requirements), which requires Respondent to follow OMB Circulars as interpreted by TDHCA. A finding for an unallowable expenditure occurred because Respondent provided rental assistance to a household and the check was voided due to insufficient funds, then reissued a month later. According to the check register provided to TDHCA as support documentation, the checks were reported on and reimbursed from both the March 2013 Monthly Expenditure Report and the April 2013 Monthly Expenditure Report, resulting in Respondent claiming an extra \$1,350.00 in disallowed costs that must be reimbursed to TDHCA in accordance with Sections 3 and 21.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under this Contract.

- c. Respondent failed to ensure that expenditures were allowable costs in accordance with program requirements, a violation of 10 TEX. ADMIN. CODE §5.2002 (Purpose and Use of Funds), which outlines general categories of acceptable uses for ESG funding, a violation of 24 C.F.R. §576, and a violation of Sections 6.B and 6.C of the Contract which limit TDHCA's financial liability to Subrecipients to those eligible costs specified in 24 C.F.R. §576. The finding occurred when Respondent purchased furniture for a household in the amount of \$1,800.00 even though furniture was not an allowed cost under the Contract, TDHCA rules, or 24 C.F.R. §576. The full amount of assistance totaling \$1,800.00 is a disallowed cost and must be reimbursed to TDHCA in accordance with Sections 3 and 21.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under this Contract.
4. All of the above findings remain outstanding at the time of this order, with disallowed costs totaling \$9,282.00.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TEX. ADMIN. CODE §2.
2. The Contract is a Program Agreement as that term is defined in 10 TAC §2.101(a)(4).
3. Respondent is a Responsible Party because it is subject to a Program Agreement (see 10 TAC §2.101(a)(5))
4. Respondent violated Section 11 of the Contract, 10 TEX. ADMIN. CODE §10.609, and 24 C.F.R. §576.500(e), by failing to ensure that all participants who received rental assistance were income eligible.
5. Respondent violated Section 6.A of the Contract, 10 TEX. ADMIN. CODE §5.3, 10 TEX. ADMIN. CODE §5.2009, OMB Circular A-110 as implemented by 2 C.F.R. Part 215, and OMB Circular A-122 as implemented by 2 C.F.R. Part 230, by failing to properly reconcile reported expenditures to actual expenditures, resulting in unallowable expenditures.
6. Respondent violated Sections 6.B and 6.C of the Contract, 10 TEX. ADMIN. CODE §5.2002, and 24 C.F.R. §576, by purchasing furniture, an expenditure that is not an allowable cost in accordance with program requirements.
7. Respondent violated 10 TAC §2.101(c) for failure to comply with provisions of the Contract.
8. Because Respondent is a Responsible Party who has violated rules promulgated pursuant to Tex. Gov't Code §2306, TDHCA is authorized to impose administrative penalties pursuant to Tex. Gov't Code §2306.041

9. An administrative penalty of \$1,000.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2
10. Respondent is required to repay disallowed costs to the Department in accordance with Sections 3 and 21.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under the Contract.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$1,000.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall repay \$9,282.00 in disallowed costs in accordance with the payment schedule listed below, and as further described at Attachment 1.

IT IS FURTHER ORDERED that Respondent shall submit a \$2,500.00 portion of the disallowed costs to TDHCA on or before 3/2/2015.

IT IS FURTHER ORDERED that Respondent shall submit regular monthly payments to TDHCA beginning on 4/1/2015, in the minimum amount of \$753.56 to be applied toward disallowed costs.

IT IS FURTHER ORDERED that if Respondent complies with the payment requirements above and repays the full amount of disallowed costs, \$9,282.00, on or before 9/1/2015, 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 complies with the payment requirements above and repays the full amount of disallowed costs, \$9,282.00, after 9/1/2015 but on or before 12/1/2015, the satisfactory performance under this order will be accepted in lieu of 50% of the assessed administrative penalty, with a \$500.00 portion of the administrative penalty to be immediately due and payable to the Department, and the remainder to be forgiven. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" after the 12/1/2015 deadline and within thirty days of the date the Department sends written notice to Respondent.

IT IS FURTHER ORDERED that if Respondent fails to repay the full amount of disallowed costs, \$9,282.00, or fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$1,000.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent

IT IS FURTHER ORDERED that all monthly payments and/or penalty payments shall 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 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 _____, 2015.

By: _____
Name: J. Paul Oxe
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxe, 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 _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

Attachment 1

Monthly payment schedule

Month	Date due	Monthly Payment Amount Full penalty forgiveness goal	Monthly Payment Amount 50% penalty forgiveness goal
1	3/2/2015	\$ 2,500.00	\$ 2,500.00
2	4/1/2015	\$ 1,130.33	\$ 753.56
3	5/1/2015	\$ 1,130.33	\$ 753.56
4	6/1/2015	\$ 1,130.33	\$ 753.56
5	7/1/2015	\$ 1,130.33	\$ 753.56
6	8/1/2015	\$ 1,130.33	\$ 753.56
7	9/1/2015	\$ 1,130.37	\$ 753.56
8	10/1/2015	N/A	\$ 753.56
9	11/1/2015	N/A	\$ 753.56
10	12/1/2015	N/A	\$ 753.54
		\$ 9,282.02	\$ 9,282.02

1g

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter H, Section 8 Housing Choice Voucher Program §5.801 concerning the Project Access Initiative, and directing its publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Texas Government Code, §§2306.053 and 2306.092, the Department is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs;

WHEREAS, the amendments to 10 TAC Chapter 5, §5.801 change the time of eligibility for the Department of State Health Services Pilot Program from the time of voucher issuance to the time of placement on the waiting list; and add the option for receipt of other Department funding for rental assistance to maintain status on the Project Access Waiting List; and

WHEREAS, the proposed amendments were published in the *Texas Register* on December 19, 2014, for public comment and no comments were received;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the amendments to 10 TAC §5.801 is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register* and

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted amendments, 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.

BACKGROUND

The proposed amendments were approved for publication on September 4, 2014, by the Board, and were published in the December 19, 2014, issue of the *Texas Register* to allow for public comment. The public comment period closed on January 20, 2015. No comments were received.

Attachment A: Preamble and Amended 10 TAC Chapter 5, Subchapter A, §5.801

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter H, §5.801, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9771).

REASONED JUSTIFICATION. The amendments change the time of eligibility for the Department of State Health Services Pilot Program from the time of voucher issuance to the time of placement on the waiting list; and add the option for receipt of other Department funding for rental assistance to maintain status on the Project Access Waiting List. These changes enable the program to serve qualified households who would otherwise be ineligible for assistance.

No comments were received during the comment period, and the Board adopted the amendments at the February 19, 2015 meeting of the Board.

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

§5.801. Project Access Initiative

(a) Purpose. Project Access is a program with a preference in the Department's Annual Public Housing Agency ("PHA") Plan that utilizes federal Section 8 Housing Choice Vouchers administered by the Texas Department of Housing and Community Affairs (the "Department") to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing.

(b) Definitions. Section 8--The U.S. Department of Housing and Urban Development ("HUD") Section 8 Housing Choice Voucher Program administered by the Department.

(c) Regulations Governing Program. All Section 8 Program rules and regulations apply to the program.

(d) Program Design.

(1) At least 90 percent of Project Access Vouchers will be reserved for households with a household member who meets the eligibility criteria of subsection (e)(1) and (2) of this section.

(2) Unless no longer authorized as a set-aside by HUD, no more than 10 percent of Project Access Vouchers will be reserved for households with a household member eligible for a pilot program in partnership with the Department of State Health Services ("DSHS") for Texas state psychiatric hospitals who meets the criteria of subsection (e)(1) and (3) of this section at the time of voucher issuance. If not permitted by HUD, the percentage in paragraph (1) of this subsection goes up to 100%.

(3) The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan. The number of vouchers allocated to each sub-population listed in paragraphs (1) and (2) of this subsection will be determined by the Department.

(4) The Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan.

(e) Project Access Eligibility Criteria. A Project Access voucher household must meet all Section 8 eligibility criteria, and one member of the household must meet all of the eligibility criteria in paragraph (1) of this subsection and either paragraph (2) or (3) of this subsection:

(1) have a permanent disability as defined in §223 of the Social Security Code or be determined to have a physical, mental, or emotional disability that is expected to be of long-continued and indefinite duration that impedes one's ability to live independently; and

(2) meet one of the criteria in subparagraphs (A) or (B) of this paragraph:

(A) At-Risk Applicant. At-Risk applicants must be a previous resident of a nursing facility, Texas state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD and meet the criteria of clause (i) or (ii) of this subparagraph:

(i) A current recipient of Tenant-Based Rental Assistance (“TBRA”) from a HOME Investment Partnership Program and within six (6) months prior to expiration of that TBRA assistance; or

(ii) A household with a household member who meets the criteria of subsection (f) of this section, or clause (i) of this subparagraph and has lost their Tenant Based Rental Assistance from a HOME Investment Partnership Program due to lack of available funding from the Participating Jurisdiction.

(B) be a current resident of a nursing facility, Texas state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD at the time of voucher issuance, unless otherwise determined by HUD which may extend Project Access to all state regulated institutions; or

(3) be eligible for the DSHS pilot program for Texas state psychiatric hospitals at the time of placement on the waiting list.

(f) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their status on the waiting list and eligibility for a Project Access voucher if the household:

(1) applied for a Project Access Voucher and was placed on the waiting list prior to transition out of the institution; and

(2) received continuous Tenant Based Rental Assistance from a HOME Investment Partnership Program or other Department funding for rental assistance from the time of exit from the institution until the issuance of the Project Access voucher.

1h

BOARD ACTION REQUEST

COMPLIANCE DIVISION

FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d)(2) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, The Department has recognized the need to amend §10.607(d)(2) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; and,

WHEREAS, the proposed amendments will provide improved compliance with federal and state requirements and consistency with other provisions of the rule.

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to publish proposed amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d)(2) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period, in the *Texas Register* for review and public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

At the Board meeting of December 18, 2014, amendments to certain sections of the Compliance Monitoring rules were adopted and published in the *Texas Register* on January 8, 2015. During that rule making process, not all sections of the rule were proposed to be changed. Questions from owners and managers of Developments monitored by the Department regarding sections of the rule that were not proposed for amendment in the last rule making have made staff realize the need for additional amendments. Further, one suggestion received through public comment in the last rule making process was intended to be included in that adoption, but inadvertently omitted.

Attachment 1. Preamble and proposed amendment to 10 TAC Chapter 10, Subchapter F, §10.607(d)(2) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, §10.607(d)(2) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period. The purpose for each amendment is described below.

10 TAC§10.607(d)(2), concerning Reporting Requirements. During the most recent rule making process, this paragraph was amended. The Department made a change to the originally proposed amendment based on public comment; however, the rule that was adopted did not accurately incorporate the public comment. The purpose of this amendment is to correct the paragraph to align with the public comment as intended and provide that certain reports are due on the 15th business day of the month. Please note, only paragraph (d)(2) is being amended, but the rule in its entirety is shown below for context.

10 TAC§10.622(d), concerning Special Rules Regarding Rents and Rent Limit Violations. The purpose of this amendment is to align subsection (d) with Subsection (b) of this section. In subsection (b) the rule clearly requires owners of Housing Tax Credit Developments to refund, not credit, excess rent collected. This proposed amendment provides the same specificity for owners of non-Housing Tax Credit rental Developments. Please note, only section (d) is being amended, but the rule in its entirety is shown for context.

10 TAC§10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period. The current rule provides that, once a Development completes the 15 year Federal Compliance Period, low-income occupancy requirements can be met Development wide instead of building by building as required during the Compliance Period. The intent was to allow for flexibility; however, the impact of employee occupied units was not taken into consideration. Under certain scenarios, a Development that was meeting the low-income occupancy requirements during the Compliance Period could be found in noncompliance with the application of the rule as currently written. This was not intended and the purpose of this amendment is to eliminate this possibility. The additional amendments are to better align the rule with other provisions found in Subchapter F of this Chapter concerning Compliance Monitoring.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments 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 improved compliance with federal and state requirements with the requirements and consistency with other provisions of the rule. There will not be any additional new economic cost to individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will not be any additional economic effect on small or micro-businesses based on these amendments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 6, 2015, through April 6, 2015 to receive input on the proposed amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. APRIL 6, 2015.

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.

§10.607. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed for:

- (1) 9% Housing Tax Credit Developments - no later than the date prescribed in §10.402(g) of this chapter relating to the 10 Percent Test;
- (2) 4% Housing Tax Credit Developments - no later than the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements); or
- (3) For all other multifamily developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2011. The first report is due April 30, 2013, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

- (1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. HTC Developments during their Compliance Period will also be required to provide the contact information of the syndicator in the Annual Owner's Compliance Report;
- (2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and,

(4) Part D "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required it must be uploaded to the Development's CMTS account.

(1) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 10th day of the month.

(2) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month.

(e) Parts A, B, C, and D of the Annual Owner's Compliance Report and the Annual Owner's Financial Certification must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(i) Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed thirty (30) days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside. *Example 622(1)*: A 100 unit development is required to lease 10 units to households at the 30 percent income and rent limits. The utility allowance is miscalculated resulting in overcharged rents. Fifteen households have an income under 30 percent. The owner must refund 10 of these households.

(c) Rent Violations of the maximum allowable limit due to application fees under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. *Example 622(2)*: A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department.

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected units back in compliance on January 1st of the year after they were overcharged the application fee.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC development after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined

that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund (not a credit to amounts owed the Development) to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments:

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income;

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent; and

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and HTF Developments). IRS Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the Owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited and reported to the IRS on IRS Form 8823 as appropriate. Owners must ensure that additional rent and occupancy restrictions are maintained even if units are leased to employees.

§10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (13) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department request;

- (2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low-Income Units. No less than five but no more than thirty-five of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;
- (3) Each Development shall submit an annual report in the format prescribed by the Department;
- (4) Reports to the Department must be submitted electronically as required in §10.607 of this chapter (relating to Reporting Requirements);
- (5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;
- (6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program, in which case the other program's certification form will be accepted;
- (7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are [can be] accounted for in the utility allowance[. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded];
- (8) All additional income and rent restrictions defined in the LURA remain in effect;
- (9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years. Example 623(1): The Development's LURA states "The Compliance Period shall be a period of 20 consecutive taxable years and the Extended Use Period shall be a period of 35 consecutive taxable years, each commencing with the first year of the Credit Period." In this scenario, the Additional Use Restrictions prescribed in the LURA are applicable through year 20, but since the Federal Compliance Period has ended, the Development will be monitored under this section;
- (10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;
- (11) The total number of required HTC Low-Income Units can [must] be maintained Development wide;
- [a) For 100% low-income Building(s)- the Owner will not be considered out of compliance with occupancy requirements if a unit is occupied by an employee, provided that the unit is Exempt under IRS Revenue Rulings 92-61 and 2004-82. Otherwise, the unit must be treated as a Low-Income Unit.
- (b) For mixed income Developments- Employees that occupy a HTC Low-Income Unit must qualify and meet all requirements to be designated as a low income household.
- (c) Owners must ensure that additional rent and occupancy restrictions are maintained without regard for Exempt unit.]
- (12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis; and
- (13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form.[Owners must continue to collect and report data in accordance §10.612(b)(1) of this chapter (relating to Tenant File Requirements)].

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) – (5) [(6)] of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments).

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low-Income occupancy requirements will be monitored Development wide, not building by building;]

(2) [(3)] All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) [(4)] The Department will not monitor the Development's application fee after the Compliance Period is over; [and]

(4) [(5)] Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with paragraph (b)(13) of this section; and [§10.613 of this chapter (relating to Lease Requirements).]

(5) [(6)] The Department will not monitor whether rent is being charged for an employee occupied unit.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year fifteen (15) in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year Fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

1i

BOARD ACTION REQUEST
ASSET MANAGEMENT
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action to approve the transfer of the HUB Managing General Partnership interest to the non-HUB co-general partner and a material amendment to the Housing Tax Credit Land Use Restriction Agreement (“LURA”) for Franklin Place Townhomes (File No. 98089)

RECOMMENDED ACTION

WHEREAS, Franklin Place Townhomes received an award of 9% Housing Tax Credits in 1998 to construct 96 multifamily units in El Paso;

WHEREAS, the tax credit application for the Development received points and/or other preferences for having a Historically Underutilized Business (“HUB”), namely Investment Builders, Inc. (“IBI”), participate in the ownership of the Development;

WHEREAS, the LURA for the Development requires that throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall remain the Managing General Partner and maintain regular, continuous, and substantial participation in the operation and ownership of the Development;

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

WHEREAS, in 2004, without the Department’s approval, IBI voluntarily sold its interest in the general partnership to the non-HUB co-owner of the general partner;

WHEREAS, the Development Owner requests approval to amend the LURA for the Development to eliminate the HUB requirement; and

WHEREAS, 10 TAC §10.406(e) allows for the transfer of a HUB’s ownership interest as long as the LURA does not require continual ownership or a material LURA amendment is approved, and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer and material LURA amendment for Franklin Place Townhomes 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

Franklin Place Townhomes, also known as Belvidere Hunt, was approved in 1998 for the construction of 96 new multifamily units in El Paso, Texas. The Development placed in service by the end of 1999. The LURA for the Development has a 40-year term and a 25-year compliance period. On December 29, 2014, the Development Owner requested approval for the elimination of the requirement for a HUB to remain the Managing General Partner throughout the Compliance Period and maintain regular, continuous, and substantial participation in the development, operation, and ownership of the project.

The ownership structure of the Owner's general partner was originally formed with a joint ownership by an affiliate of Hunt Building Company, Ltd. ("Hunt") and IBI. In August of 2004, motivated by a desire to generate working capital, IBI voluntarily sold its interest in the general partnership to the Hunt affiliate. The Hunt affiliate has operated as the sole General Partner since then.

In 2011, the Department's Compliance Division found the Development to be out of compliance for lack of HUB participation as required by the LURA. The Owner reported that since that time multiple attempts have been made to identify a replacement HUB but the Owner has been unable to find an acceptable substitute. If approved, this LURA Amendment would correct the finding.

Pursuant to the Department's Ownership Transfer rules at §10.406(e), a transfer that involves a HUB general partner selling its ownership interest to a non-HUB entity is allowed as long as the LURA does not require such continual ownership or a material LURA amendment is approved. The rule further states that all such transfers must be approved by the Board and that the Board must find that:

1. The selling HUB is acting of its own volition or is being removed as the result of a default under the organizations 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.

The Owner has complied with the ownership transfer, amendment and notification requirements under the Department's rule at Government Code §2306.6712, 10 TAC §10.405(b) and §10.406(e). The Owner has provided the opportunity for public input at a public hearing held on January 28, 2015, at 5:00 p.m. The Department is not aware of any public comment made at the public hearing.

Staff recommends approval of the transfer of the HUB Managing General Partnership interest to the non-HUB co-general partner and the elimination of the LURA requirement for participation of a HUB in the ownership structure and operation of the Development.

December 29, 2014

VIA HAND DELIVERY

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

Re: Franklin Townhomes (the "**Property**")
TDHCA File No. 98089

Dear Rosalio:

We represent Hunt Building Company, Ltd. ("**Hunt**") in its capacity as an affiliate of the general partner, Western Belvidere Hunt, LLC ("**GP**"), of the current owner of the Property, Belvidere Hunt, Ltd. ("**Owner**"). This letter constitutes notice of an ownership transfer in accordance with Section 10.406(e) of the Uniform Multifamily Rules (the "**Rules**") and a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules. Specifically, the LURA for this Property requires ownership participation by an historically underutilized business (a "**HUB**"). Owner requests elimination of that requirement, for the reasons set forth below.

Background Information

Owner's GP was originally formed with joint ownership by an affiliate of Hunt and Investment Builders, Inc. ("**IBI**"). IBI is a HUB that has participated in the tax credit program for almost 20 years and continues to do so today. In July 2004, motivated by a desire to generate working capital, IBI voluntarily sold its interest in GP to the Hunt affiliate for cash consideration. Definitive agreements were negotiated between the parties, and the transaction closed on or about August 12, 2004. Since that time, the Hunt affiliate has continued to operate Owner through GP.

In 2011, TDCHA's compliance division noted the lack of HUB participation and notified Owner of the need for correction. Since that time, there have been numerous correspondence between Owner and TDHCA with regard to HUB participation in Owner. Hunt made multiple attempts to identify a replacement HUB and was unable to find an acceptable substitute.

Request

Based upon recent changes to Section 10.406(e) of the Rules, Owner requests that TDHCA remove the HUB requirement from its LURA, allowing Hunt's affiliate to continue to operate Owner's GP as it has in the past ten years. In accordance with the Rules:

- (1) IBI, as the selling HUB, acted of its own volition in selling its interest to the Hunt affiliate. IBI was not removed from its position. If verification is required from IBI, that can be obtained.
- (2) The participation of the HUB with regard to the Property was substantive and meaningful, up until the sale of its interest. TDHCA is well-familiar with IBI and the way in which it has actively participated when owning properties for multiple decades.
- (3) The Hunt affiliate that acquired IBI's interest was already part of Owner's GP, so this is considered an affiliated transfer and no previous participation or other review is required.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, Owner is delivering a fee in the amount of \$2500. In addition, Owner 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, Owner 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, Owner requests staff recommendation, in support of this request, to be considered at the next available TDHCA Board meeting.

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

Sincerely,



Cynthia L. Bast

Attachments

cc: Tom Gouris
Patricia Murphy
Ysella Kaseman
TDHCA w/ encl.

Nicole Wideman
Shannon Mullin
Hunt w/encl.

Belvidere Hunt, Ltd.
1225 17th Street
Suite 1400
Denver, Colorado 80202

[Date]

Dear Resident:

Franklin Place Townhomes (the "**Community**") is owned by Belvidere Hunt, 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).

Owner was originally structured with a general partner that included Investment Builders, Inc., a corporation that is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. Investment Builders, Inc. decided to sell its interest, prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing HUB requirement from its contract.

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 [Date] at [Time].

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 Franklin Place Townhomes is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Franklin Place Townhomes as your home.

Sincerely,

Western Belvidere Hunt, LLC,
general partner

By: _____
Name, Title

Belvidere Hunt, Ltd.
1225 17th Street
Suite 1400
Denver, Colorado 80202

[Elected Official]

[Date]

Dear [Addressee]:

Belvidere Hunt, Ltd. (the "**Owner**") is the owner of Franklin Place Townhomes (the "**Community**") which is located [Address]. 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**").

Owner was originally structured with a general partner that included Investment Builders, Inc., a corporation that is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. Investment Builders, Inc. decided to sell its interest, prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing HUB requirement from its contract.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on [Date] at [Time].

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

Sincerely,

Western Belvidere Hunt, LLC,
general partner

By: _____
Name, Title

Belvidere Hunt, Ltd.
1225 17th Street
Suite 1400
Denver, Colorado 80202

[Date]

[Investor/Lender]

Dear [Addressee]:

Belvidere Hunt, Ltd. (the "**Owner**") is the owner of Franklin Place Townhomes (the "**Community**") which is located in El Paso, Texas. 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**").

Owner was originally structured with a general partner that included Investment Builders, Inc., a corporation that is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. Investment Builders, Inc. decided to sell its interest, prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing HUB requirement from its contract.

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 [Date] at [Time].

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

Sincerely,

Western Belvidere Hunt, LLC
general partner

By: _____
Name, Title

BOARD ACTION REQUEST
ASSET MANAGEMENT
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action to approve the transfer of the HUB Managing General Partnership interest to the non-HUB co-general partner and a material amendment to the Housing Tax Credit Land Use Restriction Agreement (“LURA”) for Mesa Place Townhomes (File No. 99095)

RECOMMENDED ACTION

WHEREAS, Mesa Place Townhomes (the “Development”) received an award of 9% Housing Tax Credits in 1999 to construct 128 multifamily units in El Paso;

WHEREAS, the tax credit application for the Development received points and/or other preferences for having a Historically Underutilized Business (“HUB”), namely Investment Builders, Inc. (“IBI”), participate in the ownership of the Development;

WHEREAS, the LURA for the Development requires that throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall remain the Managing General Partner and maintain regular, continuous, and substantial participation in the operation and ownership of the Development;

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

WHEREAS, in 2004, without the Department’s approval, IBI voluntarily sold its interest in the general partnership to the non-HUB co-owner of the general partner;

WHEREAS, the Development Owner requests approval to amend the LURA for the Development to eliminate the HUB requirement; and

WHEREAS, 10 TAC §10.406(e) allows for the transfer of a HUB’s ownership interest as long as the LURA does not require continual ownership or a material LUA amendment is approved, and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer and material LURA amendment for Mesa Place Townhomes 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

Mesa Place Townhomes, also known as Western Mesa Hills, was approved in 1999 for the construction of 128 new multifamily units in El Paso, Texas. The Development placed in service by the end of 2000. The LURA for the Development has a 40-year term and a 25-year compliance period. On December 29, 2014, the Development Owner requested approval for the elimination of the requirement for a HUB to remain the Managing General Partner throughout the Compliance Period and maintain regular, continuous, and substantial participation in the development, operation and ownership of the project.

The ownership structure of the Owner's general partner was originally formed with a joint ownership by an affiliate of Hunt Building Company, Ltd. ("Hunt") and IBI. In August of 2004, motivated by a desire to generate working capital, IBI voluntarily sold its interest in the general partnership to the Hunt affiliate. The Hunt affiliate has operated as the sole General Partner since then.

In 2011, the Department's Compliance Division found the Development to be out of compliance for lack of HUB participation as required by the LURA. The Owner reported that since that time multiple attempts have been made to identify a replacement HUB, but the Owner has been unable to find an acceptable substitute. If approved, this LURA Amendment would correct the finding.

Pursuant to the Department's Ownership Transfer rules at §10.406(e), a transfer that involves a HUB general partner selling its ownership interest to a non-HUB entity is allowed as long as the LURA does not require such continual ownership or a material LURA amendment is approved. The rule further states that all such transfers must be approved by the Board and that the Board must find that:

1. The selling HUB is acting of its own volition or is being removed as the result of a default under the organizations 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.

The Owner has complied with the ownership transfer, amendment and notification requirements under the Department's rule at Government Code §2306.6712, §10 TAC §10.405(b) and §10.406(e). The Owner has provided the opportunity for public input at a public hearing held on January 29, 2015 at 5:00 p.m. The Department is not aware of any public comment made at the public hearing.

Staff recommends approval of the transfer of the HUB Managing General partnership interest to the non-HUB co-general partners and the elimination of the LURA requirement for participation of a HUB in the ownership structure and operation of the Development.



Attorneys & Counselors

600 Congress Avenue, Suite 2200
Austin, Texas 78701-2748
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

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

December 29, 2014

VIA HAND DELIVERY

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

Re: Mesa Place Townhomes aka Western Mesa Hills (the "**Property**")
TDHCA File No. 99095

Dear Rosalio:

We represent Hunt Building Company, Ltd. ("**Hunt**") in its capacity as an affiliate of the general partner, Mesa Housing, LLC ("**GP**"), of the current owner of the Property, Western Mesa Hills, Ltd. ("**Owner**"). This letter constitutes notice of an ownership transfer in accordance with Section 10.406(e) of the Uniform Multifamily Rules (the "**Rules**") and a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules. Specifically, the LURA for this Property requires ownership participation by an historically underutilized business (a "**HUB**"). Owner requests elimination of that requirement, for the reasons set forth below.

Background Information

Owner's GP was originally formed with joint ownership by an affiliate of Hunt and Investment Builders, Inc. ("**IBI**"). IBI is a HUB that has participated in the tax credit program for almost 20 years and continues to do so today. In July 2004, motivated by a desire to generate working capital, IBI voluntarily sold its interest in GP to the Hunt affiliate for cash consideration. Definitive agreements were negotiated between the parties, and the transaction closed on or about August 12, 2004. Since that time, the Hunt affiliate has continued to operate Owner through GP.

In 2011, TDCHA's compliance division noted the lack of HUB participation and notified Owner of the need for correction. Since that time, there have been numerous correspondence between Owner and TDHCA with regard to HUB participation in Owner. Hunt made multiple attempts to identify a replacement HUB and was unable to find an acceptable substitute.

Request

Based upon recent changes to Section 10.406(e) of the Rules, Owner requests that TDHCA remove the HUB requirement from its LURA, allowing Hunt's affiliate to continue to operate Owner's GP as it has in the past ten years. In accordance with the Rules:

- (1) IBI, as the selling HUB, acted of its own volition in selling its interest to the Hunt affiliate. IBI was not removed from its position. If verification is required from IBI, that can be obtained.
- (2) The participation of the HUB with regard to the Property was substantive and meaningful, up until the sale of its interest. TDHCA is well-familiar with IBI and the way in which it has actively participated when owning properties for multiple decades.
- (3) The Hunt affiliate that acquired IBI's interest was already part of Owner's GP, so this is considered an affiliated transfer and no previous participation or other review is required.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, Owner is delivering a fee in the amount of \$2500. In addition, Owner 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, Owner 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, Owner requests staff recommendation, in support of this request, to be considered at the next available TDHCA Board meeting.

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

Sincerely,



Cynthia L. Bast

Attachments

cc: Tom Gouris
Patricia Murphy
Ysella Kaseman
TDHCA w/ encl.

Nicole Wideman
Shannon Mullin
Hunt w/encl.

Western Mesa Hills, Ltd.
1225 17th Street
Suite 1400
Denver, Colorado 80202

[Date]

Dear Resident:

Mesa Place Townhomes (the "**Community**") is owned by Western Mesa Hills, 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).

Owner was originally structured with a general partner that included Investment Builders, Inc., a corporation that is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. Investment Builders, Inc. decided to sell its interest, prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing HUB requirement from its contract.

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 [Date] at [Time].

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 Mesa Place Townhomes is your home and we invite you to attend and give your input on this proposal. Mesa Place Townhomes as your home.

Sincerely,

Mesa Housing, LLC,
general partner

By: _____
Name, Title

Western Mesa Hills, Ltd.
1225 17th Street
Suite 1400
Denver, Colorado 80202

[Elected Official]

[Date]

Dear [Addressee]:

Western Mesa Hills, Ltd. (the "**Owner**") is the owner of Mesa Place Townhomes (the "**Community**") which is located [Address]. 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**").

Owner was originally structured with a general partner that included Investment Builders, Inc., a corporation that is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. Investment Builders, Inc. decided to sell its interest, prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing HUB requirement from its contract.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on [Date] at [Time].

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

Sincerely,

Mesa Housing, LLC,
general partner

By: _____
Name, Title

Western Mesa Hills, Ltd.
1225 17th Street
Suite 1400
Denver, Colorado 80202

[Date]

[Investor/Lender]

Dear [Addressee]:

Western Mesa Hills, Ltd. (the "**Owner**") is the owner of Mesa Place Townhomes (the "**Community**") which is located in El Paso, Texas. 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**").

Owner was originally structured with a general partner that included Investment Builders, Inc., a corporation that is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. Investment Builders, Inc. decided to sell its interest, prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing HUB requirement from its contract.

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 [Date] at [Time].

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

Sincerely,

Mesa Housing, LLC
general partner

By: _____
Name, Title

1j

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action regarding Program Year 2015 Community Services Block Grant, Program Year 2015 Low Income Home Energy Assistance Program, and PY 2014 and 2015 Department of Energy Weatherization Assistance Program (“DOE-WAP”) Awards for Cameron and Willacy counties, currently served by Cameron and Willacy Counties Community Projects, Inc.

RECOMMENDED ACTION

WHEREAS, the Department has received Federal Fiscal Year (“FFY”) 2014 Department of Energy Weatherization Assistance Program (“DOE WAP”) funds, in the amount of \$4,284,475 and anticipates receiving approximately \$4,657,454 for FFY 2015;

WHEREAS, the Department has received notification of awards from the U.S. Department of Health and Human Services (“HHS”) for the FFY 2015 Community Services Block Grant (“CSBG”) award and the FFY 2015 Low Income Home Energy Assistance Program (“LIHEAP”) award;

WHEREAS, LIHEAP program funds are allocated for the Comprehensive Energy Assistance Program (“CEAP”) and Weatherization Funds (“LIHEAP-WAP”);

WHEREAS, the DOE-WAP and LIHEAP-WAP funds are allocated based on the formula detailed in 10 TAC §5.503, Distribution of WAP Funds;

WHEREAS, CEAP funds are allocated based on the formula detailed in 10 TAC §5.403, Distribution of CEAP Funds;

WHEREAS, the CSBG funds are allocated based on the formula detailed in 10 TAC §5.203, Distribution of CSBG Funds;

WHEREAS, Cameron and Willacy Counties Community Projects, Inc. (“CWCCP”) is a member of the network of organizations that receives formula funds from each of the above programs;

WHEREAS, CWCCP has several outstanding monitoring findings considered during a previous participation review by the Executive Award and Review Advisory Committee (“EARAC”);

WHEREAS, EARAC recommends denial of the awards for LIHEAP and DOE WAP; and recommends the award of the 2015 CSBG with immediate suspension pending the fulfillment of conditions noted below; and

WHEREAS, in the process of an alternate entity providing services on behalf of another provider, minimal costs may be incurred relating to that transfer or start-up;

NOW, therefore, it is hereby

RESOLVED, that PY 2015 CSBG in the approximate amount of \$897,019 is hereby approved to be awarded to CWCCP with immediate suspension of the contract pending the satisfaction of the conditions noted below;

FURTHER RESOLVED, that formula-based awards to CWCCP for FFY 2014 and FFY 2015 DOE WAP are hereby denied;

FURTHER RESOLVED, that formula-based award to CWCCP for PY 2015 LIHEAP (WAP and CEAP) in the approximate amount of \$3,365,997 is hereby denied;

FURTHER RESOLVED, that up to 24.99% of the PY 2015 LIHEAP award for the Cameron and Willacy county service area in the approximate amount of \$841,162 will be awarded and immediately provided as an interim award for up to twelve months not subject to the annual renewal process in Texas Government Code, §2105 or in 10 TAC §5.403 to Community Action Corporation of South Texas, a neighboring provider, in order to maintain CEAP continuity of services to eligible low-income households in the Cameron and Willacy counties service area; and

FURTHER RESOLVED, that if needed, limited funds from LIHEAP administrative funds or other administrative funds may be provided to Community Action Corporation of South Texas to offset start-up or transfer costs that may be incurred in the temporary or permanent transfer of the programs from CWCCP.

BACKGROUND

At the Board Meeting of December 18, 2014, the Governing Board approved awards for the PY 2014 DOE WAP and PY 2015 LIHEAP and CSBG subrecipients as recommended by the Executive Award and Review Advisory Committee (“EARAC”); that Board action included award approvals for all but a very few of the network providers. At that time, awards for Cameron and Willacy Counties Community Projects, Inc. (“CWCCP”) were not approved, nor denied, by EARAC due to financial management concerns. As indicated in the December 18, 2014 Board write-up: “Staff recommends that the funds allocated to Cameron and Willacy counties (the service area covered by this entity) by formula will be held for the service area pending a response from the entity and resolution of the monitoring issues. Staff will continue to work with the entity to resolve the remaining monitoring issues.”

Compliance staff, with collaboration from the Department’s Internal Auditor, has put significant effort into working with CWCCP on obtaining documentation and striving to understand the documentation received. On February 4, 2015, EARAC met with the Executive Director, Chief Financial Officer, and several Board members of CWCCP. At that time not all requested documentation had been provided. After that discussion, EARAC identified additional

documentation or further clarification on existing documentation that they would need to be able to be sufficiently informed to approve or deny an award to CWCCP.

In the last week or so, Compliance staff was able to clarify several concerns within the financial documents. On a call between the Department's Executive Staff and Internal Auditor, CWCCP's Executive Director and Chief Operating Officer, and CWCCP's Single Auditor on February 9, 2015, staff's interpretation of documents were confirmed and a notification was sent to CWCCP on February 10, 2015, identifying disallowed costs and questioned costs due to the inappropriate classification of program services funds. On that call, staff requested that the single auditor still needed to provide responsive documents that had been requested on January 20, 2015, that may assist in further review.

At this time, EARAC recommends denial of new awards to CWCCP for LIHEAP (CEAP and WAP) and DOE-WAP. However, in order to ensure continuity of CEAP services, \$841,162 in 2015 LIHEAP funds will be immediately provided to a neighboring CEAP provider, Community Action Corporation of South Texas. Under a separate board item, authorization is requested to directly select or release a Request for Applications for a permanent replacement provider to provide prompt assistance in delivering services in Cameron and Willacy counties.

Because of the nature of CSBG (federal requirements do not permit the withholding of a CSBG award without specific federally directed due process assurances), the Department is unable to withhold a CSBG award to CWCCP. Therefore, EARAC recommends that the CSBG award be approved with immediate suspension of the contract pending the satisfaction of the conditions noted below, and made by reference as part of the above resolution. **It should be emphasized that the provision of the documents requested in the conditions, or satisfaction of these conditions does not reflect that all prior concerns have been resolved.** If, upon review, the Department determines that additional risks or disallowed costs are identified, steps will be taken to resolve those, which may include, among other things, the ongoing suspension of CSBG funds.

- Any costs determined to be disallowed by the Department for 2013 and 2014 CEAP or CSBG costs must be repaid to the Department within 15 business days of this Board action, or alternatively submission of documented eligible expenses expended during the appropriate contract periods.
- CWCCP will no longer include funds provided by the Department in its equalization fund account. Any portion of funds provided by the Department for expenses that were historically covered using funds from this account will be documented through transactions recorded in reports specific to accounts that include only funds from the Department.
- The Quality Improvement Plan that was due to the Department on February 9th must be received and approved by the Department; the Plan must be implemented and CWCCP avail themselves of any appropriate technical assistance provided by the Department.
- CWCCP must provide the general ledger for the equalization fund as well as any other accounts through which Department funds have been moved.

Staff suggests that if the Board does opt to approve the LIHEAP and DOE awards, the conditions above related to the CSBG award, also be placed on the LIHEAP and DOE awards.

In its communications with the Department, CWCCP indicated an interest in their organization being referred for monitoring by either the State Auditor's Office or HHS Office of the Inspector General. To be responsive to that request, the Department has proceeded with that referral.

1k

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Award of Program Year 2014 Community Services Block Grant Administrative and Discretionary Funds

RECOMMENDED ACTION

WHEREAS, Community Services Block Grant (“CSBG”) funds are awarded to the State of Texas by the U.S. Department of Health and Human Services (“HHS”);

WHEREAS, when the Department receives the State’s annual award of CSBG funds, it reserves 90% of the allotment for CSBG eligible entities to provide services/assistance to the low-income population in all 254 counties; 5% for state administration expenses and the remaining 5% for state discretionary use; and

WHEREAS, the Department has determined that there remains approximately \$1,170,805 in unexpended Program Year (“PY”) 2014 CSBG Administrative and Discretionary; and

WHEREAS, the Department wishes to expend the funds prior to the funds’ expiration on September 30, 2015;

NOW, therefore, it is hereby

RESOLVED, that the awards of unexpended Program Year 2014 CSBG funds to the CSBG Eligible Entities indicated below be and are hereby approved.

BACKGROUND

Upon review of the PY 2014 CSBG grant balances, staff has determined that \$1,170,805 in Administrative and Discretionary funds remain unexpended. The original programming of funds did not result in full utilization of those funds and in order to expend these funds prior to the expiration date of September 30, 2015, staff proposes to award these funds to CSBG Eligible Entities for the provision of services to low-income individuals and communities. Organizations were eligible for awards only if they had expended 90% or more of their contracted PY 2014 CSBG funds and had their previous participation approved pursuant to 10 TAC, Chapter 1, Subchapter A, §1.5. The contract term will be March 1, 2015 through July 31, 2015.

When allocating CSBG non-discretionary (90%) funds to the 43 eligible entities, staff utilizes a multi-factor fund distribution formula detailed in 10 TAC §5.203, Distribution of CSBG Funds. The formula incorporates the U.S. Census Bureau Decennial 2010 Census and the most recent American Community Survey 5-Year Estimates data related to persons in poverty; a 98%

weighted factor for poverty population; and, a 2% weighted factor for the inverse ratio of population density. These Administrative and Discretionary funds are not part of the 90% of CSBG funds that must go to Eligible Entities. Department staff requests authority to obligate the unexpended PY 2014 CSBG funds to the Eligible Entities below on a pro rata basis, based on the original formula.

Eligible Entity Award Recipients for Unexpended Program Year 2014 Community Services Block Grant (CSBG) funds

Agency	Award Amount
Big Bend Community Action Agency	\$42,750
Combined Community Action Inc.	\$54,966
Community Action Social Services & Education	\$42,893
Fort Worth, City of	\$467,858
Hill Country Community Action Association, Inc.	\$136,186
Nueces County Community Action Agency	\$122,543
Panhandle Community Services	\$149,766
West Texas Opportunities, Inc.	\$153,843

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on the Use of Program Year 2015 Community Services Block Grant (“CSBG”) Discretionary Funds

RECOMMENDED ACTION

WHEREAS, CSBG funds are awarded annually to the State of Texas by the U.S. Department of Health and Human Services (“HHS”);

WHEREAS, upon the Department receipt of the State’s annual award of CSBG funds, it reserves 90% of the allotment for CSBG eligible entities to provide services/assistance to the low-income population in all 254 counties; 5% for state administration expenses; and the remaining 5% for state discretionary use;

WHEREAS, on January 17, 2013, the Board adopted a policy for the methods to be used in allocating and programming CSBG Discretionary (“CSBG-D”) funds that specifies a special focus area or designated special needs groups for each biennium;

WHEREAS, implementation and successful adherence to a series of new federal regulations, program requirements, certifications, and performance goals have created a challenge for the existing Eligible Entities in the statewide networks that administer Community Affairs Division programs;

WHEREAS, these Eligible Entities will benefit from a variety of types of assistance to help ensure their success in serving the needs of local households;

WHEREAS, staff recommends that the 2015–2016 CSBG-D funds have a biennial focus on investing in the network so that the Eligible Entities can be supported in implementation of regulations and on operational improvements; and

WHEREAS, to make these funds available, it is necessary for staff to utilize one or more Notices of Funding Availability, Requests for Proposals, or Requests for Applications;

NOW, therefore, it is hereby

RESOLVED, that the Board adopts a policy that the focus of the 2015–2016 biennium of funds from CSBG-D will be on investment into the Eligible Entity network, supporting their members in implementation of regulations and on operational improvements;

FURTHER RESOLVED, that the 2015 CSBG-D funds be allocated for the historically based uses and the focus areas identified in this resolution as reflected in Table 1, and that the Executive Director and his designees each of them be and they hereby are, authorized, empowered, and directed, for and on behalf of the Department, to cause one or more Notices of Funding Availability (“NOFA”), Requests for Proposal or Requests for Application (“RFP/A”) to be issued for some or all of the 5% state discretionary funds, consistent with the policy noted herein;

FURTHER RESOLVED, that should one or more respondents or applicants for funds require federal approvals, staff is authorized to make submission to those appropriate federal entities of those selected respondents prior to presentation to the Board, with the condition that all commitments made with CSBG-D funds are presented to the Board for ratification; and

FURTHER RESOLVED, that should any funds designated for particular activities remain unused after a reasonable period, those funds, along with any additional unused CSBG-D or CSBG Administrative funds from 2015 or prior years, may be distributed to the same network of agencies in accordance with Community Affairs Division policy.

BACKGROUND

Funds from CSBG-D are used each year for an identified focus, as noted above, but are also used to fund several ongoing efforts which the Department supports, and intends to continue. In this past biennium, from the annual allocation the Department released several NOFAs totaling approximately \$900,000 in the aggregate for services that included: (1) employment and education programs for migrant and seasonal farm workers and Native Americans, and other innovative projects (approximately \$200,000); (2) statewide projects to provide intensive training and technical assistance to CSBG Eligible Entities (approximately \$200,000); and (3) statewide projects that provide training and technical assistance to homelessness services providers (approximately \$500,000). Other uses of CSBG-D not utilized in NOFAs and approved by the Board include some staff costs for administration of the Section 8 Housing Choice Voucher Program, Disaster Relief, and comprehensive training on the Results Oriented Management and Accountability model for Community Action Agencies.

On January 17, 2013, the Board approved a policy shift in the allocation and use of CSBG-D funds to promote a program focused biennially on improved outcomes for designated special needs groups, with the first biennium focused on issues of homelessness. The purpose of the shift in funding priority was to provide an intensive focus on the specific needs of a group by way of a program funded for two years to allow for a greater emphasis on services and outcomes for those groups and optimize the use of these funds for the state.

As state and federal resources continue to be constrained it is incumbent upon the Department to identify creative ways to continue serving critical populations and essentially do more with less. Federal funds are generally quite restrictive with regard to their eligible uses. Flexible funds, such as CSBG-D funds, are often the only funds that may be used for addressing special projects and populations and Department needs.

New Objective for CSBG-D

The recommended focus for the 2015-2016 biennium is operational improvement in the statewide networks of agencies that administer the primary programs overseen by the Community Affairs Division, with an emphasis on assisting these agencies as they prepare to meet the requirements of the CSBG Organizational Standards developed by HHS. These Organizational Standards of Excellence complement the need for improved systems that may be derived from adherence to the new OMB super circular or review of single audits.

This comprehensive set of organizational standards, developed by the CSBG Organizational Standards Center of Excellence, has been established to ensure that all CSBG Eligible Entities have the capacity to provide high-quality services to low-income individuals and communities. The standards will provide a baseline for organizational management and leadership capacity and are focused in nine core organizational capacity areas:

- Leadership
- Governance
- Strategic Planning
- Financial Management
- Human Resources
- Community Assessment
- Consumer Input
- Community Engagement
- Data and Analysis

In some cases, the ability to achieve these standards may pose an unrealistic challenge for some subrecipients, in which case the Department also intends to support impacted subrecipients in identifying and carrying out successful strategies such as partnerships, and other forms of cooperation or linkage among organizations that allow for the continued service to clients.

In support of these issues, the Department has set aside approximately \$1,600,000 of its 2015 annual CSBG allocation for state discretionary use. With the funds designated as identified in this request, the Department will ensure that for Program Year 2015, the commitment to the historic uses of these funds will be retained, while ensuring that Eligible Entities have the training, technical assistance, and financial support to fund improvements necessary for their organization to meet the requirements of each of the nine core organizational capacity areas. The state's allocation has not been finalized by HHS at the time of Board posting so all figures are estimates.

With the 2015 CSBG-D funds staff suggests programming funds as described below and as further depicted in the table. Activities will include \$200,000 targeted for Migrant and Seasonal Farm Worker populations and Native American populations for employment and education programs for which the Department will issue a NOFA and/or RFP/A. Also, consistent with funding last year \$150,000 will be held to support disaster recovery; and \$150,000 will be held to support issuance of Department-administered housing vouchers for persons with disabilities. In all cases these amounts are unchanged from the amounts programmed for these activities last year.

To support the focus of the funds into network investment, four different types of activities are identified that will focus on different aspects of the assistance an Eligible Entity may need.

- \$500,000 will be targeted to Network Operational Investments that focus on assisting agencies within the statewide network as they prepare to meet the requirements of the CSBG Organizational Standards. The funds will be awarded to individual Eligible Entities for purposes that can be clearly defined and measurable, can be clearly associated with one or more of the Organizational Standards and that can be confirmed as being successfully implemented. Examples of how this may be used might include funds to institute recommendations that may generate from an organization’s assessments (noted below), from single audit findings, or from Quality Improvement Plans; consolidating excessive field offices; and modernization of accounting and performance reporting tools. The Department will issue one or more NOFAs and/or RFP/As totaling \$500,000 but may also include identification of an agency by the Department.
- \$150,000 will support an intensive assessment of up to four network agencies’ operations and procedures through the use of a previously procured assessment and training entity for organizations that may be identified by the Department; and/or the assessment may be requested by an agency. It is anticipated that these funds will be released through a Notice of Funding Availability or other fund release tool, but may also include identification of an agency by the Department.
- \$150,000 will be held to provide support for transitional costs agencies may incur if they choose to merge and absorb programs from other agencies;
- \$100,000 will be held to support Peer-to-Peer training initiatives among network agencies covering costs incurred by trainers qualified for varying topics;
- \$200,000 will be held to support comprehensive regional training and technical assistance activities provided by the Department or by entities that may be procured for this purpose.

The Department will provide Network Transitions Funds, Disaster Recovery Funds, and Peer-to-Peer Collaborations Funds through a NOFA and/or RFP/A, or through a non-competitive method.

TABLE 1	
Network Operational Investments	\$500,000
Intensive Community Action Agency Support Assessments	\$150,000
Network Transitions Fund	\$150,000
Peer-to-Peer Collaborations Fund	\$100,000
Network Training and Technical Assistance Fund	\$200,000
Migrant Seasonal Farm Worker and Native American Populations Education and Employment Initiative	\$200,000
Housing Voucher Program Support Fund	\$150,000
Disaster Recovery Fund	\$150,000
Total CSBG Discretionary Estimate	\$1,600,000

If approved by the Board, any applicable NOFAs, RFPs or RFAs will be released with applications targeted to be due in April / May 2015. It is anticipated that final award recommendations will be presented to the Board in June or July of 2015.

In the event that the Department does not have sufficient eligible applications to fund in one or more categories, or should other uncommitted CSBG-D funds remain, the Department will reprogram the funds from one of the eligible categories into another category approved with this action to award additional funds, with subsequent ratification by the Board.

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BOARD ACTION REQUEST
SINGLE FAMILY, COMMUNITY AFFAIRS AND METRICS
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action to Authorize the Use of Funds Contributed to the Texas Interagency Council for the Homeless

RECOMMENDED ACTION

WHEREAS, the Texas Interagency Council for the Homeless (the “Council”) was created in 1995 in Subchapter KK of Chapter 2306, Texas Government Code to promote interagency coordination relating to issues surrounding homelessness;

WHEREAS, Texas Government Code, Section 2306.904, directs the Department to provide clerical and advisory support to the Council;

WHEREAS, Section 2306.906 indicates that each agency member shall contribute resources to the Council, and the Council’s Chair has been actively pursuing the commitment of financial resources from member agencies;

WHEREAS, \$20,000 has been committed to the Council to date from member agencies to advance the work of the Council and the Council has no administrative means by which to receive or expend those funds or other funds to be committed to the Council;

WHEREAS, the Council may use these funds, and any future funds committed, in one or more ways that may require the release of the funds through a Request for Proposals, Notice of Funding Availability, Interagency Agreement or other method of releasing and expending funds; and

WHEREAS, the Department has been providing administrative support, as contemplated by statute, and is further prepared to provide clerical and advisory support to the Council with regard to the expenditure of funds;

NOW, therefore, it is hereby

RESOLVED, that the Department in its role of providing administrative support to the Council will provide for the receipt, programming and disbursement, or other administrative duties associated with the utilization of funds, for any funds committed to the Council by member agencies or other parties;

FURTHER RESOLVED, that programming of those funds will be directed by the Council and implemented by staff who are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, contracts, instruments and writings and perform such other act as may be necessary to effectuate the foregoing; and

FURTHER RESOLVED, that award and commitment of those funds will not require further Board action, but will be reported to the Board on a periodic basis.

BACKGROUND

The Texas Interagency Council for the Homeless (the “Council”) was created in 1995 in Subchapter KK of Chapter 2306, Texas Government Code to promote interagency coordination relating to issues surrounding homelessness. Members include representation from agencies that address services for health and human services including mental health, aging and rehabilitation; criminal justice; education; protective and regulatory services; workforce, youth, and veterans. Advisory members also participate from community and local government organizations interested in issues of homelessness.

The Department has been the provider of administrative support for the Council, and has been one of the few member agencies to provide financial support. However, several member agencies have recently been able to provide contributions to the Council. The Texas Workforce Commission and the Texas Education Agency have each committed \$10,000 to the Council.

The TICH’s goal is to access \$100,000 in resources across member agencies with each agency contributing a minimum of \$10,000. These financial commitments were requested for the generation of some of the following efforts of 2012’s TICH publication, *Pathways Home: A Framework for Coordinating State Administered Programs with Continuum of Care Planning to Address Homelessness in Texas*, such as:

- Compilation of the primary priorities of each Continuum of Care (“CoC”) to identify their most critical needs, allowing for better provision of services.
- Support of the work of the subcommittees created by *Pathways Home*, including the Homelessness Prevention Committee; the Housing and Supportive Services Committee; the Data, Research and Analysis Committee; and the State Infrastructure Committee.
- Pursue a “no wrong door” approach to assisting the homeless or those at risk of homelessness, in coordination with 211 Texas, that assists clients through the process of needing services, and provide for a coordinated assessment between 211 Texas and the COC; currently homelessness or threat of homelessness is in the top 10 types of requests that come into 211.
- Study ways to increase permanent housing situations for people currently experiencing homelessness and researching new ways to prevent people from becoming homeless (close the front door into homelessness and open the back door out of homelessness).
- Greater analysis on data looking to focus on sub-populations, data consistency, and an information exchange, including a comprehensive survey.
- To facilitate and support the cost share of a VISTA employee to focus solely on the work of the TICH, *Pathways Home*, and the statutory directives of the TICH.

The Council's intended use of these funds, and any future funds committed, may require the release of the funds through a Request for Proposals, Notice of Funding Availability, Interagency Agreement or other method of releasing and expending funds. However, the Council itself does not have a method by which to receive funds, release procurements, etc. Therefore, the Department is providing this service on behalf of the Council, as contemplated by statute. Staff consistently obtains Board approval prior to the release of any funds. In this case, while the use of the funds is directed by the Council, the administrative steps required to effectuate those uses are reliant on the Department and therefore staff is ensuring Board authority to perform these duties involving the receiving, awarding and expending of funds.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action Authorizing Staff to Identify a Provider, through release and subsequent award of a Request for Applications (“RFA”) or through a direct designation, to administer the Comprehensive Energy Assistance Program (“CEAP”) and the Weatherization Assistance Programs (“WAP”) in Cameron and Willacy counties

RECOMMENDED ACTION

WHEREAS, the Department has received Federal Fiscal Year (“FFY”) 2014 Department of Energy Weatherization Assistance Program (“DOE WAP”) funds in the amount of \$4,284,475 and anticipates receiving approximately \$4,657,454 for FFY 2015;

WHEREAS, the Department has received notification of awards from the U.S. Department of Health and Human Services (“HHS”) for the FFY 2015 Low Income Home Energy Assistance Program (“LIHEAP”) award;

WHEREAS, LIHEAP program funds are allocated for the Comprehensive Energy Assistance Program (“CEAP”) and Weatherization Funds (“LIHEAP-WAP”)

WHEREAS, the DOE-WAP and LIHEAP-WAP funds are allocated based on the formula detailed in 10 TAC §5.503, Distribution of WAP Funds;

WHEREAS, CEAP funds are allocated based on the formula detailed in 10 TAC §5.403, Distribution of CEAP Funds;

WHEREAS, Cameron and Willacy Counties Community Projects, Inc. (CWCCP) is a member of the network of organizations that receives formula funds from each of the above programs;

WHEREAS, CWCCP has several outstanding monitoring findings that are of concern to the Executive Award and Review Advisory Committee (“EARAC”) and the Executive Director;

WHEREAS, in spite of the Department remaining hopeful that CWCCP will be able to resolve noted findings and be subsequently presented to this Board for approval, the Department is prioritizing prompt service delivery to eligible low-income households;

WHEREAS, the state is authorized to issue Requests for Applications (“RFA”) to identify an alternate provider should the need arise or may directly select an alternate provider; and

WHEREAS, in the process of an alternate entity providing services on behalf of another provider minimal costs may be incurred relating to that transfer or start-up;

NOW, therefore, it is hereby

RESOLVED, that to expedite the delivery of services to eligible low-income households in Cameron and Willacy counties that are associated with the formula-based awards for FFY 2014 and FFY 2015 DOE weatherization in the estimate amount of \$121,732 for FFY 2014 and a similar estimate for FFY 2015, staff is authorized to release a Request for Applications to quickly identify a temporary or permanent alternate entity to administer these funds, or some portion of these funds or to directly select an alternate provider for the benefit of eligible low-income households in the service area and any administrative requirements in accordance with 10 CFR Parts 400 and 600;

FURTHER RESOLVED, for PY 2015 LIHEAP in the approximate amount of \$3,365,997 that the Department is authorized to release an emergency Request for Applications to quickly identify a potential temporary or permanent alternate entity to administer these funds, or some portion of these funds, for the benefit of eligible low-income households in the service area or to directly select an alternate provider;

FURTHER RESOLVED, that if one or more entity(ies) successfully responds to the Request for Applications, or agrees to become a direct provider of LIHEAP, to serve Cameron and Willacy counties, those entities, in the interest of limiting delay in serving households, will be authorized to proceed immediately with program administration and client services, and with subsequent ratification by the Board for FFY 2014 and FFY 2015 for DOE and for PY 2015 for LIHEAP, and

FURTHER RESOLVED, that if needed, the provision of limited funds to the alternate provider is hereby authorized to offset start-up or transfer costs that may be incurred in the temporary or permanent transfer of the programs from CWCCP.

RECOMMENDATION SUMMARY

Because EARAC has not recommended new awards to CWCCP for CEAP or WAP, staff recommends that a Request for Applications be released immediately that allows for the identification of a replacement provider(s) or for staff to directly select such provider(s), either temporary or permanent, for these two programs that will ensure prompt assistance in delivering weatherization and utility payment services in Cameron and Willacy counties. This recommendation does not include CSBG funds as the CSBG Act does not permit the withholding of a CSBG award without specific federally directed due process assurances.

The release of an RFA should not be precluded by any possible action to be taken elsewhere on this agenda; it reflects only that in the interest of the timely delivery of services to eligible low-income households in the area, an alternative solution is simultaneously being pursued.

BACKGROUND

This background is not provided as an indication of CWCCP's ultimate award status from the Department through EARAC, but is provided in an effort to give a sense of the situation that warrants the issuance of a RFA.

At the Board Meeting of December 18, 2014, the Governing Board approved awards for the PY 2014 DOE WAP and PY 2015 LIHEAP and CSBG subrecipients as recommended by the Executive Award and Review Advisory Committee ("EARAC"); that Board action included award approvals for all but a very few of the network providers. At that time, awards for Cameron and Willacy Counties Community Projects, Inc. ("CWCCP") were not approved, nor denied, by EARAC due to financial management concerns. As indicated in the December 18, 2014 Board write-up: "Staff recommends that the funds allocated to Cameron and Willacy counties (the service area covered by this entity) by formula will be held for the service area pending a response from the entity and resolution of the monitoring issues. Staff will continue to work with the entity to resolve the remaining monitoring issues."

Compliance staff, with collaboration from the Department's Internal Auditor, has put significant effort into working with CWCCP on obtaining documentation and striving to understand the documentation received. On February 4, 2015, EARAC met with the Executive Director, Chief Financial Officer, and several Board members of CWCCP; EARAC identified additional documentation or further clarification on existing documentation that they would need to be able to be sufficiently informed to approve or deny an award to CWCCP.

A subsequent call with CWCCP's single auditor occurred on February 9, 2015. Staff's interpretation of documents were confirmed and on February 10, 2015, notification was sent to CWCCP identifying disallowed costs and questioned costs related to what expenses are allowable under the CEAP program and inappropriate classification of direct services funds. On that call, staff requested that the single auditor still provide responsive documents that had been requested on January 20, 2015, that may assist in review. Additionally, a Quality Improvement Plan was previously requested and is due to the Department on February 9, 2015, which has not yet been received.

Because of the nature of these issues, EARAC has recommended denial of awards to CWCCP under CEAP and WAP. While hopeful that CWCCP will be able to again become an authorized provider through the approval of EARAC, staff is concerned that area households will be negatively impacted by the delay in contract awards. In an effort to minimize the impact of on the eligible low-income households in the service area the Department intends to issue a RFA or directly select a potential alternate provider for each of the programs for Cameron and Willacy counties.

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BOARD ACTION REQUEST

SECTION 811 PROGRAM

FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action to award a contract to the Southwest Housing Compliance Corporation pursuant to Texas Government Code, §669.003

RECOMMENDED ACTION

WHEREAS, on December 18, 2014, the Department received authorization from the Board to award a contract to one or more responsive bidders generated from a previously authorized Request for Proposal (“RFP”) that provides assistance for the Section 811 Project Rental Assistance (“PRA”) Program’s responsibilities related to the HUD required Tenant Rental Assistance Certification System (“TRACS”);

WHEREAS, the Department received a proposal from the Southwest Housing Compliance Corporation in response to the RFP and staff finds this vendor submitted the most responsive and responsible proposal;

WHEREAS, Texas Government Code, §669.003 requires that the Department must obtain the approval of the Board to award a contract with an entity that employs a person who at any time during the four years before the date of the contract was the previous Executive Director of the Department; and

WHEREAS, Michael G. Gerber was the Executive Director of the Department and left his position effective February 3, 2012, and became the President of Southwest Housing Compliance Corporation effective February 3, 2012, and continues to be in that position;

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 award a contract to Southwest Housing Compliance Corporation, in compliance with Texas Government Code, §669.003 to assist with the Tenant Rental Assistance Certification System (“TRACS”) duties of the Department for the Section 811 PRA.

BACKGROUND

The Section 811 Program provides project-based voucher funding to eligible Multifamily Developments to provide affordable housing for extremely low-income persons with disabilities. On December 18, 2014, the Board authorized the Department to award one or more contractors to assist with the Tenant Rental Assistance Certification System (“TRACS”) duties of the Department for the Section 811 PRA program in response to a Request for Proposal.

The Southwest Housing Compliance Corporation achieved the highest score of the submitted responses to the Request for Proposal. In order to enter into a contract with Southwest Housing Compliance Corporation, the Department must obtain the approval of the Board, pursuant to Texas Government Code, §669.003. This provision requires that a state agency may not enter into a contract with an entity that employs a person who at any time during the four years before the date of the contract was the executive head of the state agency, unless the governing body votes in an open meeting to approve the contract and notifies the Legislative Budget Board (which has already been done), not later than the fifth day before the date of the vote, of the terms of the proposed contract.

Section 811 PRA Program TRACS Background

The Section 811 Program provides project-based voucher funding to eligible Multifamily Developments to provide affordable housing for extremely low-income persons with disabilities. Households who qualify will pay approximately 30 percent of their income for rent and utilities. The Section 811 Program grant pays for the difference between the household’s rent payment and the rent payment charged for the unit by the Multifamily Development. In addition, the grant may pay for any utility assistance due to the tenant and vacancy payments.

In order to receive those payments, Multifamily Developments must enter resident data, called certifications or recertifications by HUD, and payment requests, called voucher data or special claims by HUD, through a HUD required system called the Tenant Rental Assistance Certification System (“TRACS”). The system is also required by HUD for other Project Based programs, such as Project Based Section 8.

The Department will be responsible for reviewing and approving the data entered into TRACS by the Multifamily Development and sending approval for payment through the TRACS system to HUD. Once the payment has been approved by the Department in the TRACS system, HUD will release payments due to the participating Multifamily Developments.

The Department does not have experience with the TRACS system, which requires software to interface with the system. The procurement of this vendor to assist the Department and/or the properties with the TRACS-related duties will support the implementation of the Section 811 PRA Program.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action regarding an Award of HOME funds from the 2014-1 HOME Multifamily Development Program Notice of Funding Availability for Housing Initiatives Corporation (#14417 Waters at Sunrise).

RECOMMENDED ACTION

WHEREAS, the issuance of a Determination Notice of \$895,136 in 4% Housing Tax Credits and an award of HOME funds not to exceed \$4,000,000 for Waters at Sunrise (#14417) was approved by the Board on January 15, 2015;

WHEREAS, Waters at Sunrise was awarded HOME funds under the Community Housing Development Organization (“CHDO”) Set Aside;

WHEREAS, each CHDO that is awarded HOME funds may also be eligible to receive a grant up to \$50,000 for CHDO Operating Expenses;

WHEREAS, the sole owner of the General Partner of the applicant – Housing Initiatives Corporation – has requested \$50,000 for CHDO Operating Expenses;

WHEREAS, the previous participation review in accordance with 10 TAC §1.5 was approved;

NOW, therefore, it is hereby

RESOLVED, the Board hereby approves an Award of a CHDO Operating Expenses Grant for Housing Initiatives Corporation not to exceed \$50,000 for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies.

BACKGROUND

General Information: Waters at Sunrise, located in Round Rock, Williamson County, involves the new construction of a mixed income development, serving multiple rent and income levels and consisting of 300 units. Of the 300 total residential units, seven units will be rent and income restricted at 50% of AMFI, 233 units will be rent and income restricted at 60% AMFI, and the remaining 60 units will be market rate with no rent or income restrictions. The HOME LURA will include seven Low Home units and 28 High Home units. The HOME units will be considered floating units throughout the

development and identified as such in the HOME LURA. The development will serve the general population and is zoned appropriately.

The CHDO Operating Expenses Grant will be in addition to and separate from the \$4,000,000 HOME loan that was approved last month. The grant is not considered project funds and therefore is not required to be used for costs directly related to developing the Waters at Sunrise property. Costs eligible for reimbursement from the grant are outlined in 24 CFR §92.208.

Organizational Structure: The Borrower is Waters at Sunrise, L. P. The General Partner is AHF – Waters at Sunrise, LLC, of which the sole member is Housing Initiatives Corporation, a nonprofit organization that the Department has certified as meeting the CHDO requirements found in 24 CFR §92.2 and §92.300. Since AHF-Waters at Sunrise LLC is a wholly owned subsidiary of a CHDO (Housing Initiatives Corporation) that will be developing and owning the property, the CHDO will be serving in the sponsor capacity under §92.300 for CHDO purposes and is comprised of the following board members and officers: Michael N. Nguyen, Daniel B. French and Joann Gonzalez. Approval of the HOME award under the CHDO set-aside will require the HOME LURA to include a provision that a CHDO remain in the ownership structure throughout the term of the HOME loan.

The Executive Award Review Advisory Committee met on November 21, 2014, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5 and approved the CHDO operating expense award up to \$50,000 on February 10, 2015.

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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on extensions of 2011-awarded HOME Program Multifamily Contracts which have not yet received their Closed Final Development Inspection Letter

RECOMMENDED ACTION

WHEREAS, Burkburnett Seniors, LLC, Oasis Cove, Ltd., and Mariposa Calder Drive, LP were awarded HOME Multifamily Development Program funds to construct multifamily rental housing on July 28, 2011;

WHEREAS, the Department has previously approved amendments to the HOME contracts for Burkburnett Seniors, LLC (Contract #1001506), Oasis Cove, Ltd. (Contract #1001491) and Mariposa Calder Drive, LP (Contract #1001491) to extend the contract end dates and allow the Development Owners to draw down funds for eligible costs;

WHEREAS, all three contracts have been amended to extend their contract end dates by the maximum extent possible – 12 months as allowed by 10 TAC §53.25(d) and an additional six months as allowed by a Board Action Request approved by TDHCA’s Governing Board on April 10, 2014 – absent further Board action;

WHEREAS, all three contracts’ end dates are approaching within the next few months and several deficiencies in their Final Development Inspection Letters remain uncorrected;

WHEREAS, all three Development Owners are waiting to be reimbursed for eligible costs upon receipt of a Closed Final Development Inspection Letter in accordance with 10 TAC §53.82(b)(9); and

WHEREAS, staff has determined that approval of this Board Action Request would not cause a violation of the Department’s rules or federal requirements and would allow the Department to release retainage and close out the contract in order to satisfy HUD requirements.

NOW, therefore, it is hereby

RESOLVED, the Board grants the Executive Director or his authorized designee authority to execute amendments for these contracts that would extend the

contract end dates by up to an additional six months each, thereby allowing the Development Owners to receive a Closed Final Development Inspection Letter.

BACKGROUND

Burkburnett Seniors, LLC received its Final Development Inspection on October 15, 2014, and a Final Development Inspection Letter from inspection staff identifying nine deficiencies was issued on December 18, 2014. The HOME contract, which began on January 20, 2012, and was scheduled to end on January 19, 2014, was amended several times in accordance with 10 TAC §53.25(d) to extend the contract end date to January 19, 2015. The contract end date was recently extended again to reflect an end date of July 19, 2015 in accordance with the Board Action Request approved by TDHCA's Governing Board on April 10, 2014. The Development Owner is in the process of formulating a response to the nine deficiencies with corrective documentation. However, if the response is inadequate and more corrective documentation needs to be submitted, it is conceivable that the Development Owner would require another amendment extending the contract end date beyond July 19, 2015 to allow for the issuance of the Closed Final Development Inspection Letter.

Oasis Cove, Ltd. received its Final Development Inspection on April 29, 2014 and a Final Development Inspection Letter from inspection staff identifying 12 deficiencies was issued on July 21, 2014. The Development Owner responded with corrective documentation on October 14, 2014, but the documentation was insufficient for seven of the twelve deficiencies. Inspection staff responded with a follow-up letter on November 24, 2014, identifying the seven deficiencies that remained open. The Development Owner responded with corrective documentation on January 30, 2015, which is currently under review by inspection staff. The HOME contract, which began on September 23, 2011, and was scheduled to end on September 22, 2013, was amended several times in accordance with 10 TAC §53.25(d) to extend the contract end date to September 22, 2014. The contract end date was recently extended again to reflect an end date of March 22, 2015, in accordance with the Board Action Request approved by TDHCA's Governing Board on April 10, 2014. It is conceivable that the Development Owner would require another amendment extending the contract end date beyond March 22, 2015 to allow for the issuance of the Closed Final Development Inspection Letter.

Mariposa Calder Drive, LP received its Final Development Inspection on February 27, 2014, and a Final Development Inspection Letter from inspection staff identifying 12 deficiencies was issued on July 11, 2014. The Development Owner responded with corrective documentation on October 10, 2014, but the documentation was insufficient for two of the twelve deficiencies. Inspection staff responded with a follow-up letter on November 25, 2014, identifying the two deficiencies that remained open. The HOME contract, which began on September 28, 2011, and was scheduled to end on September 27, 2013, was amended several times in accordance with 10 TAC §53.25(d) to extend the contract end date to September 27, 2014. The contract end date was recently extended again to reflect an end date of March 27, 2015, in accordance with the Board Action Request approved by TDHCA's Governing Board on April 10, 2014. The Development Owner is in the process of formulating a response to the two deficiencies with corrective documentation. However, if the response is inadequate and more corrective

documentation needs to be submitted, it is conceivable that the Development Owner would require another amendment extending the contract end date beyond March 27, 2015, to allow for the issuance of the Closed Final Development Inspection Letter.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Raymond Telles Manor was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$383,011 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 Raymond Telles Manor, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

Raymond Telles Manor, consists of 68 units, all of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1975, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at Padres Drive and Buena Park in El Paso. Demographics for the census tract (0039.03) include an AMFI of \$21,129; the total population is 6,921; the percent of population that is minority is 98.35%; the percent of the population that is below the poverty line is 55.04%; the number of owner-occupied units is 933 and the number of renter units is 932. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Lt. Palmer Baird Memorial Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation;

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$301,785 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 Lt. Palmer Baird Memorial Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

Lt. Palmer Baird Memorial Apartments consists of 55 units, all of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1974, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

The applicant disclosed the presence of a potential undesirable site feature under §10.101(a)(3); specifically that the development is located adjacent to a private residence that may be inaccurately labeled a “junkyard”. According to the applicant, the definition of a traditional junkyard is a yard or other temporary location where resalable or recycled junk or salvage maybe stored. The private residence in question is owned by an individual citizen who previously operated a helicopter business and auto repair company and still maintains some of the items and/or equipment from the trade. To further support their position, the applicant provided documentation that the current zoning ordinance for this location does not allow for a junkyard. Moreover, a review of the El Paso County Appraisal records indicates the homeowner has claimed both a homestead and over 65 property tax exemptions. Staff notes that the site inspection performed earlier in the summer indicated that the property is adjacent to a junkyard. However, based on the information regarding the ownership and zoning of the property, staff is willing to concede that is not the case. However, should the site in question be classified as a junkyard staff would recommend the granting of an exemption, as allowed under the rule which states “*Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board.*”

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 4747 Atlas in El Paso. Demographics for the census tract (0003.01) include an AMFI of \$27,666; the total population is 6,417; the percent of population that is minority is 90.28%; the percent of the population that is below the poverty line is 43.11%; the number of owner-occupied units is 878 and the number of renter units is 1,451. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for J. E. Anderson Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$320,245 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 J. E. Anderson Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

J. E. Anderson Apartments consists of 58 units, all of which will be rent and income restricted at 60% AMFI. The development, originally constructed in 1984, will serve the general population and is currently zoned appropriately.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 741 Lafayette in El Paso. Demographics for the census tract (0041.06) include an AMFI of \$30,985; the total population is 5,271; the percent of population that is minority is 96.77%; the percent of the population that is below the poverty line is 39.59%; the number of owner-occupied units is 938 and the number of renter units is 663. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for George Webber Memorial Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$597,221 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 George Webber Memorial Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

George Webber Memorial Apartments consists of 98 units, all of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1975, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 110 Whittier in El Paso. Demographics for the census tract (0038.04) include an AMFI of \$24,751; the total population is 3,925; the percent of population that is minority is 96.56%; the percent of the population that is below the poverty line is 40.86%; the number of owner-occupied units is 586 and the number of renter units is 658. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Everett Alvarez Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$383,011 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 Everett Alvarez Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

The Everett Alvarez Apartments consists of 96 units, ALL of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1974, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 8247 N Loop in El Paso. Demographics for the census tract (0041.03) include an AMFI of \$31,889; the total population is 6,939; the percent of population that is minority is 96.15%; the percent of the population that is below the poverty line is 29.35%; the number of owner-occupied units is 1,173 and the number of renter units is 912. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Harry S. Truman Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$504,234 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 Harry S. Truman Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

The Harry S. Truman Apartments consists of 90 units, all of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1975, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 7919 Meraz in El Paso. Demographics for the census tract (0041.06) include an AMFI of \$30,985; the total population is 5,271; the percent of population that is minority is 96.77%; the percent of the population that is below the poverty line is 39.59%; the number of owner-occupied units is 938 and the number of renter units is 663. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Dwight D. Eisenhower Memorial Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$1,014,282 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 Dwight D. Eisenhower Memorial Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of thirteen (13) existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970’s and 1980’s and are in need of modernization. They are currently occupied and operating as public housing and are owned and

managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD's Rental Assistance Demonstration ("RAD") program.

The Dwight D. Eisenhower Apartments consists of 206 units; however 66 of those units are within the floodplain and are not included as part of this application. The Applicant has indicated that they will be developed at a later time as a separate development utilizing a different source of funds. The remaining 194 units will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1973, a lead-based paint and asbestos abatement Operations and Maintenance ("O&M") plan will be required.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews found in 10 TAC §1.5. After considering the information provided EARAC recommended approval of the award.

Census Demographics: The development is located at 5628 Eisenhower in El Paso. Demographics for the census tract (0002.05) include an AMFI of \$27,999; the total population is 4,248; the percent of population that is minority is 82.86%; the percent of the population that is below the poverty line is 43.07%; the number of owner-occupied units is 750 and the number of renter units is 813. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Woodrow Bean Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$173,045 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 Woodrow Bean Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

Woodrow Bean Apartments consists of 31 units, all of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1974, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 1313 N. St. Vrain in El Paso. Demographics for the census tract (0022.02) include an AMFI of \$22,815; the total population is 4,712; the percent of population that is minority is 94.74%; the percent of the population that is below the poverty line is 45.92%; the number of owner-occupied units is 364 and the number of renter units is 1,336. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Kennedy Brothers Communities was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$2,037,920 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 Kennedy Brothers Communities, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

Kennedy Brothers Communities consists of 124 single family rental homes and 240 units made up of several different multifamily building types such as townhomes and fourplexes. They are located on two adjacent tracts of land and in conjunction with this award will be treated as one development with 364 total units, all of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. The 240 multifamily units were originally constructed in 1973 and require a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan. The remaining 140 single family units were constructed in 2001 and will not require any such plan.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 400 South Zaragosa in El Paso. Demographics for the census tract (0039.03) include an AMFI of \$21,129; the total population is 6,921; the percent of population that is minority is 98.35%; the percent of the population that is below the poverty line is 55.04%; the number of owner-occupied units is 933 and the number of renter units is 932. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Aloysius A. Ochoa Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$266,331 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 Aloysius A. Ochoa Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

Aloysius A. Ochoa Apartments consists of 70 units, all of which will be rent and income restricted at 60% AMFI. The development, which is currently zoned appropriately, was originally constructed in 1983 and the application indicated it will serve the elderly population. Staff notes that pursuant to a Board policy adopted in January 2013 over potential fair housing concerns, at the level of property owner there needs to be a classification of either general population or qualified elderly target population. As previously noted, the structure of this Portfolio reflects one limited partnership; therefore, all of the properties under this bond issuance would need to be considered general population without any occupancy restrictions for elderly households at some of the individual properties. The owner has agreed that going forward this will be a general population development.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 8820 Old Country Road in El Paso. Demographics for the census tract (0039.01) include an AMFI of \$33,079; the total population is 3,950; the percent of population that is minority is 96.96%; the percent of the population that is below the poverty line is 29.53%; the number of owner-occupied units is 709 and the number of renter units is 546. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Lyndon B. Johnson Memorial Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation;

WHEREAS, the applicant requested an exemption pursuant to §10.101(a)(3)(B) of the Uniform Multifamily Rules regarding the existing development being adjacent to or within 300 feet of active railroad tracks;

WHEREAS, the applicant has provided evidence that the development is currently receiving ongoing federal assistance from HUD and therefore should be granted an exemption to §10.101(a)(3) relating to Undesirable Site Features;

WHEREAS, staff recommends the exemption be granted based on information provided by the applicant and as allowed under §10.101(a)(3); and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$646,186 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 Lyndon B. Johnson Memorial Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

The Lyndon B. Johnson Memorial Apartments consists of 126 units, all of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1975, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

The applicant disclosed the presence of an undesirable site feature under §10.101(a)(3); specifically that the eastern boundary of the development is located within 300 feet of a railroad. While within 300 feet, the subject railroad is separated from the development by a four-lane road, which is divided and has both concrete barriers and guard rails. Pursuant to §10.101(a)(3) *“Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application.”* Because the development currently operates as public housing and will be converted through HUD’s RAD program it qualifies for the exemption allowed under the rule. Staff notes that the environmental site assessment addresses the exterior noise levels based on 24 CFR §51.104(a) and what is considered by HUD to be normally unacceptable. In the context of this property additional mitigation was suggested as it relates to the playground area and is; therefore, a condition of the Real Estate Analysis Report. Based on the provision in the rule and the attenuation measures required as part of the environmental site assessment staff is in favor of granting the exemption.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 9000 Roanoke in El Paso. Demographics for the census tract (0003.02) include an AMFI of \$33,237; the total population is 5,626; the percent of population that is minority is 92.48%; the percent of the population that is below the poverty line is

35.93%; the number of owner-occupied units is 1,052 and the number of renter units is 642. (Census information is from FFIEC Geocoding for 2014.)

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

Lyndon B Johnson Memorial Apartments Undesirable Site Features Disclosure/Exemption Request

Lyndon B Johnson Memorial Apartments is located at 9000 Roanoke, El Paso, TX 79904. The eastern boundary of the development site is located within 300 feet of a railroad. The railroad is approximately 155 feet away to the east of a 4-lane divided road with barriers.



Under the Undesirable Site Features section of the 2014 Rules, Development Sites located adjacent to or within 300 feet of active railroad tracks are considered ineligible; however, rehabilitation developments with ongoing and existing federal assistance from HUD or USDA may request an exemption.

This application has ongoing and existing federal assistance from HUD and would be eligible for a waiver. We request a waiver of Undesirable Site Features for this application. The railroad is separated from the development by a 4-lane divided road that has concrete barriers and metal guardrails. We do not believe that the railroad presents a danger to the residents. Please also note that the 2015 Rules have changed the ineligibility distance to active railroad tracks from 300 feet to 100 feet, and this development is more than 100 feet from the railroad track.

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Rafael Marmolejo Memorial Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$1,506,875 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 Rafael Marmolejo Memorial Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

Rafael Marmolejo Memorial Apartments consists of 292 units on three adjacent tracts of land; two of which are located along N. Carolina Drive and the third along N. Loop Drive. The tracts are divided by a drainage canal resulting in the development being partially located in two different census tracts as well as a portion along the southern boundary falling into Zone AE. This area is designated as within the 100-year floodplain. Pursuant to §10.101(a)(1) of the Uniform Multifamily Rules, Developments within the 100-year floodplain must satisfy specific development guidelines regarding finished ground floor elevations and drives; however, Rehabilitation Developments with existing and ongoing federal funding assistance are exempt from the requirement. All of the units will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1973, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 600 North Carolina in El Paso and lies within two different census tracts. Demographics for the first census tract (0042.01) include an AMFI of \$27,385; the total population is 6,397; the percent of population that is minority is 97.45%; the percent of the population that is below the poverty line is 34.81%; the number of owner-occupied units is 1,410 and the number of renter units is 557. (Census information is from FFIEC Geocoding for 2014.)

Demographics for the second census tract (0035.02) include AMFI of \$25,875; the total population is 4,923; the percent of population that is minority is 95.75%; the percent of the population that is below the poverty line is 42.30%; the number of owner-occupied units is 588 and the number of renter units is 838. (Census information is from FFIEC Geocoding for 2014.)

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

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with other Issuers

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Juan Hart Memorial Apartments was submitted to the Department on November 24, 2014;

WHEREAS, the Certificate of Reservation from the Texas Bond Review Board expires on April 12, 2015;

WHEREAS, the proposed issuer of the bonds for the Development is Alamito Public Facilities Corporation; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice and no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$257,080 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 Juan Hart Memorial Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Alamito Public Facilities Corporation received a Certificate of Reservation for an allocation of \$125,000,000 in Private Activity Bonds (“Bonds”) from the Texas Bond Review Board in November 2014. The Bonds will be used in conjunction with 4% Housing Tax Credits for the acquisition and rehabilitation of 13 existing developments (“Portfolio”), comprising approximately 1,600 units, in El Paso, El Paso County. The Portfolio is structured under a common financing plan with one limited partnership; however, there will be a separate Land Use Restriction Agreement on each property. The reservation 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. The properties were originally constructed in the 1970s and 1980s and are in need of modernization. They are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. All of the units in the Portfolio will be converted through HUD’s Rental Assistance Demonstration (“RAD”) program.

Juan Hart Memorial Apartments consists of 48 units, all of which will be rent and income restricted at 60% AMFI. The development will serve the general population and is currently zoned appropriately. Having been originally constructed in 1976, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be required.

Organizational Structure and Compliance: The Borrower is El Paso RAD I, LTD. The General Partner is Paisano El Paso RAD I, Inc., of which the sole member is Paisano Housing Redevelopment Corporation; a Texas nonprofit and a wholly-owned instrumentality of the Housing Authority of the City of El Paso which includes the following individuals: Gerald W. Cichon, Joe Fernandez, Francisco Ortega, Burt Blacksher, Lupita Licerio and Kevin Quinn.

The EARAC met on February 9, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is located at 4861 Atlas in El Paso. Demographics for the census tract (0003.01) include an AMFI of \$27,666; the total population is 6,417; the percent of population that is minority is 90.28%; the percent of the population that is below the poverty line is 43.11%; the number of owner-occupied units is 878 and the number of renter units is 1,451. (Census information is from FFIEC Geocoding for 2014.)

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

REPORT ITEMS

R1

ORAL
PRESENTATION

R2

TDHCA Outreach Activities, January 2015

A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public

Event	Location	Date	Division	Purpose
Public Hearing/Draft 2015 State of Texas Low Income Housing Plan and Annual Report	Austin	Jan 6	Housing Resource Center	Public Hearing
2015 Rule Amendments (REA, Asset Management and Compliance) Forum	Austin	Jan 9	Real Estate Analysis	Public Forum
NCSHA Conference	Washington, D.C.	Jan 11-16	Compliance, HOME, Homeownership, Legal, Multifamily Finance	Panelist, Panel Moderator, Participant
Housing and Health Services Coordination Council Meeting	Austin	Jan 14	Executive, Housing Resource Center	Presentation
Promoting Independence Advisory Council Meeting	Austin	Jan 15	Housing Resource Center	Participant
Texas Interagency Council for the Homeless/Quarterly Meeting	Austin	Jan 20	Community Affairs, Housing Resource Center, Legal, Program Planning/Policy/Metrics, Public & Policy Affairs	Participant
Intellectual and Developmental Disability System Redesign Advisory Committee, Housing Sub-Committee	Austin	Jan 20	Housing Resource Center	Presentation
Travis County's 5th Annual Statewide Reentry Conference	Austin	Jan 21	Housing Resource Center	Panelist
Council on Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders	Austin	Jan 23	Housing Resource Center	Presentation
State Independent Living Council and Rehabilitation Council of Texas	Austin	Jan 26-27	Housing Resource Center	Presentation
Quarterly Compliance Workshop	Austin	Jan 29	Compliance	Training

Internet Postings of Note, January 2015

A list of new or noteworthy documents posted to the Department's website

2015 9% HTC Pre-Application Planning Document — for planning purposes for entities submitting a pre-application in the 2015 competitive Housing Tax Credit cycle:

www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

2015 Competitive 9% HTC Pre-Application FAQs — providing staff responses to the most frequently asked questions from the development community regarding the 2015 competitive Housing Tax Credit pre-application cycle:

www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

Neighborhood Organizations on Record with TDHCA — detailing neighborhood organizations on record with the Department for QCP purposes at the beginning of the 2015 9% Housing Tax Credit allocation cycle:

www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

2015 Pre-Inducement Questionnaire for Multifamily Bonds — *providing staff with a preliminary understanding of a proposed Development plan prior to the submission of a Pre-application:*
www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

Uniform Multifamily Rules: Subchapters A-E & G — *establishing the general requirements associated with the funding of affordable multifamily rental properties:*
<http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm>

Section 811 Documents for Execution — *representing the contractual agreement between the Department and property owners committing developments to participation in the 811 PRA Program:*
www.tdhca.state.tx.us/section-811-pra/documents-for-execution.htm

Uniform Multifamily Rules: Subchapter F — *administering the manner in which the Department monitors the rental housing properties in its portfolio for program compliance:*
www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm

Tenant Rights and Resources Guide — *providing important definitions regarding Fair Housing and tenant rights information to individuals residing in TDHCA-monitored rental properties:*
www.tdhca.state.tx.us/pmcomp/forms.htm

2015 Amy Young Barrier Removal Program Notice of Funding Availability: Revised January 9, 2015 — *updated information regarding the availability of funds for entities seeking to apply for funds through the Department's AYBR Program:*
www.tdhca.state.tx.us/hf/single-family/amy-young.htm

Uniform Multifamily Rules: Subchapter E — *governing the post-award and asset management activities associated with multifamily rental properties funded through the Department:*
www.tdhca.state.tx.us/asset-management/announcements.htm

2015 Real Estate Analysis Rules — *detailing the Department's standards for underwriting, market analyses, appraisals, environmental site assessments, property condition assessments and direct loan requirements:*
www.tdhca.state.tx.us/rea/index.htm

2015 Competitive HTC Application Cycle FAQs — *providing staff responses to the most frequently asked questions from the development community regarding the 2015 competitive Housing Tax Credit full application cycle:*
www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

2015 9% Individually Imaged Pre-Applications — *providing access to all applications seeking housing tax credits in the 2015 allocation round participating in the pre-application cycle:*
www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

Energy Efficiency Rule for Single Family Programs — *detailing new minimum energy efficiency requirements for all single family construction activities initiated on January 1, 2015, and later:*
www.tdhca.state.tx.us/single-family/TDHCA-Energy-Efficiency-Rules.htm

Tenant Rights and Resources Guide for TDHCA Monitored Rental Properties — *providing information to potential tenants of properties financed by TDHCA regarding their right to make housing choices and receive equal access to housing and related programs under the law:*
www.tdhca.state.tx.us/pmcomp/forms.htm

2015 Emergency Solutions Grants Program: Application Submission User Guide — *detailing process interested entities must follow to submit ESG applications electronically:*
www.tdhca.state.tx.us/community-affairs/esgp/nofas.htm

2015 Post Bond Closure Submission Packet — explaining what steps owners of properties financed through private activity bonds must take no later than sixty calendar days after closing on the bonds:
www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm

2015 4% Housing Tax Credit and Tax Exempt Bond Process Manual — explaining the programs and what steps entities interested in participating in the tax credit/private activity bond program must take:
www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

2014 HOME Multifamily Development Program Application Log: January 15, 2015 — listing applicants seeking financing for multifamily affordable rental properties through the Department's HOME Program:
www.tdhca.state.tx.us/multifamily/home/index.htm

Participating Jurisdiction List — listing cities and counties in Texas designated as PJs and generally ineligible for funding through the Department's HOME Program:
www.tdhca.state.tx.us/multifamily/home/index.htm

Community Affairs: Program Year 2015 Income Limits — listing income figures at 100% and 125% of the federal poverty guideline to determine eligibility for assistance through the Department's Comprehensive Energy Assistance, Weatherization Assistance, and Community Services Block Grant programs:
www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm; www.tdhca.state.tx.us/community-affairs/wap/guidance.htm; www.tdhca.state.tx.us/community-affairs/csbg/guidance.htm

2015 9% Housing Tax Credit Pre-Application Logs: January 29, 2015 — listing applicants participating in the 2015 Competitive HTC pre-app cycle, organized by region and subregion, except for the At-Risk and USDA Set-Asides:
www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

2015 Multifamily Housing Revenue Bond Rules — detailing the Department's requirements for issuing bonds to finance rental housing, the procedures for applying for bonds and the regulatory and land use restrictions imposed upon Bond financed Developments:
www.tdhca.state.tx.us/multifamily/nofas-rules.htm

4% HTC Bond Status Log: December 31, 2014 — listing applicants seeking non-competitive 4% HTCs in association with bond financing through a local issuer:
www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm;
www.tdhca.state.tx.us/multifamily/bond/index.htm

Housing Tax Credit Property Inventory: January 15, 2015 — comprehensive listing of all properties financed through the Department's HTC Program, organized by file number, city, and developer information:
www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm; www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm

R3

BOARD REPORT ITEM
FINANCIAL ADMINISTRATION DIVISION
FEBRUARY 19, 2015

Report on the Department's 1st Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")

BACKGROUND

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures which are not subject to the PFIA, and the remaining portion is related to accounts excluded from the indentures but covered by the PFIA. The Department's total investment portfolio is \$850,976,608 of which \$820,266,409 is not subject to the PFIA. This report addresses the remaining \$30,710,199 (See Page 1 of the Internal Management Report) in investments covered by the PFIA. These investments are deposited in the General Fund, Housing Trust Fund, Compliance, and Housing Initiative accounts which are all held at the Texas Treasury Safekeeping Trust Company ("TTSTC"), primarily in the form of overnight repurchase agreements which are fully collateralized and secured by the U.S. Government Securities. A repurchase agreement is the purchase of a security with an agreement to repurchase that security at a specific price and date which in this case was November 26, 2014, with an effective interest rate of 0.04%. These investments safeguard principal while maintaining liquidity.

Below is a description of each fund group and its corresponding accounts.

- The **General Fund** accounts maintain funds for administrative purposes to fund expenses related to the Department's ongoing operations. These accounts contain balances related to bond residuals, fee income generated from the Mortgage Credit Certificate ("MCC") Program, escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate ("BMIR") Program.
- The **Housing Trust Fund** accounts maintain funds related to programs set forth by the Housing Trust Fund funding plan. The Housing Trust Fund provides loans and grants to finance, acquire, rehabilitate, and develop decent and safe affordable housing.
- The **Compliance** accounts maintain funds from compliance fees and asset management fees collected from multifamily developers. The number of low income units and authority to collect these fees is outlined in the individual Land Use Restriction Agreements ("LURAs") that are issued to each Developer. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the monitoring and administration of these properties.

- The **Housing Initiative** accounts maintain funds from fees collected from Developers in connection with the Department's Tax Credit Program. The majority of fees collected are application fees and commitment fees. The authority for the collection of these fees is outlined in the Department's Multifamily Rules. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the administration of the Tax Credit Program.

This report is in the prescribed format and detail required by the Public Funds Investment Act. It shows in detail the types of investments, their maturities, their carrying (face amount) values, and fair values at the beginning and end of the quarter. The detail for investment activity is on Pages 1 and 2.

During the 1st Quarter, as it relates to the investments covered by the PFIA, the carrying value increased by \$2,036,573 (See Page 1) for a total of \$30,710,199. The increase is described below by fund groups.

General Fund: The General Fund increased by \$1,417,543. This consists primarily of \$288,303 received in bond administration fees, \$305,074 in MCC Fees, and a transfer of \$3,500,000 from the Taxable Mortgage Program ("TMP"). Disbursements included \$2,371,885 transferred to fund the operating budget and \$279,943 in bond related expenses.

Housing Trust Fund: The Housing Trust Fund increased \$2,232,470. This consists primarily of \$545,731 received in loan repayments and \$3,228,865 from General Revenue. Disbursements included \$1,454,410 for loans and grants.

Compliance: Compliance funds decreased \$2,582,590. This consists primarily of \$807,608 received in compliance fees. Disbursements included \$3,311,702 transferred to fund the operating budget.

Housing Initiative: Housing Initiative funds increased \$969,149. This consists primarily of \$2,767,238 received in fees related to tax credit activities. Disbursements included \$1,816,130 transferred to fund the operating budget.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION**

**PUBLIC FUNDS INVESTMENT ACT
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)
QUARTER ENDING November 30, 2014**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION
PUBLIC FUNDS INVESTMENT ACT
Internal Management Report (Sec. 2256.023)
Quarter Ending November 30, 2014

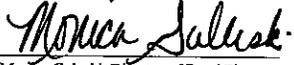
	Investment Type	FAIR VALUE (MARKET) @ 08/31/14	CARRYING VALUE @ 08/31/14	CARRYING VALUE @ 11/30/14	FAIR VALUE (MARKET) @ 11/30/14	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 11/30/14	RECOGNIZED GAIN
NON-INDENTURE RELATED:								
General Fund	Mortgage-Backed Securities	764,249.97	726,887.40	675,527.92	712,583.47	(307.02)	3,633.19	-
General Fund	Repurchase Agreements	6,732,944.15	6,732,944.15	8,201,846.63	8,201,846.63	-	45.57	-
Housing Trust Fund	Repurchase Agreements	5,069,086.71	5,069,086.71	7,301,557.07	7,301,557.07	-	40.81	-
Compliance	Repurchase Agreements	8,561,973.96	8,561,973.96	5,979,383.94	5,979,383.94	-	33.22	-
Housing Initiatives	Repurchase Agreements	7,582,734.50	7,582,734.50	8,551,883.77	8,551,883.77	-	47.71	-
		28,710,989.29	28,673,626.72	30,710,199.33	30,747,254.88	(307.02)	3,800.50	-

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:

David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 15, 2014

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 16, 2013

	Date 1/27/15
David Cervantes, Chief Financial Officer	
	Date 1/29/15
Monica Galuski, Director of Bond Finance	

**Texas Department of Housing and Community Affairs
Non-Indenture Related Investment Summary
For Period Ending November 30, 2014**

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 8/31/14	Beginning Market Value 8/31/14	Accretions/ Purchases	Amortizations/ Sales	Maturities	Transfers	Ending Carrying Value 11/30/14	Ending Market Value 11/30/14	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	0.04	11/26/14	12/01/14	1,610,157.91	1,610,157.91	5,187.82				1,615,345.73	1,615,345.73		
Repo Agmt	General Fund	0.04	11/26/14	12/01/14	55,356.25	55,356.25		(23,322.30)			32,033.95	32,033.95		
Repo Agmt	General Fund	0.04	11/26/14	12/01/14	305,606.29	305,606.29		(79,344.85)			226,261.44	226,261.44		
Repo Agmt	General Fund	0.04	11/26/14	12/01/14	1,488,205.58	1,488,205.58	1,370,741.71				2,858,947.29	2,858,947.29		
Repo Agmt	General Fund	0.04	11/26/14	12/01/14	309,396.32	309,396.32	32,026.88				341,423.20	341,423.20		
Repo Agmt	General Fund	0.04	11/26/14	12/01/14	345,490.29	345,490.29	62,850.07				408,340.36	408,340.36		
GNMA	General Fund	7.50	08/31/89	07/20/18	74,125.33	79,168.08			(4,766.88)		69,358.45	73,857.04	(544.16)	
GNMA	General Fund	7.50	10/31/89	09/20/18	128,753.79	136,977.29			(11,354.48)		117,399.31	124,628.76	(994.05)	
GNMA	General Fund	7.50	01/01/90	11/20/18	70,680.81	75,195.19			(5,069.88)		65,610.93	69,576.45	(548.86)	
GNMA	General Fund	7.50	01/01/90	12/20/18	67,542.78	71,999.93			(15,066.23)		52,476.55	55,978.83	(954.87)	
GNMA	General Fund	7.50	02/27/90	12/20/18	7,422.86	7,452.40			(376.43)		7,046.43	7,075.81	(0.16)	
GNMA	General Fund	7.50	03/30/90	01/20/19	78,551.03	83,805.31			(4,915.01)		73,636.02	78,705.12	(185.18)	
GNMA	General Fund	7.50	04/26/90	03/20/19	62,206.64	66,311.66			(3,575.94)		58,630.70	62,605.86	(129.86)	
GNMA	General Fund	7.50	05/29/90	04/20/19	78,345.97	83,379.70			(5,294.36)		73,051.61	77,848.18	(237.16)	
GNMA	General Fund	2.65	01/29/13	12/15/42	47,397.26	46,305.23			(373.36)		47,023.90	47,029.07	1,097.20	
GNMA	General Fund	3.20	01/29/13	10/15/42	111,860.93	113,655.18			(566.91)		111,294.02	115,278.35	2,190.08	
Repo Agmt	General Fund	0.04	11/26/14	12/01/14	2,618,731.51	2,618,731.51	100,763.15				2,719,494.66	2,719,494.66		
General Fund Total					7,459,831.55	7,497,194.12	1,571,569.63	(102,667.15)	(51,359.48)	0.00	8,877,374.55	8,914,430.10	(307.02)	0.00
Repo Agmt	Housing Trust Fund	0.04	11/26/14	12/01/14	73,731.62	73,731.62		(16,128.96)			57,602.66	57,602.66		
Repo Agmt	Housing Trust Fund	0.04	11/26/14	12/01/14	4,741.14	4,741.14	9.65				4,750.79	4,750.79		
Repo Agmt	Housing Trust Fund	0.04	11/26/14	12/01/14	354,114.01	354,114.01	62,665.13				416,779.14	416,779.14		
Repo Agmt	Housing Trust Fund	0.03	08/29/14	09/02/14	116,568.12	116,568.12					116,568.12	116,568.12		
Repo Agmt	General Revenue Appn	0.04	11/26/14	12/01/14	98,083.17	98,083.17		(97,803.99)			279.18	279.18		
Repo Agmt	General Revenue Appn	0.03	08/29/14	09/02/14	889,911.18	889,911.18		(678,922.11)			210,989.07	210,989.07		
Repo Agmt	General Revenue Appn	0.03	08/29/14	09/02/14	686,773.74	686,773.74		(344,862.48)			341,911.26	341,911.26		
Repo Agmt	General Revenue Appn	0.03	08/29/14	09/02/14	173,884.79	173,884.79	50,103.19				223,987.98	223,987.98		
Repo Agmt	Housing Trust Fund-GR	0.03	08/29/14	09/02/14	766,060.94	766,060.94	1,353,248.97				2,119,309.91	2,119,309.91		
Repo Agmt	Bootstrap -GR	0.03	08/29/14	09/02/14	83,342.08	83,342.08		(80,000.00)			3,342.08	3,342.08		
Repo Agmt	Bootstrap -GR	0.03	08/29/14	09/02/14	546.47	546.47					546.47	546.47		
Repo Agmt	Bootstrap -GR	0.03	08/29/14	09/02/14	1,366,829.45	1,366,829.45	2,003,660.96				3,370,490.41	3,370,490.41		
Repo Agmt	Contract for Deed Conversion	0.03	08/29/14	09/02/14	454,500.00	454,500.00		(19,500.00)			435,000.00	435,000.00		
Housing Trust Fund Total					5,069,086.71	5,069,086.71	3,469,687.90	(1,237,217.54)	0.00	0.00	7,301,357.07	7,301,557.07	0.00	0.00
Repo Agmt	Multi Family	0.04	11/26/14	12/01/14	1,106,892.47	1,106,892.47		(175,849.62)			931,042.85	931,042.85		
Repo Agmt	Multi Family	0.04	11/26/14	12/01/14	807,907.54	807,907.54		(334,415.19)			473,492.35	473,492.35		
Repo Agmt	Low Income Tax Credit Prog.	0.04	11/26/14	12/01/14	6,647,173.95	6,647,173.95		(2,072,325.21)			4,574,848.74	4,574,848.74		
Compliance Total					8,561,973.96	8,561,973.96	0.00	(2,582,590.02)	0.00	0.00	5,979,383.94	5,979,383.94	0.00	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.04	11/26/14	12/01/14	790,633.37	790,633.37		(254,255.16)			536,378.21	536,378.21		
Repo Agmt	Low Income Tax Credit Prog.	0.04	11/26/14	12/01/14	6,420,820.95	6,420,820.95	1,202,390.38				7,623,211.33	7,623,211.33		
Repo Agmt	Low Income Tax Credit Prog.	0.04	11/26/14	12/01/14	371,280.18	371,280.18	21,014.05				392,294.23	392,294.23		
Low Income Tax Credit Prog. Total					7,582,734.50	7,582,734.50	1,223,404.43	(254,255.16)	0.00	0.00	8,551,883.77	8,551,883.77	0.00	0.00
Total Investment Summary					28,673,626.72	28,710,989.29	6,264,661.96	(4,176,729.87)	(51,359.48)	0.00	30,710,199.33	30,747,254.88	(307.02)	0.00

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BOARD REPORT ITEM
BOND FINANCE DIVISION
FEBRUARY 19, 2015

REPORT ITEM

Report on the Department's 1st Quarter Investment Report relating to funds held under Bond Trust Indentures.

BACKGROUND

- The Department's Investment Policy was revised and approved at the Board Meeting of April 11, 2013, to exclude funds invested under a bond trust indenture for the benefit of bond holders because each trust indenture controls the authorized investments under that particular trust indenture. Management of assets within an indenture is the responsibility of the Trustee. This internal management report is for informational purposes only and while not required under the Public Funds Investment Act, it is consistent with the prescribed format and detail as required by the Public Funds Investment Act. It shows in detail the types of investments, their maturity, their carrying (face amount) value and their fair value at the beginning and end of the quarter.
- The detail for investment activity can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.
- Overall, the portfolio carrying value decreased by \$46.3 million (See Page 4) for a total of \$820,266,409. The decrease reflects loan repayments and bond redemptions.

The portfolio consists of those investments described in the attached Bond Trust Indenture Supplemental Management Report.

	<u>Beginning Quarter</u>	<u>Ending Quarter</u>
Mortgage Backed Securities ("MBS")	85%	84%
Guaranteed Investment Contract/ Investment Agreement ("GIC/IA")	3%	5%
Repurchase Agreements	7%	5%
Money Markets and Mutual Funds	5%	6%

The 1% decrease in MBS is due to the principal payments received on the underlying mortgages. The 2% increase in GIC/IA, 1% increase in money markets and mutual funds, and 2% decrease in Repurchase Agreements are a result of the deposit of mortgage repayments that are invested temporarily prior to bond redemptions.

The portfolio activity for the quarter:

- The maturities in MBS this quarter were \$40 million which represents loan repayments or payoffs. The table below shows the trend in new loans and loan payoffs.

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	
	FY 14	FY 14	FY 14	FY 14	FY 15	Total
Purchases	-	-	-	-		-
Sales	20,238,887	-	-	-		20,238,887
Maturities	45,617,217	36,063,849	32,111,580	38,527,660	40,322,810	192,643,116

- The process of valuing investments at fair value (market value) identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department does not typically liquidate these investments (mortgage backed securities) but holds them until maturity.
- The fair value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) increased \$4 million (See Pages 1 and 2), with fair value being greater than the carrying value. The national average for a 30-year fixed mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of November 30, 2014, was 3.97%, down from 4.10% at the end of August 2014. There are various factors that affect the fair value of these investments, but there is a correlation between the prevailing mortgage interest rates and the change in market value.
- Given the current financial environment, this change in market value is to be expected. However, the change is cyclical and is reflective of the overall change in the bond market as a whole.
- The ability of the Department's investments to provide the appropriate cash flow to pay debt service and eventually retire the related bond debt is more important than the relative value in the bond market as a whole.
- The more relevant measures of indenture parity, projected future cash flows, and the comparison of current interest income to interest expense are reported on page 3 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indentures with assets greater than liabilities in a range from 99.61% to 136.67% which would indicate the Department has sufficient assets to meet its obligations. The interest comparison reflects interest income greater than interest expense and indicates a positive cash flow.

Texas Department of Housing and Community Affairs
Bond Finance Division
Executive Summary
As of November 30, 2014

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Collateralized Home Mortgage Revenue Bond Indenture Funds	Taxable Mortgage Program	Multi-Family Indenture Funds	Combined Totals
PARITY COMPARISON:						
PARITY ASSETS						
Cash	\$ 69,363	\$ 9,753			\$ 14,259,707	\$ 14,338,823
Investments ⁽¹⁾	\$ 51,813,454	\$ 22,801,792	\$ 702,377	\$ 1,964,173	\$ 83,327,612	\$ 160,609,409
Mortgage Backed Securities ⁽¹⁾	\$ 387,034,263	\$ 261,659,666	\$ 4,356,456	\$ 5,745,041	\$ -	\$ 658,795,427
Loans Receivable ⁽²⁾	\$ 1,505,011				\$ 995,175,710	\$ 996,680,721
Accrued Interest Receivable	\$ 2,142,849	\$ 985,584	\$ 28,512	\$ 12,702	\$ 10,178,383	\$ 13,348,030
TOTAL PARITY ASSETS	\$ 442,564,941	\$ 285,456,796	\$ 5,087,345	\$ 7,721,916	\$ 1,102,941,412	\$ 1,843,772,410
PARITY LIABILITIES						
Bonds Payable ⁽¹⁾	\$ 390,835,000	\$ 245,880,000	\$ 3,700,000		\$ 993,669,483	\$ 1,634,084,483
Accrued Interest Payable	\$ 3,861,394	\$ 3,780,965	\$ 22,382		\$ 10,233,250	\$ 17,897,991
Other Non-Current Liabilities ⁽³⁾					\$ 103,400,134	\$ 103,400,134
TOTAL PARITY LIABILITIES	\$ 394,696,394	\$ 249,660,965	\$ 3,722,382	\$ -	\$ 1,107,302,867	\$ 1,755,382,608
PARITY DIFFERENCE	\$ 47,868,547	\$ 35,795,831	\$ 1,364,963	N/A	\$ (4,361,455)	\$ 88,389,802
PARITY	112.13%	114.34%	136.67%	N/A	99.61%	105.04%
INTEREST COMPARISON For the <i>third</i> Fiscal Month Only (not Fiscal Year to Date) :						
INTEREST INCOME						
Interest & Investment Income	\$ 1,883,033	\$ 990,819	\$ 28,416		\$ 3,469,933	\$ 6,372,201
TOTAL INTEREST INCOME	\$ 1,883,033	\$ 990,819	\$ 28,416	\$ -	\$ 3,469,933	\$ 6,372,201
INTEREST EXPENSE						
Interest on Bonds	\$ 1,271,403	\$ 745,990	\$ 20,576		\$ 3,469,928	\$ 5,507,897
TOTAL INTEREST EXPENSE	\$ 1,271,403	\$ 745,990	\$ 20,576	\$ -	\$ 3,469,928	\$ 5,507,897
NET INTEREST INTEREST RATIO	\$ 611,630 148.11%	\$ 244,829 132.82%	\$ 7,840 138.10%	N/A N/A	\$ 5 100.00%	\$ 864,304 115.69%

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value.

This adjustment is consistent with indenture cashflows prepared for rating agencies.

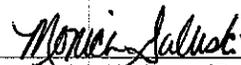
(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.

(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
 BOND FINANCE DIVISION
 BOND TRUST INDENTURES
 Supplemental Management Report
 Quarter Ending November 30, 2014

INDENTURE	FAIR VALUE (MARKET) @ 08/31/14	CARRYING VALUE @ 08/31/14	CHANGE IN CARRYING VALUE				CARRYING VALUE @ 11/30/14	FAIR VALUE (MARKET) @ 11/30/14	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT REC'BL @ 11/30/14	RECOGNIZED GAIN
			ACCRETION / PURCHASES	AMORTIZATION / SALES	MATURITIES	TRANSFERS					
Single Family	517,598,416.68	476,553,577.23	12,847,682.50	(28,008,695.47)	(23,690,808.87)	-	437,701,755.39	479,687,566.24	940,971.40	2,136,203.33	-
RMRB	312,840,817.53	292,114,698.85	7,948,852.51	-	(15,738,489.39)	-	284,325,061.97	308,180,140.30	3,128,959.65	985,584.17	-
CHMRB	5,482,595.06	5,025,868.98	242,859.85	(28,400.44)	(179,770.02)	-	5,060,558.37	5,495,251.02	(22,033.43)	28,511.76	-
Taxable Mortgage Program	10,825,811.61	10,592,683.32	585,471.32	(2,863,722.78)	(605,217.47)	-	7,709,214.39	8,421,407.36	479,064.68	19,551.52	-
Multi Family	83,870,815.74	82,293,328.80	9,947,975.84	(6,662,961.26)	(108,524.49)	-	85,469,818.89	87,023,905.67	(23,400.16)	-	-
Indenture Total	930,618,456.62	866,580,157.18	31,572,842.02	(37,563,779.95)	(40,322,810.24)	0.00	820,266,409.01	888,808,270.59	4,503,562.14	3,169,850.78	-

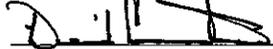
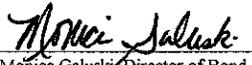
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 David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 15, 2014
 Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 16, 2013

	Date <u>1/27/15</u>
David Cervantes, Chief Financial Officer	
	Date <u>1/23/15</u>
Monica Galuski, Director of Bond Finance	

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS
 BOND FINANCE DIVISION
 BOND TRUST INDENTURES
 Supplemental Management Report
 Quarter Ending November 30, 2014

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 8/31/14	CARRYING VALUE @ 08/31/14	ACCRETION/ PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 11/30/14	FAIR VALUE (MARKET) @ 11/30/14	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
Mortgage-Backed Securities	797,338,580.72	733,300,281.28	-	-	(40,322,810.24)	-	692,977,471.04	760,912,756.98	3,896,986.50	-
Guaranteed Inv Contracts	27,168,180.55	27,168,180.55	10,513,839.29	(1,330,479.82)	-	-	36,351,540.02	36,351,540.02	-	-
Investment Agreements	1,829,436.48	1,829,436.48	3,001,033.35	(118,122.78)	-	-	4,712,347.05	4,712,347.05	-	-
Treasury-Backed Mutual Funds	45,320,323.05	45,320,323.05	9,517,750.99	(6,544,838.48)	-	-	48,293,235.56	48,293,235.56	-	-
Repurchase Agreements	58,961,935.82	58,961,935.82	8,540,218.39	(29,570,338.87)	-	-	37,931,815.34	38,538,390.98	606,575.64	-
Total	930,618,456.62	866,580,157.18	31,572,842.02	(37,563,779.95)	(40,322,810.24)	0.00	820,266,409.01	888,808,270.59	4,503,562.14	-

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:
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	Date 1/27/15
David Cervantes, Chief Financial Officer	
	Date 1/23/15
Monica Galuski, Director of Bond Finance	

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BOARD REPORT ITEM
COMPLIANCE DIVISION
FEBRUARY 19, 2015

Implementation of 2 CFR Part 200 (“the Omni Circular” or “Super Circular”) relating to Single Audits

BACKGROUND

On December 26, 2013, the Office of Management and Budget (“OMB”) released 2 CFR Part 200 which supersedes, streamlines, and combines requirements from prior OMB circulars A-21, A-87, A-110, A-122, A-102, and A-133 into one regulation. The new Omni Circular, as updated by 79 FR 75867, has an implementation date of December 26, 2014. As both a recipient and pass through entity of federal funding the Department is subject to the requirements of the Omni Circular. Department staff have attended external training and convened internal reading groups to study the Omni Circular, ensure common understanding, and compile questions to be asked of our federal awarding agencies. Through these activities staff has identified areas which require further federal guidance, areas of rules and contracts that will need to be amended, and internal policies and procedures that need to be developed or improved. Based on the Omni Circular, the areas in which staff expect the most significant changes are in procurement, indirect cost rates, and review of single audits. Just as the Department is working to ensure an understanding so that the Omni Circular can be fully complied with, subrecipients also need to be taking steps to ensure compliance; staff encourages all of the Department’s subrecipients to become familiar with the new requirements.

The State also has Uniform Grant Management Standards (“UGMS”) that provide state-level guidance similar to the types of guidance found in OMB circulars. It is anticipated that the Comptroller of Public Accounts’ office will soon release updated UGMS that will also impact the Department and many of our subrecipients. As updates to these rules are released and federal guidance and interpretation are issued, updates regarding these matters will be presented to the Board. Where needed, rules presented to the Board from this point forward will reflect Department implementation of both the Omni Circular and the UGMS. The purpose of this report item is to identify for the Board and our partner subrecipients changes staff is anticipating in one significant facet of the Omni Circular: the single audits.

Single audits required by 2 CFR Part 200 Subpart F (formerly OMB Circular A-133)

A single audit is an audit that grantees of federal funds are subject to that standardizes the requirements for auditing federal programs and requires one audit - a “single audit” – to encompass all of the grantee’s federal programs, as opposed to the preparation of separate audits for each federal program of the grantee. Entities that expend \$750,000 or more (previously \$500,000) in federal funds including states, local governments, and nonprofits are subject to this audit requirement. For entities whose fiscal years start before December 26, 2014, the \$500,000 threshold remains.

Department staff have previously performed reviews of single audits; however, as discussed at the Board meeting of January 15, 2015, Department staff has now deepened its understanding of the scope

of review of single audits through a consulting engagement with the Director of the Office of Internal Audit. We believe that some monitoring can be made more effective and focused by a careful review of the findings identified in these reports.

Based on these changes, Subrecipients can expect to experience changes in three areas generated from the Department's review of single audits:

1. Actions taken by the Department if the required single audit is delinquent;
2. Follow up regarding findings identified in the single audit; and
3. Terms and conditions placed on new awards and contracts related to findings identified in the single audit.

Single Audit Delinquency. The Department has an existing rule (10 TAC §1.3) that provides for the suspension of payments under existing contracts if a subrecipient's single audit is delinquent. In addition, the rule states that the Department may not enter into new contracts or renew contracts with subrecipients who are delinquent in the submission of their single audit. In the past, contracts with housing subrecipients who were past due in submission of their single audit were immediately suspended. Community Affairs subrecipients experienced more leniency and delinquent single audits have been approached on a case by case basis. Staff is developing internal policies and procedures to govern the application of these procedures across all Department programs for all types of subrecipients. The procedures will provide for clear notification to the subrecipient that the single audit is delinquent and the consequences (along with a timeline) for continued noncompliance. Staff believes this process can be defined and implemented through a Department Standard Operating Procedure; however, if the Board would prefer this as a formal rule, staff will work to develop a proposed rule.

Follow Up of Findings. The old circulars and the new regulation require TDHCA, as a pass through entity, to issue a management decision for the single audit including a determination if the auditor's findings are sustained. In the past, staff reviewed single audits and noted whether or not there were findings in the response letter. However, in order to issue a management decision and determine if the auditor's findings are sustained, staff is now taking the step to contact the subrecipient (or in some cases the auditor) to request documentation regarding the finding and correction thereof. Staff will only undertake this if the finding is directly related to a Department program or if the finding could affect a Department program. This review process could potentially result in the disallowance and required repayment of funds, if findings remain unresolved.

Terms and Conditions on New Awards. The Department's Executive Award Review Advisory Committee ("EARAC") has been considering findings identified in single audits during its review of the awardee's previous participation in other Department programs. In limited instances, EARAC has recommended placing conditions on awards. The Omni Circular contemplates that pass through entities should be reviewing these single audits prior to making funding decisions and should be using the audit as a basis for identifying appropriate terms and conditions for new awards. Subrecipients can expect to see an increase in recommended terms and conditions on awards due to any findings identified in their single audits, especially if they are significant and/repeat findings.

R6

BOARD REPORT ITEM
FAIR HOUSING TEAM
FEBRUARY 19, 2015

The Fair Housing Team has been very active since the last Board report on October 9, 2014. Below is a report on the Department's fair housing activities.

Affirmative Marketing Data Tool

The new Affirmative Marketing Rule, adopted in January, 2015 and to become effective for monitoring in April, 2015, outlines the methodology for an affirmative marketing data tool which will compare demographic data of a development with the demographic data of the MSA or County to determine whether certain populations are underrepresented or "least likely to apply." Underrepresentation is evidenced by percentages that represent a 20% difference between the MSA or County market area and developments or (where developments do not have tenant data to report) census tracts. This definition was developed to be consistent with HUD's definition of a minority impacted area in its Affirmative Fair Housing Planning Guide and the demographic studies completed under the Phase 2 AI. The Department worked with the Program Planning Policy & Metrics Division to create a tool in an Access database and the database was promoted to the web to operate as a web-based tool with the help of IS staff in January, 2015. Moving to a web-based model has greatly increased the tool's speed and made some enhancements possible (such as a census tract mapping function). Staff has completed testing of the tool and looks forward to releasing the tool for use during its Affirmative Marketing Rule webinar on February 23, 2015.

Language Assistance Services

The Department's Language Assistance Plan ("LAP"), developed by the Housing Resource Center and made effective February 3, 2014, states that as funding became available the Department would enter into a contract with two vendors (one primary, one secondary) for telephone translation of languages outside of Departmental staff's competency on an as needed basis. The plan also states that a relationship would be formed with a sister agency skilled in Spanish translation to meet the demand for Spanish language documents and that a qualified vendor would be engaged to provide in-person translations for events where Department staff anticipates persons of limited English proficiency to be present. Informal survey information from internal staff was gathered in the fall of 2014 to help estimate items in queue for document translation and the need for call services to assist callers speaking other languages. This information was used to develop cost estimates for a language vendor pilot to be funded by Information and Research funds over a six-month period. The state already has contracts for language assistance services with three major vendors; two of these vendors were selected for use with this Department initiative (Language Line Services and Universe Translation Service) and an internal staff training will be rolled out to assist each Division in understanding how to access both the third party calling service and the document translation service. Staff is excited to be able to offer all

Divisions a method of communication that will meet language assistance needs. During the month of September, staff will review how much of the planned budget was spent and review tracking logs related to Division and agency cost and use.

Affirmative Marketing Rule and Tenant Selection Criteria Webinars

The Affirmative Marketing Requirements and Tenant Selection Criteria Rules were published for adoption in the *Texas Register* on January 2, 2015. The new rules become effective for monitoring, as described in the published rule, on April 1, 2015. In response to public comment, the Department has planned two webinars to address highlights of the new rules and provide best practices suggestions. The Tenant Selection Criteria Webinar took place on February 17, 2015 and the Affirmative Marketing Requirements webinar will take place on February 23, 2015. The webinars will be recorded and placed on the website after the trainings are delivered. A running FAQ will be kept to answer compliance questions and assist Owners and Agents in understanding rule provisions. A survey will be distributed to capture feedback on the trainings after the events occur.

Tenant Rights and Resources Guide for TDHCA Monitored Rental Properties

The Fair Housing Team worked with the Compliance Division to integrate a tenant's programmatic rights brochure with TDHCA's Fair Housing Disclosure Notice and a property's notice of amenities and services. The guide was created to assist the Department in providing fair housing rights information and directly addressing Impediment 3 of the State of Texas's AI. Delivery of the guide in place of the Fair Housing Disclosure notice and property notice of amenities became effective January 8, 2015. The guide is posted in the Compliance Forms section of the Department's website and has recently also been translated into Spanish. The Spanish version is currently being modified for web posting accessibility.

Fair Housing Month Activities

The Fair Housing Team and the Department's DPPA staff have been engaged in planning Fair Housing Month activities for the month of April. The Department is currently planning a three week webinar series on general fair housing topics to be offered in coordination with the Texas Workforce Commission. The Department also plans to share a Fair Housing Month logo with its Fair Housing Workgroup participants from other state agencies, release various articles and media messages, and deliver an internal brown bag workshop on addressing Fair Housing complaints.

Traffic on the Fair Housing Website

Many of the state agencies who meet with TDHCA monthly to discuss obligations to affirmatively further fair housing and strategies to increase fair housing awareness are moving to update or revise website information based on the Department's new Fair Housing site. The site has been helpful in educating the public about their rights and has resulted in occasional walk in traffic and an average of four phone calls a day related specifically to answering general fair housing questions and giving out resource numbers. Fair Housing site traffic metrics reveal that 4,088 external users have visited the site between October, 2014 and February, 2015, 71% of which were tracked as new visitors to the page.

While these traffic metrics are not perfectly immune from tracking imperfections, they clearly show that the site is being used as a resource.

ACTION ITEMS

2

ORAL
PRESENTATION

3

BOARD ACTION REQUEST

BOND FINANCE DIVISION

FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action regarding Optional Par Termination Rights with respect to Interest Rate Swap Transactions related to Single Family Variable Rate Mortgage Revenue Refunding Bonds, 2004 Series B and Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D.

RECOMMENDED ACTION

WHEREAS, the Department previously issued its Single Family Variable Rate Mortgage Revenue Refunding Bonds, 2004 Series B and its Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D (collectively the “2004B&D Bonds”);

WHEREAS, contemporaneously with the issuance of the 2004B&D Bonds, the Department entered into an interest rate swap agreement with UBS AG with respect to the 2004 Series B Bonds (the “2004B Swap Agreement”) and with Goldman Sachs Bank (“GSB”) with respect to the 2004 Series D Bonds (the “2004D Swap Agreement”) (collectively, the “2004B&D Swap Agreements”);

WHEREAS, on April 10, 2014, the Governing Board approved the restructuring of the 2004B Swap through the adoption of Resolution No. 14-022, thereby transferring the 2004B Swap to The Bank of New York Mellon (“BNY”) as the swap counterparty, modifying the amortization and optionality of the 2004B Swap, and reducing the fixed interest rate payable by the Department;

WHEREAS, on May 8, 2014, the Governing Board approved the restructuring of the 2004D Swap through the adoption of Resolution No. 14-022, thereby modifying the amortization and optionality of the 2004D Swap and reducing the fixed interest rate payable by the Department; and

WHEREAS, the Governing Board desires to achieve the benefits contemplated in the restructuring of the 2004B&D Swap Agreements;

NOW, therefore it is hereby

RESOLVED, that the Director of Bond Finance, with the approval of the Executive Director, is authorized to take such actions as necessary to execute the Department’s right to optional par termination under the 2004B&D Swap Agreements.

BACKGROUND

In April 2004, the Department, in conjunction with the closing of its Single Family Mortgage Revenue Refunding Bonds, 2004 Series A & B, entered into the 2004B Swap Agreement with UBS AG. In April 2014, the Department restructured for benefit the 2004B Swap Agreement and, at such time, BNY became the swap provider (or counterparty) for the 2004B Swap Agreement.

In October 2004, the Department, in conjunction with the closing of its Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D, entered into the 2004D Swap Agreement with GSB. In May 2014, the Department restructured for benefit the 2004D Swap Agreement and GSB remains the swap provider for the 2004D Swap Agreement.

The 2014 restructuring of the 2004B&D Swap Agreements achieved a reduction in the fixed interest rates payable under the 2004B&D Swap Agreements, modified the swap amortization schedules to better match the underlying loan portfolio, and increased optionality through the inclusion of optional par termination rights. The optional par termination rights are exercisable semi-annually in accordance with the 2004B&D Swap Agreements.

The semi-annual optional par termination rights serve two primary purposes:

- 1) Optional calls of outstanding swap are used to prevent being overswapped (when the notional amount of the swap exceeds the bonds outstanding).
- 2) Optional calls of outstanding swap are used to achieve the economic benefit provided for through the restructuring of the swaps in 2014.

As an example, the March 1, 2015 debt service payment for 2004 Series D is detailed below:

Bonds Outstanding Prior to 3/1/2015	\$33,165,000
Bonds to Be Redeemed 3/1/2015	<u>3,580,000</u>
Bonds Outstanding on and after 3/1/2015	\$29,585,000
<i>2004 Series D Bonds Hedged 100% with Swap</i>	
Swap Outstanding Prior to 3/1/2015	\$33,165,000
Swap Notional Reduction 3/1/2015	(1,180,000)
Swap Called for Mandatory Bond Redemptions	(2,400,000)
Swap Called for Economic Benefit 3/1/2015	<u>(2,100,000)</u>
Swap Outstanding on and after 3/1/2015	\$27,485,000
<i>2004 Series D Bonds Hedged 93% with Swap and 7% with Cash</i>	

Staff estimates the economic benefit of the \$2.1 million optional call to be between \$30,000 and \$90,000 depending on the prepayment speed of the mortgage loans underlying the relevant mortgage-backed securities for the 2004 Series D Bonds.

If the Department does not execute our optional right to call the \$2.1 million in swap, this economic benefit accrues to the swap provider.

As part of managing the swaps and relevant bond issues, staff determines the amount of swap that must be called to prevent being overswapped and works closely with the Department's Financial Advisor, George K. Baum, to analyze the risk/return of the optional call of additional swap available to be called for economic benefit.

Staff intends to update the Governing Board through a regular board item to be provided semi-annually at the February and July board meetings. The board report will detail the status of all swaps, any change since the prior report, and will provide any details, such as those provided above, as to optional calls for economic benefit and the anticipated return to the Department.

4a

15053

Glenoak Apartments

Corpus Christi

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Timely Filed Appeals under any of the Department's Program Rules

RECOMMENDED ACTION

WHEREAS, a 2015 Competitive Housing Tax Credit Pre-Application was submitted for Glenoak Apartments (#15053) on January 6, 2015;

WHEREAS, upon review staff identified that the Site Control documentation file, required under 10 TAC §11.8(b)(1)(a), was inoperable, making the Pre-Application ineligible;

WHEREAS, the Pre-Application was terminated on January 26, 2015;

WHEREAS, the Applicant has timely appealed the termination;

WHEREAS, in order for the Pre-Application to be reinstated, the board must grant a waiver of either §11.8(a)(1) of the Qualified Allocation Plan ("QAP"), related to General Submission Requirements, allowing the pre-application to be submitted after the applicable deadline, or §11.8(b)(1)(A), Pre-Application Threshold Criteria, allowing the Application to be submitted without the required Site Control documentation;

WHEREAS, pursuant to §10.207 of the Uniform Multifamily Rule ("the Rule"), a request for a waiver should establish how it is necessary to address circumstances beyond the Applicant's control and how, if not granted, the Department will not fulfill some specific requirement of law; and

WHEREAS, the Applicant has provided insufficient evidence to support such a waiver request;

NOW, therefore, it is hereby,

RESOLVED, the request for waiver is denied and the Applicant's appeal of the termination of Glenoak Apartments (#15053) is hereby denied.

BACKGROUND

Pursuant to §11.8(b)(1)(A) of the QAP, site control documentation must be submitted as part of the Pre-Application Threshold Criteria. On January 6, 2015, two days before the Pre-Application Final

Delivery Date, a Competitive Housing Tax Credit Pre-Application was submitted for Glenoak Apartment using the Department's online Pre-Application system, hosted by JotForm. This submission appeared at first glance to include the required site control documentation. On January 7, 2015, the Department sent out a listserv announcement that stated "Applicants are advised to carefully review the submission confirmation email to ensure that all elections are correct and that all necessary attachments are included and can be opened from the confirmation email."

Once the Pre-Application Final Delivery Date passed, staff downloaded all of the submissions from JotForm, at which point it was discovered that the site control documentation for Glenoak Apartments was unable to be opened or downloaded. Staff contacted JotForm to see if the file could be retrieved from their servers another way. The response from JotForm's technical support staff states that the "file seems to have not been properly uploaded to our servers." The pre-application was then terminated on January 26, 2015, for failing to meet the threshold requirements outlined in §11.8(a)(1) of the QAP.

Both the Applicant's appeal to the Executive Director and to the Board suggest that the online pre-application system did not function properly. Staff disagrees. Through the online system, TDHCA received 337 pre-application submissions and 714 corresponding attachments. Of these attachments, only one file was unable to be retrieved, that being the site control documentation for Glenoak Apartments. This equates to 0.001% of all attachments, or 0.003% of all Applicants.

The Applicant's appeal to Mr. Irvine included a sworn declaration from a forensic investigator, who opined that the file was corrupted during one of three transfer points: 1) between the Applicant and the JotForm server, 2) between JotForm and TDHCA, or 3) during some internal handling of the file by TDHCA staff. TDHCA staff was never able to open or download the file from the JotForm server, so the file must have been corrupted or not saved correctly on the JotForm server during the initial transfer point (between the Applicant and JotForm). For this reason, the second and third transfer points could not have been the cause of the problem, as confirmed by the Department's senior Information Systems staff, the second and third points of transfer did not occur. Therefore, staff could not be found responsible.

Further, the appeal to the Board argues that the "Applicant uploaded two clean files through the online system. That has been verified by a computer forensic consultant." In fact, that is not what the sworn declaration from the forensic investigator indicates. The only definitive conclusion that Mr. Hallman makes is that the file emailed to him by the Applicant did exist on the Applicant's computer at 1:08pm on January 6, 2015, approximately 16 minutes prior to the submission of the Pre-Application. The Applicant is unable to verify that the file arrived intact at JotForm, and thus cannot confirm that the file was indeed delivered, uncorrupted, to TDHCA or Jotform.

Both appeals state that sufficient safeguards were not in place to alert a user to a problem with the upload. However, the safeguard that was in place, the submission confirmation email which included all the data input by the user and hyperlinks to the uploaded documents, was not utilized by the Applicant.

In the appeal to the Board, the Applicant analogizes that when Pre-Applications were submitted via CD, an Application would not have been terminated in the event that TDHCA staff stepped on and broke the Applicant’s CD. Staff believes this is not a fair comparison. A more apt analogy would be if an Applicant submitted a CD that appeared to contain the necessary file, but when staff attempted to open said file, it was found to be corrupt, or not the file that the Applicant intended to include on the CD. Recent history includes several examples of applications that were submitted with similar errors (see chart below), and in each case, the applications were terminated and any associated appeals denied. These errors, including the one that occurred during the Glenoak submission, could have been remedied by the Applicants themselves, by taking one more step to ensure that their submissions were accurate and complete.

14106	Submitted application without functioning bookmarks
14114	Submitted application without bookmarks
14261	Submitted blank pre-application CD; complete files submitted after the deadline
14301	Submitted pre-application without site control documentation; site control submitted after deadline
13188	Submitted application with ESA for the wrong development
13030	Submitted CD without required Excel file; file submitted after deadline

Further, in the appeal to Mr. Irvine, the Applicant stated that the Applicant “was not made aware of any method to check the success of the upload.” However, the appeal to the Board includes a copy of the very email TDHCA sent on January 7, 2015, indicating receipt by the Applicant.

Finally, the appeal suggests that this matter should be treated as an Administrative Deficiency. Staff again disagrees. As stated in §10.201(7) of the Rule, “the purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application.” Because evidence of site control is a Pre-Application threshold criteria, its omission cannot be considered “non-material missing information.” Therefore, the Administrative Deficiency process is not an appropriate method by which to cure the missing site control documentation. Therefore, staff recommends denial of the appeal.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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January 26, 2015

Writer's direct phone # 512-475-1676
Email: jean.latscha@tdhca.state.tx.us

Mr. Roger Canales
TG 110 Glenoak, LP
8610 N New Braunfels, Suite 500
San Antonio, TX 78217

RE: TERMINATION OF HTC PRE-APPLICATION #15053, 911 GLENOAK APARTMENTS, CORPUS CHRISTI, TEXAS

Dear Mr. Canales:

Pursuant to §11.8(b)(1)(A) of the 2015 Qualified Allocation Plan ("QAP"), documentation evidencing Site Control must be submitted as part of the Pre-Application Threshold Criteria. The Pre-Application for Glenoak Apartments was submitted to the Department by the Pre-Application Final Delivery Date, January 8, 2015 and appeared to include the required site control documentation file. However, upon review, staff found that the file was corrupt and could not be opened, constituting no submission of the required documentation. Because the Application submitted does not meet the threshold criteria outlined in §11.8(b)(1)(A) of the 2015 QAP, the Pre-Application is hereby terminated.

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements relating to the filing of an appeal can be found in §10.902 of the 2015 Uniform Multifamily Rules. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §10.902 of the 2015 Uniform Multifamily Rules for full instruction on the appeals process.

If you have any questions or concerns, please contact me at 512-475-1676 or by email at jean.latscha@tdhca.state.tx.us.

Sincerely,


Jean M. Latscha
Director of Multifamily Finance





There is an access denied error when downloading submission uploaded PDF file of JotForm (Private)

Asked by J_o_e on January 12, 2015 at 01:51 PM

2) Separately, this PDF link is provided in our submission results but we get an access denied error when trying to download it. The other 714 PDF files downloaded successfully. Can you shed any light on this one? <http://www.jotform.com/uploads/TDHCA42594360357156/296380735269895524/purch>

[«Original post of this question](#)

download error

download link

xml access denied

Edit



JotForm Support

(Private)

Answered by jonathan on January 12, 2015 at 02:45 PM

Hi Joe,

I was able to reproduced the issue.

I could not download the uploaded file using the link in the Submission data of your jotform <http://www.jotform.us/form/42594360357156>

This [download link](#)

corrupt download file link				
111	purchase contract TG 110 Glenok LP.pdf	census tract map for 86355003102.pdf		15053

Unfortunately, the user uploaded file seems to have not been **properly uploaded** to our server. This was the reason it was inaccessible.

The most I can suggest at this time is to contact the form respondent and request from them to either re-upload the file thru submission again of the form, or contact them via email and request copy via the email attachment instead.

Hope this help. Please inform us if you need further assistance.

Thanks.

February 2, 2015

Via Electronic Mail

Mr. Tim Irvine
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Glenoak Apartments in Corpus Christi (the "**Development**")
TDHCA No. 15053

Dear Tim:

We represent TG 110 Glenoak, LP (the "**Applicant**"), which submitted a pre-application for low income housing tax credits for the rehabilitation of the Development on January 6, 2015. The application has been terminated because TDHCA was unable to open the file that was uploaded to evidence site control. We appeal TDHCA's termination of the application and request reinstatement for the reasons set forth below.

There is no dispute that the Applicant submitted its application in a timely manner. The only concern arises from the fact that TDHCA was unable to open the PDF file (the "**File**") that contained the purchase contract, evidencing site control. Because TDHCA was unable to open the file that was uploaded using TDHCA's online application system, the application has been terminated.

The facts of this matter are set forth in the attached Affidavit from Roger Canales, a representative of the Applicant; they will not be repeated here. A supporting affidavit s provided by Bonnie Sears, who worked with Mr. Canales in uploading the application.

Upon learning that TDHCA was unable to open the File, the Applicant engaged a computer forensic consulting firm to try to determine the genesis of the problem. The report from Digital Discovery is attached hereto. The consultant has examined the File that was uploaded and has concluded that there was absolutely nothing wrong with that file when it was uploaded into TDHCA's online system. The consultant therefore concludes that the corruption must have occurred at one of three times: (1) as the File was proceeding to the system of the online vendor that

Mr. Tim Irvine
February 2, 2015
Page 2

was engaged to create the application system or (2) as the File transferred from the online vendor's system to TDHCA's server or (3) as TDHCA was handling the File. In any event, the Applicant had absolutely no control over the File at that time and could not have known that any corruption had occurred.

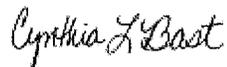
Further, it is clear that TDHCA and the vendor who created the online application system did not include safeguards that could have helped avoid this result. The online application system could have been structured so that it would provide the user with immediate feedback when a file is uploaded. This feedback could have alerted the user to any problems with the upload by indicating the size of the file uploaded. Such a feature was not included in the system.

TDHCA may argue that the confirming email, which the Applicant acknowledges receiving, contained a hyperlink for the File, which could have been launched, allowing the Applicant to examine the file that TDHCA received. However, as shown in Mr. Canales's affidavit, he had no idea that the confirming email contained this feature. Nothing provided him with an obvious indication. The webinar that TDHCA presented, and Mr. Canales reviewed, contained thorough instructions, including a description of the confirming email. However, nothing in the webinar indicated that the applicant would be able to check the status of the uploaded files via a hyperlink on the confirming email. Nothing on the confirming email itself noted that these files could be launched and reviewed.

Appeal

Because the Applicant submitted a fully readable File, had no control over the corruption that occurred during the upload, and was not made aware of any method to check the success of the upload, the Applicant simply cannot be held responsible for this occurrence. We respectfully request that you reinstate the application. If you deny this appeal, the Applicant requests to be heard at the next available Board meeting.

Sincerely,



Cynthia L. Bast

Mr. Tim Irvine
February 2, 2015
Page 3

cc: Jean Latsha
Kathryn Saar
TDHCA

Gil Piette
Ray Lucas
Roger Canales
Bonnie Sears
Applicant

STATE OF TEXAS)
)
COUNTY OF BEXAR) §§

AFFIDAVIT

I, Roger Canales, being first duly sworn on oath, depose and say that:

1. I am the Director of Real Estate Development for Housing & Community Services, Inc. ("HCS"). In that capacity, I was responsible for submission of a pre-application (the "Application") to the Texas Department of Housing and Community Affairs ("TDHCA") for low-income housing tax credits for the Glenoak Apartments in Corpus Christi, Texas (TDHCA No. 15053).

2. Prior to preparing the Application, I viewed the pre-application webinar posted on TDHCA's website (the "Webinar") and reviewed the Pre-Application FAQs published on TDHCA's website.

3. On Tuesday, January 6, 2015, I completed and submitted the Application, utilizing TDHCA's mandatory on-line system. I received a confirming email at 1:25 pm. A copy of that confirming email is attached as Exhibit A. The confirming email shows that two documents were uploaded to TDHCA's online system as follows:

Site Control Documentation – file name of "purchase contract TG 110 Glenoak LP.pdf"

Census Tract Map – file name of "census tract map for 48355003102.pdf"

The Application was submitted three days before the deadline.

4. The two documents that were uploaded were both saved on HCS's computer server, in the same folder. A screen shot of the folder in which these two documents were saved is attached as Exhibit B. HCS uses version 9.5.5.315 of Adobe Acrobat. After these two files were uploaded to TDHCA's online system, no further changes were made to the files on HCS's server.

5. Prior to uploading the two documents, they were opened on multiple computers by multiple people working for HCS. Each time, the documents were accessible and readable. Prior to uploading the documents on TDHCA's online system, I opened them to assure that they were fully accessible and readable and had all pages intact.

6. Upon reviewing the confirming email attached as Exhibit A, I noticed an error in the zip code of the Applicant. I therefore clicked on the "Edit Submission" link on the confirming email, which opened TDHCA's online system and allowed me to change the zip code. I received a second confirming email of the submission at 1:53 pm. A copy of that confirming email is attached as Exhibit C. The second confirming email does not indicate any change to the Site Control Documentation or Census Tract Map.

7. Upon reviewing the confirming email attached as Exhibit C, I noticed an error in the requested tax credit amount. I therefore clicked on the "Edit Submission" link on the second confirming email, which opened TDHCA's online system and allowed me to change the requested tax credit amount. I received a third confirming email of the submission at 3:48 pm. A copy of that confirming email is attached as Exhibit D. The third confirming email does not indicate any change to the Site Control Documentation or Census Tract Map.

8. After receipt of the third confirming email on Tuesday, January 6, 2015 at 3:48 pm, I took no further action with regard to the Application.

9. On Friday, January 16, 2015, I received a deficiency notice from TDHCA, indicating that the Site Control Documentation file would not open. I proceeded to investigate. I went back to both the Site Control Documentation file and the Census Tract Map file saved on the HCS server and confirmed that both documents would open. I sent the Site Control Documentation file to our counsel via email, and she confirmed she was able to open it.

10. I learned from TDHCA staff that the references to the two uploaded files on the confirming emails were actually hyperlinks. I clicked on the hyperlink for file name "census tract map for 48355003102.pdf" in one of the confirming emails, and a complete and readable file opened properly. I clicked on the hyperlink for the file name "purchase contract TG 110 Glenoak LP.pdf" in one of the confirming emails, and I received an error message.

11. I did not know that the references to the two uploaded files on the confirming emails were hyperlinks. This information was not covered in the Webinar or the FAQs. Had I known that these were hyperlinks, I would have tried to open them upon receipt of the confirming emails; I would have discovered the problem with the Site Control Documentation; and I would have corrected the problem prior to the filing deadline for the pre-application.

12. I consulted with GMT Enterprises, a computer consulting firm that is a consultant to HCS. I sent Mr. Terry Mathis of GMT Enterprises the file "purchase contract TG 110 Glenoak LP.pdf" from our computer server, the same file that was uploaded to TDHCA. Upon examination, he determined that the file was not corrupted as it existed on HCS's server when it was uploaded. His conclusion was that the corruption occurred during the upload process as the file was transmitted via the online system to TDHCA's server.

13. HCS engaged Digital Discovery, a computer forensics consulting firm, to examine the file that was uploaded to TDHCA. I provided the consultant with the file that was uploaded to TDHCA. Digital Discovery examined my computer and this file and generated a declaration of findings.

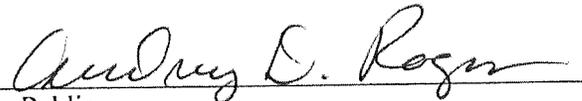
14. I have provided TDHCA with a replacement copy of the file "purchase contract TG 110 Glenoak LP.pdf".

AFFIANT:



Roger Canales

Sworn to before me on February 2, 2015.



Notary Public

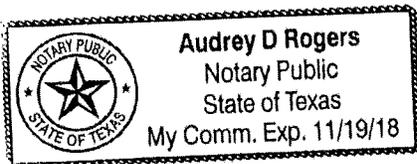


EXHIBIT A

From: TDHCA [mailto:htcnotifications@tdhca.state.tx.us]
Sent: Tuesday, January 06, 2015 1:25 PM
To: Canales, Roger
Subject: 2015 HTC Pre-Application Submission Confirmation: #15053

You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle. Your Application number is 15053. If you have not done so already, please submit your application fee, which should be in the amount of \$680, along with a copy of this confirmation. Certain Qualified Nonprofits are eligible for a 10% discount; please see §10.901(1) of the Uniform Multifamily Rule for more information. Pre-Applications submitted without the required fee will be rejected. Pre-Application fees must be received by 5:00 p.m. on Thursday, January 8, 2015.

A copy of your submission is below and will be posted to the Department's website along with the site control documentation, census tract map, and any other attachments included in the Pre-Application submission. If you find that any of the information submitted is incorrect, please use the Edit Submission link below in order to make corrections. Any edits must be received by 5:00 p.m. on Thursday, January 8, 2015.

[Edit Submission](#)

Please do not respond to this email. If you have questions, please contact a Multifamily Staff Member.
<http://www.tdhca.state.tx.us/multifamily/contacts.htm>

JotForm

Question

Answer

Full Name

Gilbert Piette

Address

8610 N. New Braunfels, Suite 500

City

San Antonio

State

TX

Zip Code

78108

Phone Number

(210) 821-4300

Phone Extension

105

E-mail

gilp@hscorp.org

Full Name

Roger Canales

Phone Number	(210) 821-4300
Phone Extension	120
E-mail	rogerc@hscorp.org
Full Name	Raymond Lucas
Phone Number	(210) 821-4390
Phone Extension	
E-mail	luke007rhl@aol.com
Name of Proposed Entity	TG 110 Glenoak, LP
Development Name	Glenoak Apartments
Development Type	Reconstruction
Secondary Development Type	
Previous TDHCA #	
Initial construction year	
Units Demolished	68
Units Reconstructed	68
# of Non-Contiguous Sites	
# of Census Tracts	
Target Population	General
Address	711 Glenoak Drive
City	Corpus Christi
Zip Code	78418
ETJ?	No
County	Nueces
Region	10
Rural/Urban	Urban
Census Tract	48355003102
Census Tract 2	
Census Tract 3	
Census Tract 4	
Census Tract 5	
Total LI Units	68

Total MR Units	0
Total PHA Units	0
Total Units	68
HTC Request	1200000
Pre-App Fee Due	680
Has fee already been submitted?	Yes
Check #	12294
Check all that apply	At-Risk Nonprofit
U.S. Representative	Blake Farenthold
District	27
State Senator	Juan "Chuy" Hinojosa
District	20
State Representative	Todd A. Hunter
District	32
School Superintendent	Joe Kelley
District Name	Flour Bluff ISD
Address	Street Address: 2505 Waldron Road City: Corpus Christi Zip Code: 78418
Presiding officer of Board of Trustees	Richard Pittman
Address	Street Address: 2505 Wladron Road City: Corpus Christi Zip Code: 7818
Name	Nelda Martinez
Office	Mayor
Name 2	Kelley Allen
Office 2	City Council Member
Name 3	Chad Magill
Office 3	City Council Member
Name 4	Pricilla Leal
Office 4	City Council Member
Name 5	Colleen McIntyre

Office 5	City Council Member
Name 6	Rudy Garza
Office 6	City Council Member
Name 7	Lillian Riojas
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Name 8	Mark Scott
Office 8	City Council Member
Name 9	David Loeb
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Name 11	Mike Pusley
Office 11	County Commissioner
Name 12	Joe Gonzales
Office 12	County Commissioner
Name 13	Oscar Ortiz
Office 13	County Commissioner
Name 14	Joe McComb
Office 14	County Commissioner
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Office 21	

Name 22

Office 22

Name 23

Office 23

Name 24

Office 24

Name 25

Office 25

More than 25 Local
Officials?

Are there Neighborhood
Organizations whose
boundaries contain the
Development Site? No

Neighborhood
Organization

N.O. Address

Neighborhood
Organization 2

N.O. Address 2

Neighborhood
Organization 3

N.O. Address 3

Neighborhood
Organization 4

N.O. Address 4

Neighborhood
Organization 5

N.O. Address 5

Neighborhood
Organization 6

N.O. Address 6

Neighborhood
Organization 7

N.O. Address 7

Neighborhood
Organization 8

N.O. Address 8	
Neighborhood Organization 9	
N.O. Address 9	
Neighborhood Organization 10	
N.O. Address 10	
Neighborhood Organization 11	
N.O. Address 11	
Neighborhood Organization 12	
N.O. Address 12	
More than 12 Neighborhood Organizations?	
Unit Sizes	8
Unit Features	7
Sponsor Characteristics	1
High Quality Housing Total	16
Income Levels of Tenants	16
Rent Levels of Tenants	11
Tenant Services	10
Opportunity Index	0
Educational Excellence	3
Underserved Area	0
Tenant Populations with Special Needs	2
Serve and Support Texans Most in Need Total	42
Declared Disaster Area	10
Community Support and Engagement Total	10
Financial Feasibility	18

Cost of Development per Square Foot	12	
Pre-Application Participation	6	
Leveraging of Private, State and Federal Resources	3	
Extended Affordability or Historic Preservation	2	
Right of First Refusal	1	
Funding Request Amount	1	
Efficient Use of Limited Resources and Applicant Accountability Total	43	
Point Adjustment		
Total Application Self Score	111	
Site Control Documentation		<u>purchase contract TG 110 Glenoak LP.pdf</u>
Census Tract Map		<u>census tract map for 48355003102.pdf</u>
Other Pertinent Information		
App #	15053	

EXHIBIT B

Computer > common (\server) (H:) > REAL ESTATE DEVELOPMENT > 2015 Applications > Pre-application

Organize ▾ Burn New folder

★ Favorites

- Desktop
- Downloads
- Recent Places

Libraries

- Documents
- Music
- Pictures
- Videos

Computer

os (C)

Name	Date modified	Type	Size
census tract map for 48355003102	1/6/2015 1:05 PM	Adobe Acrobat D...	179 KB
GOA pre-application scoring sheet	12/23/2014 2:56 PM	Microsoft Excel W...	18 KB
pre-application scoring sheet	12/23/2014 11:44 ...	Microsoft Excel W...	17 KB
purchase contract TG 110 Glenoak LP	1/6/2015 1:08 PM	Adobe Acrobat D...	1,907 KB

EXHIBIT C

From: TDHCA [mailto:htcnotifications@tdhca.state.tx.us]
Sent: Tuesday, January 06, 2015 1:53 PM
To: Canales, Roger
Subject: EDIT: 2015 HTC Pre-Application Submission Confirmation: #15053

You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle. Your Application number is 15053. If you have not done so already, please submit your application fee, which should be in the amount of \$680, along with a copy of this confirmation. Certain Qualified Nonprofits are eligible for a 10% discount; please see §10.901(1) of the Uniform Multifamily Rule for more information. Pre-Applications submitted without the required fee will be rejected. Pre-Application fees must be received by 5:00 p.m. on Thursday, January 8, 2015.

A copy of your submission is below and will be posted to the Department's website along with the site control documentation, census tract map, and any other attachments included in the Pre-Application submission. If you find that any of the information submitted is incorrect, please use the Edit Submission link below in order to make corrections. Any edits must be received by 5:00 p.m. on Thursday, January 8, 2015.

[Edit Submission](#)

Please do not respond to this email. If you have questions, please contact a Multifamily Staff Member.
<http://www.tdhca.state.tx.us/multifamily/contacts.htm>

JotForm

<u>Question</u>	<u>Answer</u>
Full Name	Gilbert Piette
Address	8610 N. New Braunfels, Suite 500
City	San Antonio
State	TX
Zip Code	78217
Phone Number	(210) 821-4300
Phone Extension	105
E-mail	gilp@hscorp.org
Full Name	Roger Canales

Phone Number	(210) 821-4300
Phone Extension	120
E-mail	rogerc@hcscorp.org
Full Name	Raymond Lucas
Phone Number	(210) 821-4390
Phone Extension	
E-mail	luke007rhl@aol.com
Name of Proposed Entity	TG 110 Glenoak, LP
Development Name	Glenoak Apartments
Development Type	Reconstruction
Secondary Development Type	
Previous TDHCA #	
Initial construction year	
Units Demolished	68
Units Reconstructed	68
# of Non-Contiguous Sites	
# of Census Tracts	
Target Population	General
Address	711 Glenoak Drive
City	Corpus Christi
Zip Code	78418
ETJ?	No
County	Nueces
Region	10
Rural/Urban	Urban
Census Tract	48355003102
Census Tract 2	
Census Tract 3	
Census Tract 4	
Census Tract 5	
Total LI Units	68

Total MR Units	0
Total PHA Units	0
Total Units	68
HTC Request	1200000
Pre-App Fee Due	680
Has fee already been submitted?	Yes
Check #	12294
Check all that apply	At-Risk Nonprofit
U.S. Representative	Blake Farenthold
District	27
State Senator	Juan "Chuy" Hinojosa
District	20
State Representative	Todd A. Hunter
District	32
School Superintendent	Joe Kelley
District Name	Flour Bluff ISD
Address	Street Address: 2505 Waldron Road City: Corpus Christi Zip Code: 78418
Presiding officer of Board of Trustees	Richard Pittman
Address	Street Address: 2505 Wladron Road City: Corpus Christi Zip Code: 7818
Name	Nelda Martinez
Office	Mayor
Name 2	Kelley Allen
Office 2	City Council Member
Name 3	Chad Magill
Office 3	City Council Member
Name 4	Pricilla Leal
Office 4	City Council Member
Name 5	Colleen McIntyre

Office 5	City Council Member
Name 6	Rudy Garza
Office 6	City Council Member
Name 7	Lillian Riojas
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Name 12	Joe Gonzales
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Name 13	Oscar Ortiz
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Name 14	Joe McComb
Office 14	County Commissioner
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Office 20	
Name 21	
Office 21	

Name 22

Office 22

Name 23

Office 23

Name 24

Office 24

Name 25

Office 25

More than 25 Local
Officials?

Are there Neighborhood
Organizations whose
boundaries contain the
Development Site? No

Neighborhood
Organization

N.O. Address

Neighborhood
Organization 2

N.O. Address 2

Neighborhood
Organization 3

N.O. Address 3

Neighborhood
Organization 4

N.O. Address 4

Neighborhood
Organization 5

N.O. Address 5

Neighborhood
Organization 6

N.O. Address 6

Neighborhood
Organization 7

N.O. Address 7

Neighborhood
Organization 8

N.O. Address 8	
Neighborhood Organization 9	
N.O. Address 9	
Neighborhood Organization 10	
N.O. Address 10	
Neighborhood Organization 11	
N.O. Address 11	
Neighborhood Organization 12	
N.O. Address 12	
More than 12 Neighborhood Organizations?	
Unit Sizes	8
Unit Features	7
Sponsor Characteristics	1
High Quality Housing Total	16
Income Levels of Tenants	16
Rent Levels of Tenants	11
Tenant Services	10
Opportunity Index	0
Educational Excellence	3
Underserved Area	0
Tenant Populations with Special Needs	2
Serve and Support Texans Most in Need Total	42
Declared Disaster Area	10
Community Support and Engagement Total	10
Financial Feasibility	18

Cost of Development per Square Foot	12	
Pre-Application Participation	6	
Leveraging of Private, State and Federal Resources	3	
Extended Affordability or Historic Preservation	2	
Right of First Refusal	1	
Funding Request Amount	1	
Efficient Use of Limited Resources and Applicant Accountability Total	43	
Point Adjustment		
Total Application Self Score	111	
Site Control Documentation		<u>purchase contract TG 110 Glenoak LP.pdf</u>
Census Tract Map		<u>census tract map for 48355003102.pdf</u>
Other Pertinent Information		
App #	15053	

EXHIBIT D

From: TDHCA [mailto:htcnotifications@tdhca.state.tx.us]
Sent: Tuesday, January 06, 2015 3:48 PM
To: Canales, Roger
Subject: EDIT: 2015 HTC Pre-Application Submission Confirmation: #15053

You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle. Your Application number is 15053. If you have not done so already, please submit your application fee, which should be in the amount of \$680, along with a copy of this confirmation. Certain Qualified Nonprofits are eligible for a 10% discount; please see §10.901(1) of the Uniform Multifamily Rule for more information. Pre-Applications submitted without the required fee will be rejected. Pre-Application fees must be received by 5:00 p.m. on Thursday, January 8, 2015.

A copy of your submission is below and will be posted to the Department's website along with the site control documentation, census tract map, and any other attachments included in the Pre-Application submission. If you find that any of the information submitted is incorrect, please use the Edit Submission link below in order to make corrections. Any edits must be received by 5:00 p.m. on Thursday, January 8, 2015.

[Edit Submission](#)

Please do not respond to this email. If you have questions, please contact a Multifamily Staff Member.
<http://www.tdhca.state.tx.us/multifamily/contacts.htm>

JotForm

<u>Question</u>	<u>Answer</u>
Full Name	Gilbert Piette
Address	8610 N. New Braunfels, Suite 500
City	San Antonio
State	TX
Zip Code	78217
Phone Number	(210) 821-4300
Phone Extension	105
E-mail	gilp@hscorp.org
Full Name	Roger Canales

Phone Number	(210) 821-4300
Phone Extension	120
E-mail	rogerc@hscorp.org
Full Name	Raymond Lucas
Phone Number	(210) 821-4390
Phone Extension	
E-mail	luke007rhl@aol.com
Name of Proposed Entity	TG 110 Glenoak, LP
Development Name	911 Glenoak Apartments
Development Type	Reconstruction
Secondary Development Type	
Previous TDHCA #	
Initial construction year	
Units Demolished	68
Units Reconstructed	68
# of Non-Contiguous Sites	
# of Census Tracts	
Target Population	General
Address	711 Glenoak Drive
City	Corpus Christi
Zip Code	78418
ETJ?	No
County	Nueces
Region	10
Rural/Urban	Urban
Census Tract	48355003102
Census Tract 2	
Census Tract 3	
Census Tract 4	
Census Tract 5	
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Total Units	68
HTC Request	1119000
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Name 7	Lillian Riojas
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Office 21	

Name 22

Office 22

Name 23

Office 23

Name 24

Office 24

Name 25

Office 25

More than 25 Local
Officials?

Are there Neighborhood
Organizations whose
boundaries contain the
Development Site? No

Neighborhood
Organization

N.O. Address

Neighborhood
Organization 2

N.O. Address 2

Neighborhood
Organization 3

N.O. Address 3

Neighborhood
Organization 4

N.O. Address 4

Neighborhood
Organization 5

N.O. Address 5

Neighborhood
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N.O. Address 6

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Organization 7

N.O. Address 7

Neighborhood
Organization 8

N.O. Address 8	
Neighborhood Organization 9	
N.O. Address 9	
Neighborhood Organization 10	
N.O. Address 10	
Neighborhood Organization 11	
N.O. Address 11	
Neighborhood Organization 12	
N.O. Address 12	
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Extended Affordability or Historic Preservation	2	
Right of First Refusal	1	
Funding Request Amount	1	
Efficient Use of Limited Resources and Applicant Accountability Total	43	
Point Adjustment		
Total Application Self Score	111	
Site Control Documentation		<u>purchase contract TG 110 Glenoak LP.pdf</u>
Census Tract Map		<u>census tract map for 48355003102.pdf</u>
Other Pertinent Information		
App #	15053	

STATE OF TEXAS)
) §§
COUNTY OF BEXAR)

AFFIDAVIT

I, Bonnie Sears, being first duly sworn on oath, depose and say that:

1. I am a Special Projects Coordinator for Lucas & Associates, LP ("Lucas"). Lucas is a consultant to Housing & Community Services, Inc. ("HCS"). In that capacity, I worked closely with Roger Canales of HCS for submission of a pre-application (the "Application") to the Texas Department of Housing and Community Affairs ("TDHCA") for low-income housing tax credits for the Glenoak Apartments in Corpus Christi, Texas (TDHCA No. 15053).

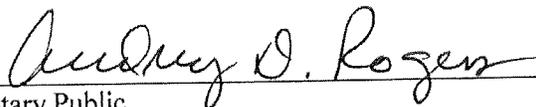
2. I was present when Roger Canales uploaded the two files to TDHCA's online system. There was no indication of any problem when the two files were uploaded. I have no idea why TDHCA would be able to open and read the Census Tract Map file but would not be able to open and read the Site Control Documentation file. Both files were fully functional at the time they were uploaded.

AFFIANT:

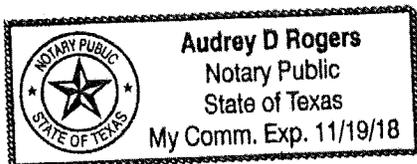


Bonnie Sears

Sworn to before me on January 30, 2015.



Notary Public





Digital Discovery
DEFENSIBLE DISCOVERY & ESI CONSULTING

PDF Upload to TDHCA Analysis

Mark Hallman CHFI, CCE, EnCE, GCFE, GCFA

2/1/2015

This document shows the pertinent digital forensic artifacts related to the submission of a purchase agreement from HCS Corporation to TDHCA.

DECLARATION OF MARK HALLMAN

I, Mark Hallman, declare as follows:

1. My name is Mark Hallman. I am over the age of twenty-one years and have never been convicted of a felony or crime of moral turpitude and am completely competent to make this declaration.

2. All of the information set forth herein is within my personal knowledge and is, in all things, true and correct.

3. I am currently Chief Operating Officer and Vice President of Forensic Services for Digital Discovery in Dallas, Texas. I have held this position since January 2010. In this capacity, I have responsibility for overseeing and managing digital forensic investigations, incident response engagements and e-Discovery consulting and collections for a wide range of clients and industries. From 2005 to 2009, I served as Chief Knowledge Officer/Director of Forensic Services for Digital Discovery.

4. I have worked in the technology industry for approximately twenty-five years, and I have more than eight years of experience in forensic acquisitions, analysis and incident response. My experience includes conducting and/or managing over 350 digital forensic investigations or e-Discovery projects, including e-Discovery collection engagements that each involved hundreds of computers. I also have extensive experience performing large-scale acquisitions of complex, multi-server, multi-location environments and recovery of deleted data and data from damaged media. I received my B.B.A. in Management Information Systems from the University of Texas at Austin in 1984. I am a Certified Computer Hacking Forensic Investigator (CHFI), a SANS GIAC Certified Forensics Analyst (GCFA), a SANS GIAC Certified Forensics Examiner (GCFE), a ISFCE Certified Computer Examiner (CCE) and a Guidance Software EnCase Certified Examiner (EnCE).

5. Housing and Community Services, Inc. (HSC) retained Digital Discovery to conduct a forensic investigation related to the submission of a purchase agreement to the Texas Division of Housing and Community Affairs (TDHCA). I was responsible for conducting the forensic investigation and authoring this declaration reflecting my findings and conclusions on January 30, 2015.

6. On January 6, 2015 Roger Canales submitted two files named "purchase contract TG 110 Glenoak LP.PDF" and "census tract map for 48355003102.pdf" to the TDHCA web site. The TDHCA sent a confirmation email to Mr. Canales at 01:24:52 PM on January 6, 2015. The email had the subject line of: *"2015 HTC Pre-Application Submission Confirmation: #15053"* and the first line of the email stated that *"You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle."*

7. Mr. Canales has provided me with copies of the two files that he submitted on January 6, 2015. Mr. Canales stated these files were stored on the HSC server and that these files had not changed since he submitted them on January 6, 2015. He provided these files to me via email. Both files provided by Mr. Canales were intact and viewable with Adobe Reader.

8. A LNK file is a relatively simple but valuable artifact for the forensics investigator. Windows-created LNK files are generated when a user opens a local or remote file or document, giving investigators valuable information on a custodian's activity and the file itself. A LNK file was found on Mr. Canales' computer that points to the "purchase contract TG 110 Glenoak LP.PDF". The metadata contained in this showed that the file resided on the HSC. And that the document was last modified on 01/06/2015 01:08:02 PM. The metadata in this LNK confirms what Mr. Canales represented to me concerning the files that he emailed to me.

9. A copy of the file "purchase contract TG 110 Glenoak LP.PDF" was found on Mr. Canales' computer and was named "purchase contract TG 110 Glenoak LP (2).PDF".

10. The file "purchase contract TG 110 Glenoak LP (2).PDF" was found in the "/Users/rogerc/AppData/Local/Microsoft/Windows/Temporary/Internet Files/Content.Outlook/ZW3WLWLG/" folder and was last modified on 01/06/2015 01:08:02 PM, the same date and time that was captured in the LNK file that contains metadata about the target file stored on the server. The Content.Outlook folder is the temporary storage location for attachments that are opened from within email client MS Outlook.

11. The MD5 hash value of the version of the purchase contract found in the MS Outlook temporary folder, "purchase contract TG 110 Glenoak LP (2).PDF", matches the MD5 hash value of the copy of the file named "purchase contract TG Glenoak LP.PDF" that was provided to me by Mr. Canales. That hash value is "d5bb160d1536387de5d31f3ed155df8b".

12. My opinion is that the file "purchase contract TG 110 Glenoak LP.PDF" was transmitted to the TDHCA between 01:08:02 PM and 01:24:52 PM on January 6, 2015. Any corruption had to have occurred during the transfer or handling of the document. This corruption could have occurred in one of several points during transfer; 1.) From HSC to the vendor that TDHCA uses to host their file transfers, jotform.us 2.) From jotform.us to the TDHCA server or 3.) Some TDHCA internal handling of the document.

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed February 2, 2015



MARK HALLMAN



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
Juan S. Muñoz, PhD, *Vice Chair*
Leslie Bingham-Escareño
T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

February 5, 2015

Writer's direct phone # 512-475-3296
Email: tim.irvine@tdhca.state.tx.us

Cynthia Bast
Locke Lord
600 Congress, Suite 22000
Austin, TX 78701

RE: APPEAL OF HTC PRE-APPLICATION TERMINATION: #15053, 911 GLENOAK APARTMENTS,
CORPUS CHRISTI, TEXAS

Dear Ms. Bast:

The Texas Department of Housing and Community Affairs is in receipt of your letter, dated February 2, 2015, appealing the termination of Glenoak Apartments (HTC #15053) in Corpus Christi, Texas. As stated in the termination letter, dated January 26, 2015, the Pre-Application for Glenoak Apartments was submitted to the Department by the Pre-Application Final Delivery Date, January 8, 2015, and appeared to include the required site control documentation file. However, when staff attempted to download the file from the JotForm server, it was discovered that the file was corrupt and could not be opened.

Through the online system, TDHCA received 337 pre-application submissions and 714 corresponding attachments. Of these attachments, only one file was found to be corrupt, that being the site control documentation for Glenoak Apartments. The appeal states that sufficient safeguards were not in place to alert a user to a problem with the upload. The safeguard staff did put in place was the submission confirmation email which included all the data input by the user and hyperlinks to the uploaded documents.

The appeal also states that the Applicant was not made aware of any method to check the success of the upload. However, the Department sent a Listserv email on January 7, 2015 (subject line: HTC Pre-Application Reminder), which stated, in part "Applicants are advised to carefully review the submission confirmation email to ensure that all elections are correct and that all necessary attachments are included and can be opened from the confirmation email."



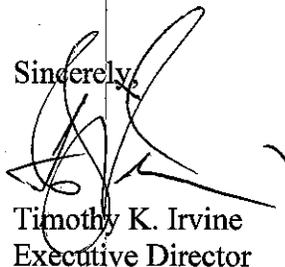
Appeal of Pre-Application Termination: #15053, 911 Glenoak Apartments, Corpus Christi, Texas

February 5, 2015

Page 2

Because the site control documentation was not received by 5:00 pm on January 8, 2015, the Applicant's appeal is hereby denied. As requested in your letter, this appeal has been placed on the agenda for the February 19, 2015, Board meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy K. Irvine', is written over the word 'Sincerely,'.

Timothy K. Irvine
Executive Director



600 Congress, Suite 2200
Austin, TX 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

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

February 10, 2015

Via Electronic Mail

Mr. J. Paul Oxe
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Glenoak Apartments in Corpus Christi (the "**Development**")
TDHCA No. 15053

Dear Mr. Oxe:

We represent TG 110 Glenoak, LP (the "**Applicant**"), which submitted a pre-application for low income housing tax credits for the reconstruction of the Development on January 6, 2015. The application has been terminated because TDHCA was unable to open the file that was uploaded to evidence site control. We appealed TDHCA's termination of the application to the Executive Director, which appeal was denied. We now appeal to the Board and request reinstatement.

We ask that you review the appeal submitted to the Executive Director, as it contains important background information on this matter. The purpose of this letter is to respond to the Executive Director's determination on the appeal. Specifically, the Applicant disputes the safeguards that TDHCA implemented to protect against errors like the one that occurred. The Executive Director's response states:

The appeal also states that the Applicant was not made aware of any method to check the success of the upload. However, the Department sent a Listserv email on January 7, 2015 (subject line: HTC Pre-Application Reminder), which stated, in part "Applicants are advised to carefully review the submission confirmation email to ensure that all elections are correct and that all necessary attachments are included and can be opened from the confirmation email."

A copy of the January 7 Listserv email is attached for your reference as Exhibit A. It is important to note several things:

- The reference to opening the file attachments is one small phrase, situated near the bottom of the email.
- This is the first time in the entire pre-application cycle that any public reference was made to opening the attachment files from the confirmation email.
- This email was not delivered until January 7, only one day before the deadline. By this time, the Applicant had already submitted its pre-application. It had received three confirming emails and had checked each to make sure the file names listed on the confirming email were the same as the names of the files that were uploaded. In short, the Applicant believed it had completed everything it needed to do, before this reminder email even arrived on January 7.

Additionally, we reiterate that nothing on the confirming emails delivered by TDHCA to the Applicant on January 6 stated that the Applicant could or should check the two PDF files by clicking on the links. It simply states that a "copy" of the submission is set forth below. The only reference to a link is to the "Edit Submission" link. Finally, the first line of the email states: "You have successfully submitted your Competitive HTC pre-application for the 2015 Cycle." A copy of one of the confirming emails is attached for your reference as Exhibit B.

The crux of this appeal seems to be who should bear the burden when a new system is implemented and does not work perfectly, through no fault of the Applicant. Previously, pre-applications were submitted on a CD. Certainly, if a complete CD were submitted, but someone at TDHCA dropped it and stepped on it, an applicant would not be responsible for submitting an incomplete application. The analogy applies here. The Applicant uploaded two clean files through the online system. That has been verified by a computer forensic consultant. But somehow, as TDHCA was trying to upload the file from the JotForm server, the file was broken.

In this situation, the appropriate resolution would be to allow the Applicant to cure this problem by submitting the site control documentation as an Administrative Deficiency. In fact, the Applicant has already delivered the site control documentation to TDHCA, upon receiving notification from TDHCA that the file was corrupt. The Applicant's submission of this site control documentation after the deadline cures the omission and does not necessitate a substantial reassessment or re-evaluation of the Application on the part of TDHCA.

Mr. J. Paul Oxer
February 10, 2015
Page 3

Appeal

Because the Applicant submitted a fully readable file in the online system and had no control over the corruption that occurred during the upload, we believe it is appropriate for TDHCA to allow the omission to be corrected by an Administrative Deficiency. We respectfully request that you reinstate the application. Thank you.

Sincerely,



Cynthia L. Bast

cc: Jean Latsha
Kathryn Saar
TDHCA

Gil Piette
Ray Lucas
Roger Canales
Bonnie Sears
Brad McMurray
Applicant

Mr. J. Paul Oxe
February 10, 2015
Page 4

EXHIBIT A

-----Original Message-----

From: TDHCA [<mailto:do-not-reply@tdhca.state.tx.us>]
Sent: Wednesday, January 07, 2015 1:51 PM
To: bonnies@LUCASLP.COM
Subject: TDHCA: HTC Pre-Application Reminder [S811][HP][HTC][HTF][MFB]

This message is a reminder that the Pre-Application Final Delivery date is 5pm CST tomorrow, January 8, 2015. Pursuant to §11.8(a)(1) of the 2015 Qualified Allocation Plan, the pre-application fee is required by the deadline in order for the pre-application to be accepted.

Although the pre-applications are submitted via the on-line system, payment must be physically received by the Department by the 5pm CST deadline. No other form is required to be submitted in hard copy, and Department staff will make a copy of the check to serve as a receipt. If submitting payment that includes a discounted fee pursuant to §10.901(1) of the 2015 Uniform Multifamily Rules, Applicants should include supporting documentation that the Applicant is non-profit or CHDO with the payment. Applicants are responsible for ensuring that the fee amount is appropriate; Department staff will not confirm that check amounts are correct since the on-line application can be manipulated after the submission of the fee.

Additionally, Applicants are advised to carefully review the submission confirmation email to ensure that all elections are correct and that all necessary attachments are included and can be opened from the confirmation email. If no confirmation email is received, Applicants should first check the spam folder; if the email confirmation is not in spam, please contact Kathryn Saar so that the confirmation can be resent.

Applicants are encouraged to submit pre-applications well in advance of the deadline.

If you have any questions about the upcoming deadline for pre-application submission, please contact Kathryn Saar at 512.836.7834 or by email at kathryn.saar@tdhca.state.tx.us

Please do not reply to this email. It is from an unattended email address.

To contact the Texas Department of Housing and Community Affairs, get more information, or view a slideshow of recent TDHCA activities, visit <http://www.tdhca.state.tx.us/> in your Web browser. Like us on facebook (<http://www.facebook.com/TDHCA>) and follow us on twitter (<http://twitter.com/TDHCA>).

Login to your email list account to edit your subscription:
<http://maillist.tdhca.state.tx.us/list/login.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p&mAddress=bonnies%40LUCASLP.COM>

Unsubscribe from this list:
<http://maillist.tdhca.state.tx.us/list/unsubscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p&address=bonnies%40LUCASLP.COM&val=9y0nipeg>

EXHIBIT B

Bast, Cynthia L.

From: TDHCA <htcnotifications@tdhca.state.tx.us>
Sent: Tuesday, January 06, 2015 3:48 PM
To: Canales, Roger
Subject: EDIT: 2015 HTC Pre-Application Submission Confirmation: #15053

You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle. Your Application number is 15053. If you have not done so already, please submit your application fee, which should be in the amount of \$680, along with a copy of this confirmation. Certain Qualified Nonprofits are eligible for a 10% discount; please see §10.901(1) of the Uniform Multifamily Rule for more information. Pre-Applications submitted without the required fee will be rejected. Pre-Application fees must be received by 5:00 p.m. on Thursday, January 8, 2015.

A copy of your submission is below and will be posted to the Department's website along with the site control documentation, census tract map, and any other attachments included in the Pre-Application submission. If you find that any of the information submitted is incorrect, please use the Edit Submission link below in order to make corrections. Any edits must be received by 5:00 p.m. on Thursday, January 8, 2015.

[Edit Submission](#)

Please do not respond to this email. If you have questions, please contact a Multifamily Staff Member. <http://www.tdhca.state.tx.us/multifamily/contacts.htm>



<u>Question</u>	<u>Answer</u>
Full Name	Gilbert Piette
Address	8610 N. New Braunfels, Suite 500
City	San Antonio
State	TX
Zip Code	78217
Phone Number	(210) 821-4300
Phone Extension	105
E-mail	gilp@hscorp.org
Full Name	Roger Canales
Phone Number	(210) 821-4300
Phone Extension	120
E-mail	rogerc@hscorp.org
Full Name	Raymond Lucas

Phone Number	(210) 821-4390
Phone Extension	
E-mail	luke007rhl@aol.com
Name of Proposed Entity	TG 110 Glenoak, LP
Development Name	911 Glenoak Apartments
Development Type	Reconstruction
Secondary Development Type	
Previous TDHCA #	
Initial construction year	
Units Demolished	68
Units Reconstructed	68
# of Non-Contiguous Sites	
# of Census Tracts	
Target Population	General
Address	711 Glenoak Drive
City	Corpus Christi
Zip Code	78418
ETJ?	No
County	Nueces
Region	10
Rural/Urban	Urban
Census Tract	48355003102
Census Tract 2	
Census Tract 3	
Census Tract 4	
Census Tract 5	
Total LI Units	68
Total MR Units	0
Total PHA Units	0
Total Units	68
HTC Request	1119000

Pre-App Fee Due	680
Has fee already been submitted?	Yes
Check #	12294
Check all that apply	At-Risk Nonprofit
U.S. Representative	Blake Farenthold
District	27
State Senator	Juan "Chuy" Hinojosa
District	20
State Representative	Todd A. Hunter
District	32
School Superintendent	Joe Kelley
District Name	Flour Bluff ISD
Address	Street Address: 2505 Waldron Road City: Corpus Christi Zip Code: 78418
Presiding officer of Board of Trustees	Richard Pittman
Address	Street Address: 2505 Wladron Road City: Corpus Christi Zip Code: 7818
Name	Nelda Martinez
Office	Mayor
Name 2	Kelley Allen
Office 2	City Council Member
Name 3	Chad Magill
Office 3	City Council Member
Name 4	Priscilla Leal
Office 4	City Council Member
Name 5	Colleen McIntyre
Office 5	City Council Member
Name 6	Rudy Garza, Jr.
Office 6	City Council Member
Name 7	Lillian Riojas

Office 7	City Council Member
Name 8	Mark Scott
Office 8	City Council Member
Name 9	David Loeb
Office 9	City Council Member
Name 10	Judge Loyd Neal
Office 10	County Judge
Name 11	Mike Pusley
Office 11	County Commissioner
Name 12	Joe Gonzales
Office 12	County Commissioner
Name 13	Oscar Ortiz
Office 13	County Commissioner
Name 14	Joe McComb
Office 14	County Commissioner
Name 15	
Office 15	
Name 16	
Office 16	
Name 17	
Office 17	
Name 18	
Office 18	
Name 19	
Office 19	
Name 20	
Office 20	
Name 21	
Office 21	
Name 22	
Office 22	
Name 23	
Office 23	

Name 24	
Office 24	
Name 25	
Office 25	
More than 25 Local Officials?	
Are there Neighborhood Organizations whose boundaries contain the Development Site?	No
Neighborhood Organization	
N.O. Address	
Neighborhood Organization 2	
N.O. Address 2	
Neighborhood Organization 3	
N.O. Address 3	
Neighborhood Organization 4	
N.O. Address 4	
Neighborhood Organization 5	
N.O. Address 5	
Neighborhood Organization 6	
N.O. Address 6	
Neighborhood Organization 7	
N.O. Address 7	
Neighborhood Organization 8	
N.O. Address 8	
Neighborhood Organization 9	
N.O. Address 9	

Neighborhood Organization 10	
N.O. Address 10	
Neighborhood Organization 11	
N.O. Address 11	
Neighborhood Organization 12	
N.O. Address 12	
More than 12 Neighborhood Organizations?	
Unit Sizes	8
Unit Features	7
Sponsor Characteristics	1
High Quality Housing Total	16
Income Levels of Tenants	16
Rent Levels of Tenants	11
Tenant Services	10
Opportunity Index	0
Educational Excellence	3
Underserved Area	0
Tenant Populations with Special Needs	2
Serve and Support Texans Most in Need Total	42
Declared Disaster Area	10
Community Support and Engagement Total	10
Financial Feasibility	18
Cost of Development per Square Foot	12
Pre-Application Participation	6

Leveraging of Private, State and Federal Resources	3
Extended Affordability or Historic Preservation	2
Right of First Refusal	1
Funding Request Amount	1
Efficient Use of Limited Resources and Applicant Accountability Total	43
Point Adjustment	
Total Application Self Score	111
Site Control Documentation	purchase contract TG 110 Glenoak LP.pdf
Census Tract Map	census tract map for 48355003102.pdf
Other Pertinent Information	
App #	15053

4b

12174

(incorrectly identified as 12074 on the agenda)

Royal Gardens Mineral Wells

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on a Request for the Reissuance of Competitive (9%) Housing Tax Credits to Royal Gardens Mineral Wells (#12174)

RECOMMENDED ACTION

WHEREAS, on December 31, 2014, the Department received a return of Competitive (9%) Housing Tax Credits in the amount of \$697,774 from Royal Gardens Mineral Wells (#12174);

WHEREAS, the return included a request for the effective date of the return to be December 31, 2014, and asked that the credits be reissued to the same development pursuant to 10 TAC §11.6(5) of the 2015 Qualified Allocation Plan (“2015 QAP”);

WHEREAS, pursuant to Treasury Regulation 1.42-14 §(i)(3)(ii), in order for a state to be eligible for National Pool, the amount of credit that remains unallocated at the end of the calendar year may not exceed 1 percent of the total credit ceiling;

WHEREAS, the 2014 credit ceiling, with the return from Royal Garden Mineral Wells, is approximately \$64,814,078, 1 percent of which is \$648,141;

WHEREAS, pursuant to Treasury Regulation 1.42-14 §(b)(2)(C)(iii), a state may, in its discretion, treat any portion of credit returned from a project after September 30 of a calendar year and that is not reallocated by the close of the calendar year as returned on January 1 of the succeeding calendar year;

WHEREAS, in order for the State of Texas to receive credit from the National Pool, the Department must consider all or a portion (at least \$49,633) of the Royal Gardens Mineral Wells return as returned on January 1, 2015; and

WHEREAS, with regard to the reissuance of the credit in accordance with §11.6(5) of the 2015 QAP, additional information is required in order for staff to make a recommendation

NOW, therefore, it is hereby

RESOLVED, in order to qualify for the National Pool, the Board hereby directs staff to consider the credits returned by Royal Gardens Mineral Wells as returned on January 1, 2015 and report such on the IRS Form 8610;

FURTHER RESOLVED, the Board finds that additional information is needed in order to determine whether Royal Gardens Mineral Wells qualifies for application of the force majeure provisions of §11.6(5) of the 2015 QAP and staff is hereby directed to request the necessary information from the Owner for Royal Gardens Mineral Wells in order to determine whether the provisions of §11.6(5) of the 2015 QAP would be met.

BACKGROUND

An award of \$697,774 in Competitive (9%) Housing Tax Credits to Royal Gardens Mineral Wells (the “Development”) was approved by the Board on July 26, 2012, and staff executed a Carryover Allocation Agreement with the Owner of the Development on December 28, 2012. That Carryover Allocation Agreement included a certification from the Owner that each building for which the allocation was made would be placed in service by December 31, 2014, in order to satisfy the requirements of Section 42 of the Internal Revenue Code. On April 1, 2014, the Development, which at the time was under construction, was destroyed in a fire. As a result, the owner was unable to meet the December 31, 2014 deadline to place the buildings in service. Subsequently, on December 31, 2014, the Owner submitted a letter to the Department returning the credits.

Section 11.6(2) of the 2014 Qualified Allocation Plan (“2014 QAP”) calls for any credit returned after January 1 and eligible for reallocation to be first returned to the sub-region or set-aside from which the original allocation was made. In addition, §11.6(4) of the 2014 QAP outlines procedures for establishing a Waiting List and making awards to active and eligible application on that list. Typically, Department staff, when receiving credit returns even late in the year, is able to reallocate those credits to applications on that Waiting List, but due to the extremely late date of this return, compounded by its coming in at the close of business, staff was unable to reallocate those credits to the next 2014 Application on the Waiting List. However, these credits are not lost to the state and can be added to the 2015 credit ceiling.

The Owner’s return of credits included a request that the return be effective as of December 31, 2014 and that the credits be reissued to the same Development pursuant to §11.6(5) of the 2015 QAP, related to Credits Returned Resulting from *Force Majeure* Events. Staff does not agree that a return of credits in calendar year 2014 would be subject to the 2015 QAP.

However, because this return was made after September 30, 2014, the Department does have the discretion, under Treasury Regulation 1.42-14 §(b)(2)(C)(iii), to consider all or part of this return as having been returned on January 1, 2015. It is in the state’s best interest to consider all or a portion (at least \$49,633) of the credit returned as having been returned on January 1, 2015, in order to receive credit from the National Pool in 2015. The state is eligible to receive credit from the 2015 National Pool if the unallocated credit in 2014 does not exceed 1 percent of the total credit ceiling in 2014, which is approximately \$648,141. Should the entire \$697,774 return be considered returned in 2014, the state would not be eligible for 2015 National Pool.

Should the Department consider the returned credit as having been received on January 1, 2015, a determination must be made regarding the applicability of the *force majeure* provisions of the 2015 QAP. According to §11.6(5) of the 2015 QAP in order for the *force majeure* provisions to be applicable, several requirements must be met.

In addition to the voluntary return of credits and other requirements, the *force majeure* provision of the rule calls for evidence that both the Development and Development Owner were properly insured. Also, the Department's Real Estate Analysis Division must determine that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event. As of the date of this board action request, staff understands that the insurance claim has been filed but not settled. Should the board direct staff to consider the entire credit amount as having been returned on January 1, 2015, and that §11.6(5) of the 2015 QAP applies, staff further recommends that the Owner be given until May 1, 2015 to provide the necessary documentation to satisfy the requirements of §11.6(5) of the 2015 QAP. While the rules regarding Administrative Deficiencies would typically apply, staff is already aware that some of the necessary documentation is unavailable, and allowing the Owner additional time will save the need for board action next month. This timeline would give staff the ability to make a recommendation to the board regarding the reallocation of the credits at the board meeting currently scheduled for June 16, 2015.

1500 MLK LLC

Cameron Dorsey
TDHCA
221 E 11th Street
Austin TX 78701
RE: 12174 Mineral Wells

December 31, 2014

Good afternoon Mr. Dorsey:

Pursuant to Section 11.6 (5) of the 2015 TDHCA Qualified Allocation Plan, 1500 MLK, LLC the Project Owner of Project # 12174, Royal Gardens, Mineral Wells, Texas is returning the tax credits effective as of 5:00 PM on December 31, 2014.

This return is based on a Force Majeure event which occurred on April 1, 2014, and which fits within the definition in 11.6(5) (A) and was not caused by the willful negligence of the Development Owner. All necessary proof of the fire, the loss and the fact that it was not caused by the willful negligence or willful act of the Owner has previously been submitted to TDHCA. As required by this Section of the QAP:

1. The tax credits were awarded in the prior three years—2012.
2. The credits are being returned after September 30 of the preceding year.
3. The credits are returned pursuant to a Force majeure event that occurred after the start of construction and before the issuance of Forms 8609.
4. The Department was timely notified of the event, all steps were taken to minimize the effects of the event and the project was properly insured.
5. The Force Majeure event prevents the Development Owner from meeting the placement in service requirements of the original allocation, which would be December 31, 2014.

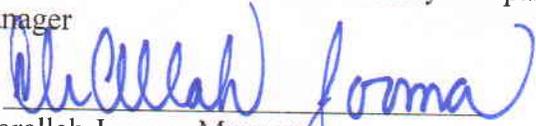
The Owner respectfully requests that, having met the requirements of Section 11.6(5) of the 2015 QAP, which became effective on December 23, 2014, the Department treat this return of credits as having occurred on January 1, 2015 and that the Department issues credits and a Carryover Agreement for the same amount of credits from the current year's allocation.

Respectfully,

1500 MLK, LLC, a Texas Limited liability company

By: SE 14th Avenue, LLC, a Texas limited Liability Company,
Its Managing Member

By: Murid GP V, LLC, a Texas limited liability company,
Its Co-Manager

By: 
Noorallah Jooma--Manager



THE LAW OFFICES OF
CLAIRE G. PALMER, PLLC

2224 Clearspring Drive South
Irving, Texas 75063

972-948-3166
Fax: 972-432-8825

clairepalmerpllc@sbcglobal.net

January 30, 2015

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

RE: Royal Gardens- Mineral Wells, Texas (the "Project")
1500 MLK, LLC
Housing Tax Credit Development No. 12074

Dear Mr. Irvine:

On behalf of my client, 1500 MLK, LLC (the "Project Owner"), this letter is to request that the Texas Department of Housing and Community Affairs ("TDHCA") reissue the above-referenced 9% housing tax credits in accordance with Section 11.6 (5) of the 2015 TDHCA Qualified Allocation Plan ("QAP"). The Project Owner of Project # 12174, Royal Gardens, Mineral Wells, Texas returned the tax credits effective as of 5:00 PM on December 31, 2014. This was after the effective date of the 2015 QAP and, therefore, the referenced section is applicable to the reissue of the tax credit.

As you are aware, the return was based on a Force Majeure event which occurred on April 1, 2014, and which fits within the definition in 11.6(5) (A) and was not caused by the willful negligence of the "Development Owner". All necessary proof of the fire, the loss and the fact that it was not caused by the willful negligence or willful act of the Project Owner has previously been submitted to TDHCA.

The pertinent Sections of the QAP and the Project Owner's compliance therewith are set forth as follows:

For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

- (A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. Force Majeure events must make construction activity impossible or materially impede its progress; **The credits were returned after September 30 of the preceding program year (that being 2014), and were returned as a result of a Force Majeure event that occurred after the start of construction (at 80% completion) and before issuance of 8609, caused by an event outside the control of the Project Owner and making construction activity impossible**
- (B) Acts or events caused by the willful negligence or willful act of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure; **The Force Majeure event was not the result of the willful negligence or willful act of the Project Owner or Developer, as shown by the Fire Marshall's report previously provided to TDHCA.**
- (C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event; **All required information was provided to TDHCA when the event occurred.**
- (D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, that the Development and Development Owner was properly insured and that the Department was Housing Tax timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph; **Evidence of insurance, all reasonable steps that have been taken to minimize or mitigate damages and all information about the event has been provided to TDHCA as soon as such information was available.**
- (E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation; **The totality of the damages sustained in the Force majeure event made making the placed in service deadline of December 31, 2014 impossible.**

- (F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; **The request is for the same amount.**
- (G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; **The Project Owner requests that TDHCA REA perform an analysis to determine that the Project continues to be financially viable;** and
- (H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs. **This request was made when the credits were returned.**

Having met the criteria established in the QAP, the Project Owner now respectfully request that TDHCA, after performing the required real estate analysis, reissue the tax credits and issue a new carryover agreement.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Claire G. Palmer". The signature is written in a cursive, flowing style.

Claire G, Palmer

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 19, 2015

Presentation, Discussion, and Possible Action on Timely Filed Waivers under any of the Department's Program Rules

RECOMMENDED ACTION

WHEREAS, 2015 Competitive Housing Tax Credit Pre-Applications were timely submitted for Cleme Manor Apartments (#15043) and Bay City Manor Apartments (#15128);

WHEREAS, both Applicants are proposing Rehabilitation of a Development with ongoing and existing federal assistance from HUD or USDA that is located within 100 feet of active railroad tracks;

WHEREAS, both Applicants, in an effort to meet the requirements of 10 TAC §10.101(a)(3) related to Undesirable Site Features, attempted to obtain a letter from the fair housing or civil rights office of the federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act;

WHEREAS, neither Applicant was able to obtain such a letter and both Applicants have requested a waiver of the rule, specifically of the requirement to produce the letter;

WHEREAS, Department staff has received correspondence from the US Department of Housing and Urban Development ("HUD") that it will not provide letters;

WHEREAS, the impossibility of satisfaction of the requirement to produce such a letter is good cause for granting the waiver as it is out of the Applicant's control; and

WHEREAS, Section 2306.001(3), Texas Government Code, calls for the Department to contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income;

NOW, therefore, it is hereby,

RESOLVED, the request for the waivers of the portion of 10 TAC §10.101(a)(3) regarding the requirements to obtain a letter from the fair housing or civil rights office of the federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act is hereby granted.

BACKGROUND

Pursuant to §10.101(a)(3) of the 2015 Qualified Allocation plan (“QAP”), Development Sites in proximity to certain undesirable site features will be found ineligible. However, an Application proposing Rehabilitation of a Development with ongoing and existing federal assistance from HUD or USDA and that is located in proximity to certain Undesirable Site Features can be granted an exemption from the rule. A requirement of such an exemption includes the submission of a letter from the fair housing or civil rights office of the federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act. The Applicants for Cleme Manor Apartments and Bay City Apartments both attempted to obtain such a letter since both were proposing Developments that require such an exemption. However, HUD staff have indicated to both one of the applicants and directly to Department staff that they will not provide such a letter.

While staff, in drafting the rule, felt it appropriate to impose such a requirement, it was never intended to be an impossibility. Considering the correspondence from HUD regarding the issue, staff is recommending granting a waiver of this particular part of the rule. However, staff does not recommend that other requirements of the rule be waived. Therefore, if these Developments are in fact in proximity to undesirable site features, the Applicants would still be required to either formally request an exemption of the rule or be found ineligible. In addition, staff is not recommending a blanket waiver of the rule. Should other Applicants choose to request such a waiver and/or exemption, staff will evaluate those requests on a case by case basis.



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February 11, 2015

Via Electronic Delivery

Mr. Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78711-3941

Re: Cleme Manor in Houston, Texas
TDHCA No. 15043

Dear Tim:

On behalf of our client, Cleme Manor Holdings, LLC (the "**Applicant**"), we submit this waiver request relating to a Tax Credit Application¹ for the rehabilitation of the Cleme Manor Apartments in Houston (the "**Development**"). As you know, the Development was built in 1970 in Houston's Fifth Ward neighborhood; the Development contains 284 units, all supported by a HAP Contract with HUD for rental subsidy. The Applicant acquired the Development in August 2014. The Development has received CDBG Disaster Recovery funding from the City of Houston, which is well-documented in prior correspondence with respect to an application for Tax Credits in 2014 (the "**Prior Tax Credit Application**"). The Development is in a community revitalization area designated by the City of Houston and is an important preservation and revitalization project for the entire Fifth Ward.

The Applicant is striving to meet the threshold requirements of Section 10.101(a)(3) of the QAP with regard to undesirable site features. Specifically, as disclosed in conjunction with the Prior Tax Credit Application, the Development is adjacent to a railroad track. When the proximity to the railroad track was disclosed to TDHCA, we noted that, as a part of approving the transfer of the Section 8 HAP contract to the Applicant as the purchaser of the Development, HUD required a sound study. The sound study was conducted in accordance with HUD standards and a copy was submitted to TDHCA. The site and the noise from the railroad were deemed acceptable to HUD, and transfer of the HAP Contract was ultimately approved by HUD.

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in the Rules or the Qualified Allocation Plan (the "**QAP**"), as applicable.

TDHCA's rules with regard to the Undesirable Site Features changed between the time of the Prior Tax Credit Application and the 2015 QAP. Specifically, the 2015 QAP now says that an Application with a Development Site within 100 feet of active railroad tracks will be ineligible for participation unless: (1) the application involves a rehabilitation of an existing property with federal assistance; (2) the applicant requests an exemption from ineligibility; and (3) the applicant provides "a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act" (a "**Fair Housing Compliance Letter**"). The Applicant has been diligently striving to obtain a Fair Housing Compliance Letter from HUD, as the federal oversight agency with regard to the Development's HAP Contract. HUD has advised that it simply cannot provide such a letter, as it would be inconsistent with HUD's protocol and authority. A copy of an email from Mr. Garry Sweeney, Regional Director for the Fort Worth office is set forth below:

From: Sweeney, Garry L [<mailto:Garry.L.Sweeney@hud.gov>]
Sent: Tuesday, February 10, 2015 9:44 AM
To: Schreiber, Sheldon; Lewis, Christina
Cc: Miles, Thurman G
Subject: RE: Clime Manor -- Support Letter from HUD to TDHCA.DOCX

Schel,

As we have discussed, neither Ms. Lewis nor I can provide the letter you are requesting supporting the plans for Clime Manor because it is not within our authority to do so. I have previously discussed this with the Texas Department of Housing and Community Affairs (TDHCA) and that agency is aware of my position. My offices conduct site and neighborhood standards reviews for proposals HUD receives where the proposal requires such a review. The Clime Manor proposal does not require such a review.

I would suggest that you discuss alternatives with the TDHCA. Perhaps the TDHCA will accept letters of support from the City of Houston and other parties such fair housing advocacy groups.

In short, because a site and neighborhood review was not required in conjunction with the transfer of the HAP Contract, HUD has no basis for the analysis requested by TDHCA.

It should be noted, however, that before HUD approved the transfer of the HAP Contract to the Applicant, it reviewed whether such transfer would comply with HUD regulations, handbooks, and administrative and legal requirements. As part of this process, HUD reviewed the Applicant's Affirmative Fair Housing Marketing Plan, as set forth in HUD Form 935.2A, promulgated by HUD's Office of Fair Housing and Equal Opportunity.

Waiver Request Based Upon Impossibility of Performance. In light of the foregoing, we specifically ask TDHCA to waive the requirement that the Applicant submit a Fair Housing Compliance Letter in conjunction with its request for an exemption under Section 10.101(a)(3) of the QAP. Note the Applicant will submit the exemption request as required. It simply cannot provide the Fair Housing Compliance Letter with that request, because HUD will not produce it.

Pursuant to Section 10.207(a) of the QAP, a waiver may be granted when the Applicant shows good cause and circumstances outside of the Applicant's control. Further, the waiver

Mr. Timothy K. Irvine
February 11, 2014
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must fulfill the policies and purposes of TDHCA. We believe it is clear that HUD's inability to provide a Fair Housing Compliance Letter is outside of the Applicant's control and the impossibility constitutes good cause for granting this waiver. Further, when the Applicant was pursuing the Prior Tax Credit Application, the Applicant established in numerous communications, including public testimony, that the rehabilitation of Cleme Manor is an extremely important preservation and revitalization project that is a priority for the City of Houston. The preservation of the existing affordability provided by the HAP Contract in a neighborhood that may be subject to gentrification and the improvement of conditions for existing residents are consistent with TDHCA's policies and mission.

For all these reasons, we respectfully request that you grant the waiver requested at the Board meeting on February 19.

Sincerely,



Cynthia L. Bast

cc: Cameron Dorsey
Jean Latsha
Kathryn Saar
via email

From: [Nan Boyles](#)
To: [Jean Latsha \(jean.latsha@tdhca.state.tx.us\)](mailto:jean.latsha@tdhca.state.tx.us); [Kathryn Saar](#)
Cc: [Danna Hoover](#); [Kim Youngquist](#); [Dennis Hoover](#)
Subject: Bay City Manor
Date: Thursday, February 12, 2015 2:05:42 PM
Importance: High

Jean;

In regards to our upcoming application of the Bay City Manor Apartments in Bay City, TX. and the Undesirable Site Feature of being within 100 feet of an active railroad track. Let this email serve as an official request for a waiver with respect to obtaining the required letter from HUD on the Undesirable Site Feature requirement indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act. Should you have any questions, please let me. Thank you for your time.

Nan S. Boyles
Development Corridinator
Hamilton Valley Management
512 756 6809 ext 207
nboyles@hamiltonvalley.com