

BOARD MEETING OF SEPTEMBER 4, 2014

J. Paul Ozer, Chair



Juan Muñoz, Vice-Chair

J. Mark McWatters, Member

Leslie Bingham Escareño, Member

Robert D. Thomas, Member

Tom Gann, Member

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

AGENDA

**10:00 a.m.
September 4, 2014**

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

**CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM**

J. Paul Oxer, 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.

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.

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

EXECUTIVE

- a) Presentation, Discussion, and Possible Action regarding the Board Minutes summaries for June 5, 2014, and June 26, 2014

**Barbara Deane
Board Secretary**

RULES

- b) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §5.2 concerning Definitions and §5.19 concerning Client Income Guidelines and directing their publication for public comment in the *Texas Register*
- c) Presentation, Discussion, and Possible Action on proposed repeal of 10 TAC §5.16 concerning Monitoring and Single Audit Requirement and §5.20 concerning Determining Income Eligibility and directing their publication for public comment in the *Texas Register*
- d) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §5.204 concerning Use of Funds, §5.207 concerning Subrecipient Performance, § 5.210 concerning Community Needs Assessment and Community Action Plan, and §5.213 concerning Board Structure and directing their publication for public comment in the *Texas Register*
- e) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §5.423 concerning Household Crisis Component and directing its publication for public comment in the *Texas Register*

**Brooke Boston
DED SF, CA &
Metrics**

- f) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §5.502 concerning Purpose and Goals and §5.528 concerning Health and Safety and directing their publication for public comment in the *Texas Register*
- g) Presentation, Discussion, and Possible Action on proposed new 10 TAC §5.2013 concerning Environmental Clearance and directing its publication for public comment in the *Texas Register*
- h) Presentation, Discussion, and Possible Action on adoption of amendments to 10 TAC §1.13 concerning Adjudicative Hearing Procedures
- i) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter E concerning Post Award and Asset Management Requirements, and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E concerning Post Award and Asset Management Requirements, and directing their publication for public comment in the *Texas Register*
- j) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10 Subchapter D concerning Underwriting and Loan Policy and a proposed new 10 TAC Chapter 10 Subchapter D and directing their publication for public comment in the *Texas Register*
- k) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §10.601(b) concerning Compliance Monitoring Objectives and Applicability; §10.607 concerning Reporting Requirements; §10.609(5) concerning Notices to the Department; §10.612, concerning Tenant File Requirements; §10.613 concerning Lease Requirements; §10.614 concerning Utility Allowances; §10.618 concerning Onsite Monitoring; §10.620(b) concerning Monitoring for Non-Profit Participation or HUB Participation; and, §10.624 concerning Events of Noncompliance, proposed repeal of 10 TAC §10.610 concerning Tenant Selection Criteria; and, §10.617, concerning Affirmative Marketing Requirements, and proposed new 10 TAC §10.610 concerning Tenant Selection Criteria; §10.617 concerning Affirmative Marketing Requirements, and directing their publication for public comment in the *Texas Register*

Jeff Pender
Deputy General
Counsel

Cari Garcia
Dir. Asset
Management

Brent Stewart
Dir. Real Estate
Analysis

Stephanie Naquin
Dir. Of MF
Compliance

811 PROGRAM

- l) Presentation, Discussion, and Possible Action authorizing staff for the Section 811 PRA Program, to execute all necessary agreements and contracts with Owners of Multifamily Properties, execute agreements with HUD for future funding awards, and make program design adjustments

Brooke Boston
DED SF, CA &
Metrics

HOUSING RESOURCE CENTER

- m) Presentation, Discussion, and Possible Action on publishing the draft 2015-2019 State of Texas Consolidated Plan

Elizabeth Yevich
Dir. Housing
Resource Ctr.

LEGAL

- n) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Pineywoods Home Team Affordable Housing (HOME 539113 / HTF 859003)

Jeff Pender
Deputy General
Counsel

ASSET MANAGEMENT:

- o) Presentation, Discussion, and Possible Action on Material LURA Amendment

Cari Garcia
Dir. Asset
Management

05612

Park Manor

Sherman

p) Presentation, Discussion, and Possible Action on Housing Tax Credit Application Amendments

13240	Summit Place	Dallas
13115	Abbingtion Meadows	Howe
13223	Campanile at Jones Creek	Richmond
11041/12002	Riverwood Commons	Bastrop

q) Presentation, Discussion, and Possible Action Regarding an Extension Request Relating to a Determination Notice for Housing Tax Credits with another Issuer

13428	Village at Palm Center	Houston
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REPORT ITEMS

The Board accepts the following reports:

- 1. Report from the Deputy Executive Director for Single Family, Community Affairs and Metrics **Brooke Boston**
DED SF, CA & Metrics
- 2. Presentation on the Department Quarterly Snapshot tool
- 3. TDHCA Outreach Activities, July-August 2014 **Michael Lyttle**
Chief of External Affairs
- 4. Report on the State of Texas Housing and Health Services Coordination Council 2014-2015 Biennial Plan **Elizabeth Yevich**
Dir. Housing Resource Center

ACTION ITEMS

ITEM 2: RULES:

- a) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 11 §§11.1(e), 11.2, 11.3(e), 11.3(f), 11.5, 11.6(5), 11.7, 11.8, 11.9(c)(4), 11.9(c)(5), 11.9(c)(7), 11.9(d)(1), 11.9(d)(4), 11.9(e)(3), 11.9(e)(7) and 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan and directing their publication for public comment in the *Texas Register* **Jean Latsha**
Dir. Multifamily Finance
- b) Presentation, Discussion, and Possible Action on proposed repeals of 10 TAC Chapter 10 Subchapter A concerning General Information and Definitions; Subchapter B concerning Site and Development Requirements and Restrictions; Subchapter C concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules; and Subchapter G concerning Fee Schedule, Appeals and Other Provisions, and a proposed new 10 TAC Chapter 10 Subchapter A concerning General Information and Definitions; Subchapter B concerning Site and Development Requirements and Restrictions; Subchapter C concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules; and Subchapter G concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register*
- c) Presentation, Discussion, and Possible Action regarding on the proposed repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and a proposed new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules and directing their publication for public comment in the *Texas Register*

ITEM 3: MULTIFAMILY FINANCE

Jean Latsha
Dir. Multifamily
Finance

- a) Presentation, Discussion and Possible Action on the 2014 HOME Multifamily Rental Development Notice of Funding Availability (NOFA)
- b) Presentation, Discussion, and Possible Action Regarding Reinstatement of a Determination Notice for Housing Tax Credits with another Issuer
 - 13249 William Cannon Apartments Austin
- c) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer
 - 14404 Park at the Cliff Dallas
 - 14409 Lakes of El Dorado McKinney
 - 14410 Fountains of Rosemeade Dallas
 - 14411 Ash Lane Apartments Euless
- d) Presentation, Discussion, and Possible Action on Inducement Resolution No. 15-001 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority - 2014 Waiting List for Good Samaritan Towers
- e) Presentation, Discussion, and Possible Action on Awards of Competitive 9% Low Income Housing Tax Credits from the Waiting List for the 2014 Housing Tax Credit Application Round approved July 31, 2014

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 Oxer
Chairman

- 1. The Board may go into Executive Session Pursuant to Tex. Gov't. Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee
- 2. Pursuant to Tex. Gov't. Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., filed in federal district court, Northern District of Texas.*
 - b) *Relman, Dane & Colfax PLLC letters to HUD concerning the State's Phase 2 Analysis of Impediments*
- 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 & 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 two days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, 512-475-4577 at least three (3) days before the meeting so that appropriate arrangements can be made.

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

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on the Board Meeting Minutes Summaries for June 5, 2014, and June 26, 2014.

RECOMMENDED ACTION

Approve Board Meeting Minutes Summaries for June 5, 2014, and June 26, 2014

RESOLVED, that the Board Meeting Minutes Summaries for June 5, 2014, and June 26, 2014, as having been specifically approved, are hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
June 5, 2014

On Thursday, the 5th day of June, 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”) 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
- Leslie Bingham Escareño
- Tom Gann
- J. Mark McWatters
- Dr. Juan Muñoz
- Robert Thomas

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

- 1) Tim Irvine, TDHCA Executive Director, read into the record Resolution 14-030 recognizing June as Home Ownership Month which was unanimously resolved by the Board. Mr. Irvine also read into the record a proclamation from Governor Perry in recognition of Home Ownership Month.
- 2) Eric Pike, TDHCA Home Ownership Program Director, provided brief information on the success of TDHCA home ownership programs and then introduced the Lenders and Loan Officers of the Year.
- 3) The Board unanimously adopted the Consent Agenda as presented, except for item 1(b) which was moved from Consent to the Action agenda.
- 4) Consent Agenda Item 1(b) – Presentation, Discussion, and Possible Action regarding the staff report relating to previous participation reviews performed on awards conditionally approved by the Board on May 8, 2014, for unexpended Program Year 2013 CSBG discretionary funds – was presented by Patricia Murphy, TDHCA Chief of Compliance. The Board unanimously approved staff recommendation to accept the report after public comment from George Simon, Executive Director of Tri-County Community Action, who was opposed to staff’s recommendation.
- 5) Cameron Dorsey, TDHCA Deputy Executive Director for Multifamily Programs and Fair Housing, expounded on Report Item 4 – Report on activities of the Department’s newly-formed fair housing team and its plans for coordinated efforts to address requirements regarding the affirmative furthering of fair housing.
- 6) Agenda Item 2 – Presentation, Discussion, and Possible Action on the Agency Strategic Plan for Fiscal Years 2015-2019 – was presented by Elizabeth Yevich, Director of the Housing Resource Center. The Board unanimously approved staff recommendation for approval of the document.

7) Agenda Item 4 – Presentation, Discussion, and Possible Action on Approval of the Draft FFY 2015 Low Income Home Energy Assistance Program (“LIHEAP”) State Plan for Public Comment – was taken out of order per direction of Board Chair Oxer and presented by Michael DeYoung, TDHCA Director of Community Affairs. The Board unanimously approved staff recommendation for approval of the draft plan.

8) Agenda Item 3(a) – Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers of the Department’s Program Rules and Requests for Exemption from Undesirable Site Features – was presented by Jean Latsha, TDHCA Director of Multifamily Finance.

The Board first deliberated on #14006 Oak Grove Village in Marble Falls and after public comment (listed below) declined staff’s recommendation to deny the appeal and instead granted the appeal by a 5-1 vote, with Mr. Gann in opposition.

- Claire Palmer, attorney for the applicant, testified against staff recommendation and
- Mark Mayfield, applicant, testified against staff recommendation.

The Board voted unanimously to approve staff recommendation denying the appeal from #14029 Royal Gardens in Wichita Falls.

On Item #14108 Cleme Manor in Houston, the Board voted unanimously after hearing public comment (listed below) to approve staff recommendation to grant the applicant’s exemption for undesirable site features and grant the appeal of the application’s termination under undesirable area features.

- Cynthia Bast, attorney for the applicant, testified in support of staff recommendation;
- Stedman Grigsby, City of Houston Housing and Community Development, testified in support of staff recommendation;
- Neil Drobenare, NHP Foundation, testified in support of staff recommendation; and
- Debra Walker, Texas Organizing Project, testified in support of staff recommendation.

On Item #14175 Liberty Square and Liberty Village in Groesbeck, the Board voted 5-1, with Mr. Thomas in opposition, to table the item until the meeting of June 26, 2014. Public comment included:

- Barry Palmer, attorney for the applicant, testified against staff recommendation to deny the appeal and
- Donna Rickenbacker, Marquee Consultants, testified in support of more time for the applicant to submit additional material to TDHCA.

9) At 11:37 a.m. the Board went into Executive Session and reconvened in open session at 12:22 p.m. No action was taken in or as a result of Executive Session.

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 1:18 p.m. The next meeting is set for Thursday, June 26, 2014.

Secretary

Approved:

Chair

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
June 26, 2014

On Thursday, the 26th day of June, 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”) 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
- Leslie Bingham Escareño
- Tom Gann
- Dr. Juan Muñoz
- Robert Thomas

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

1) The Board unanimously adopted the Consent Agenda as presented and amended (item 1{j}) except for items 1(e) and 1(l) which were moved to the Action Items.

2) Consent Agenda Item 1(e) – Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 25, concerning the Colonia Self-Help Centers, and directing its publication in the *Texas Register* – was presented by Homero Cabello, TDHCA Director of the Office of Colonia Initiatives and the Housing Trust Fund. After hearing public comment (listed below), the Board unanimously approved staff recommendation and adopted the amendments to the rule.

- Jose Lopez offered comment on the proposed rule amendments; and
- Maria Gomez offered comment on the proposed rule amendments

3) Consent Agenda Item 1(l) – Presentation, Discussion, and Possible Action regarding an Award of HOME funds from the 2013-1 HOME Multifamily Development Program Notice of Funding Availability for #13502 Majors Place Apartments in Greenville – was presented by Jean Latsha, TDHCA Director of Multifamily Finance. After hearing public comment (listed below), the Board unanimously approved staff recommendation to make the award.

- TDHCA staffer Peggy Henderson read a letter into the record from Massoud Ebrahim, City Manager for the City of Greenville, in opposition to staff recommendation

4) David Cervantes, TDHCA Chief Financial Officer, presented Item 2(a): Presentation, Discussion, and Possible Action on the FY 2015 Operating Budget; Item 2(b): Presentation, Discussion, and Possible Action on the FY 2015 Housing Finance Division Budget; and, Item 2(c): Presentation, Discussion, and Possible Action regarding the Legislative Appropriations Request for State Fiscal Years 2016-17. The Board unanimously approved Items 2(a) and 2(b) and, after hearing public comment (listed) below), unanimously approved Item 2(c).

- Charles Cloutman, Meals on Wheels and More, testified in support of TDHCA asking for additional funding for the Amy Young Barrier Removal Program.

5) Per Board request, Mr. Cabello spoke briefly about the milestone of the 500th home being completed through the Amy Young Barrier Removal Program.

6) Agenda Item 3 – Presentation, Discussion, and Possible Action on Resolution No. 14-035 authorizing Publication of Public Notice for Mortgage Credit Certificate Program (Program 83) – was presented by both Eric Pike, TDHCA Director of the Texas Homeownership Program, and Tim Nelson, TDHCA Director of Bond Finance. Mr. Pike presented an overview of TDHCA Mortgage Credit Certificate programs and Mr. Nelson spoke to the specifics of Item 3. The Board unanimously approved staff recommendation for approval of the resolution.

7) Agenda Item 4 was pulled from the agenda.

8) Agenda Item 5(a) – Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers of the Department’s Program Rules and Requests for Preclearance from Undesirable Area Features – was presented by Ms. Latsha and Kathryn Saar, TDHCA Competitive Housing Tax Credit Program Administrator. Sub items #14001 Pine Terrace Apartments in Mount Pleasant; #14100 Savannah Park in Abernathy, Lexington, and Karnes City; #14102 Stoneleaf at Glen Rose in Glen Rose; #14175 Liberty Square and Liberty Village in Groesbeck; and #14182 Prairie Gardens in Abilene all withdrew. Sub items #14106 Manor Lane Senior Apartments in Hondo and #14130 Tays in El Paso both were pulled.

The Board first deliberated on #14191 Wheatley Courts in San Antonio and after public comment (listed below) denied staff recommendation to deny pre-clearance of the application by a 4-1 vote with Mr. Gann in opposition, thus granting the appeal from the applicant.

- Ivy Taylor, Councilwoman from the San Antonio City Council, testified in opposition to staff recommendation;
- Bill McManus, Police Chief for the City of San Antonio, testified about law enforcement initiatives in the area of the proposed development;
- Bill Fisher, Sonoma Housing Advisors, testified in support of staff recommendation;
- Morris Stribling, Commissioner of the San Antonio Housing Authority, testified in opposition to staff recommendation;
- Lourdes Castro Ramirez, Executive Director of the San Antonio Housing Authority, testified in opposition to staff recommendation;
- Louis Bernardy, McCormack Baron Salazar, testified in opposition to staff recommendation;
- LaShawn Roberson testified in opposition to staff recommendation; and
- Mary Ellen Burns testified in opposition to staff recommendation

The Board voted unanimously after hearing public comment (listed below) to approve staff recommendation denying the appeal of the termination of applications #14083 Selinsky Street Supportive Housing and #14084 Palm Parque in Houston.

- Rick Sims, applicant of the two applications, testified in opposition to staff recommendation

On Item #14097 Residences at Rodd Field in Corpus Christi, the Board voted unanimously after hearing public comment (listed below) to approve staff recommendation denying reinstatement of the application.

- Dan Allgeier, the applicant, testified in opposition to staff recommendation

On Item #14114 Waters at Granbury in Granbury, the Board voted unanimously after hearing public comment (listed below) to approve staff recommendation denying reinstatement of the application.

- Ruben Esqueda, the applicant, testified in opposition to staff recommendation

Prior to deliberating on Item #14063 Hudson Providence in Hudson, Mr. Gann recused himself. After hearing public comment (listed below), the Board voted to table the item to the meeting on July 31, 2014.

- Barry Palmer, attorney representing the applicant, testified in opposition to staff recommendation

Mr. Gann returned and the Board, after hearing public comment (listed below) considered and tabled Item #14215 Village on Harvest Time in Houston to enable staff to collect additional information.

- Tamea Dula, attorney representing the applicant, testified in opposition to staff's recommendation of denying the scoring notice appeal; and
- Clark Colvin, the applicant, testified in opposition to staff recommendation

Prior to the Board's consideration of #14209 Riverside Village in Rio Hondo, Mr. Thomas left the meeting. After hearing public comment (listed below), the Board unanimously approved staff recommendation to deny the scoring notice appeal.

- TDHCA staffer Michael Lyttle read a letter into the record from State Representative Eddie Lucio III in opposition to staff recommendation;
- Tim Lang, the applicant, testified in opposition to staff recommendation; and
- Nick Mitchell-Bennett, CDC-Brownsville, testified in support of staff recommendation

9) Agenda Item 5(b) – Presentation, Discussion, and Possible Action to Issue a list of Approved Applications for Housing Tax Credits in accordance with Tex. Gov't Code, §2306.6724(e) – was presented by Ms. Latsha and unanimously approved by the Board.

10) At 12:29 p.m. the Board went into Executive Session and reconvened in open session at 1:18 p.m. No action was taken in or as a result of Executive Session.

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 4:00 p.m. The next meeting is set for Thursday, July 31, 2014.

Secretary

Approved:

Chair

1b

**BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 4, 2014**

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §5.2 concerning Definitions, and §5.19 concerning Client Income Guidelines and directing their publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Texas Government Code §§2306.053 and .092, the Texas Department of Housing and Community Affairs (“the Department”) is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs and

WHEREAS, the proposed amendments to 10 TAC §5.2 define program terms and remove some definitions, and the proposed amendments to §5.19 clarify program requirements for determining income eligibility;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered and directed, for and on behalf of the Department to cause the publication of the proposed amendments, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The proposed amendments to 10 TAC §5.2 add definitions for “Award Date,” “Contract,” and “Life Threatening Crisis,” and remove some definitions that are no longer applicable to Community Affairs programs.

The proposed amendments to 10 TAC §5.19 clarify what income sources are to be included and excluded during benefit determinations, and incorporate the eligibility determination requirements of 10 TAC §5.20 concerning Determining Income Eligibility. (Existing §5.20 is proposed for repeal in a separate action item.)

Attachment A: Preamble and proposed amendments to 10 TAC Chapter 5, Subchapter A, §5.2 and §5.19

The Texas Department of Housing and Community Affairs (“the Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.2 concerning Definitions and §5.19 concerning Client Income Guidelines. The purpose of the amendments to §5.2 is to define additional terms, including Award Date, Contract, and Life Threatening Crisis; to remove terms that are no longer relevant to these rules including Targeting, and Terms and Conditions; and to modify definitions due to change in federal law (such as OMB Circulars and Supplies) and staff administrative corrections. The purpose of the amendments to §5.19 is to clarify what income sources are to be included and excluded during benefit determinations, and to incorporate the eligibility determination requirements of 10 TAC §5.20 concerning Determining Income Eligibility. (Existing §5.20 is proposed for repeal concurrently with this amendment.)

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be clarification of definitions and requirements, consistency with federal requirements, greater and more efficient use of funds and greater flexibility for Subrecipients within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

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

REQUEST FOR PUBLIC COMMENT. Written comments to the rule may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code §2306.092 which authorizes the Department to administer its Community Affairs programs.

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

§5.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the Community Affairs Programs, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

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

- (A) Interlocking management or ownership;
- (B) Identity of interests among family members;
- (C) Shared facilities and equipment;
- (D) Common use of employees; or
- (E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

~~(43) Children--Household dependents not exceeding eighteen (18) years of age.~~

~~(24) Code of Federal Regulations (CFR) -- The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.~~

~~(45) Collaborative Application--An application from two or more organizations to provide services to the target population. If a unit of general local government applies for only one organization, this will not be considered a Collaborative Application. Partners in the Collaborative Application must coordinate services and prevent duplication of services.~~

~~(56) Community Action Agencies (CAAs)--Local Private Nonprofit Organizations and Public nonprofit Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. Each CAA must have a board consisting of one third elected public officials, not fewer than one third representatives of low income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.~~

~~(67) Community Action Plan--A plan required by the Community Services Block Grant (CSBG) Act which describes the local (Eligible Entity Subrecipient) service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.~~

~~(78) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.~~

~~(89) Community Services Block Grant (CSBG)--A HHS funded program U.S. federal which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level. Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.~~

~~(910) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP funded program to assist low-income Households, particularly those with the lowest incomes, that pay a high proportion of Household income for home energy, primarily in meeting their immediate home energy needs.~~

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

~~(1012) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The~~

CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

~~(413)~~ Declaration of Income Statement (DIS)--A Department approved form for limited use and only when an applicant cannot obtain income documentation requiring the Subrecipient to document income and the circumstances preventing the client from obtaining documentation has no documented proof of income. The DIS is not complete unless notarized in accordance with §406.014 of the Texas Government Code.

~~(414)~~ Department--The Texas Department of Housing and Community Affairs.

~~(6915)~~ Department of Energy (DOE)--federal department that provides funding for the weatherization assistance program.

~~(6816)~~ Department of Health and Human Services (HHS)--federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

~~(7017)~~ Department of Housing and Urban Development (HUD)--federal department that provides funding for ESG.

~~(4318)~~ Discretionary Funds--Those CSBG funds maintained ~~in reserve~~ by the Department a state, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG Eligible Entities and not designated held in reserve for state administrative purposes.

~~(419)~~ DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy. 10 CFR Part 600 implements OMB requirements on behalf of DOE and establishes administrative requirements for grants and agreements.

~~(4520)~~ Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

~~(4721)~~ Elderly Person--A person who is sixty (60) years of age or older, except for ESG.

~~(4822)~~ Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

~~(4923)~~ Eligible Entity--Those local organizations in existence and designated by the federal government to administer programs created under the federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

~~(2024)~~ Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

(A) natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.

(H) This definition does not apply to ESG or HHSP.

~~(2425) Emergency Solutions Grants (ESG)--A HUD funded federal grant program authorized in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371–11378, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act) which provides funds for services necessary to help persons that are at-risk of homelessness or homeless quickly regain stability in permanent housing. ESG is funded through HUD.~~

~~(2226) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a Dwelling Unit.~~

~~(2327) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular weatherization energy efficiency measures.~~

~~(4628) Equipment--A tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit. If the unit acquisition cost exceeds \$5,000, approval from the Department's Community Affairs Division must be obtained before the purchase takes place.~~

~~(2429) Families with Young Children--A family that includes a child age five (5) or younger.~~

~~(2530) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income. Determined by dividing a Household's annual home energy costs by the Household's annual gross income.~~

~~(2631) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures, by way of example, at the time of this rulemaking, that amount is \$1,000, but is subject to change.~~

~~(2732) Homeless or homeless individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.~~

~~(2833) Homeless and Housing and Services Program (HHSP)--A state funded program established under §2306.2585 of the Texas Government Code by the State Legislature during the 81st Legislative session with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.~~

~~(2934) Household--Any individual or group of individuals who are living together as one economic unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.~~

~~(3035) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.~~

~~(36) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant household could lose their life without the Subrecipient's utility assistance because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by client report) and any member of the Household is dependent upon equipment that is prescribed by a medical professional, operated on electricity or gas and is necessary to sustain the person's life. Examples of life-sustaining equipment include but are not limited to kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not include information regarding the applicant's medical condition but may include certification that such a device is required in the home to sustain life.~~

~~(3437) Local Unit of Government--City, county, council of governments, and housing authorities.~~

- (~~3238~~) Low Income--Income in relation to family size and that governs eligibility for a program:
- (A) For DOE WAP, at or below 200% of the DOE Income guidelines;
 - (B) For CEAP, CSBG, and LIHEAP WAP at or below 125% of the HHS Poverty Income guidelines;
 - (C) For ESG, 30% of the Area Median Income (AMI) as defined by HUD's Section 8 Income Limits for persons receiving prevention assistance; and
 - (D) For HHSP, 30% of the AMI as defined by HUD's Section 8 Income Limits for all clients assisted.
- (~~3339~~) Low Income Home Energy Assistance Program (LIHEAP)--A HHS funded ~~block grant that is implemented to~~ program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.
- (~~3440~~) Migrant Farm Worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.
- (~~3541~~) Modified Cost Reimbursement--A contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.
- (~~3642~~) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit. This definition does not apply to ESG or HHSP.
- (~~3743~~) National Performance Indicator--An individual measure of performance within the Department's reporting system for measuring performance and results of Subrecipients of funds.
- (~~3844~~) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.
- (~~3945~~) Office of Management and Budget (OMB) -- Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.
- (~~4046~~) OMB Circulars--~~OMB circulars~~ Instructions or information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establishes consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB. Cost principles for local governments are set forth in OMB Circular A-87, and for nonprofit organizations in OMB Circular A-122. Uniform administrative requirements for local governments are set forth in OMB Circular A-102, and for nonprofits in OMB Circular A-110. OMB Circular A-133 "Audits of States, Local Governments, and Nonprofit Organizations," provides audit standards for governmental organizations and other organizations expending federal funds.
- (~~4147~~) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.
- (~~4248~~) Performance Statement--A document which identifies the services to be provided by a Subrecipient.
- (~~4349~~) Persons with Disabilities--Any individual who is:
- (A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;
 - (B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or
 - (C) receiving benefits under 38 U.S.C. Chapter 11 or 15.
- (~~4450~~) Population Density--The number of persons residing within a given geographic area of the state.

(4551) Poverty Income Guidelines--The official poverty income guidelines as issued by the U.S. Department of Health and Human Services (HHS) annually.

(4652) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(4753) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(4854) Referral--The process of providing information to a client Household about an agency, program, or professional person that can provide the service(s) needed by the client.

(4955) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.

(5056) Renter--A person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.

(5157) Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the Household annualized income must be derived from the agricultural labor or related industry.

(5258) Shelter--Defined by the Department as a Dwelling Unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities. This definition does not apply to ESG or HHSP.

(5359) Single Audit--As defined in the Single Audit Act of 1984 (as amended) or UGMS, a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal or State awards during such fiscal year provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal or State awards for each such department, agency, and organizational unit.

(5460) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

~~(5540) Social Security Act--As defined in 42 U.S.C. §§601, et seq,~~

(5661) State--The State of Texas or the Texas Department of Housing and Community Affairs.

(5762) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(5863) Subgrant--An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(5964) Subgrantee--The legal entity to which a subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(6065) Subrecipient--Generally, an organization with whom the Department contracts and provides CSBG, CEAP, ESG, HHSP, DOE WAP, or LIHEAP funds. (Refer to Subchapters B, D - G, J, and K of this chapter for program specific definitions.)

(6166) Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and

Cooperative Agreements." A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.

(67) System for Award Management (SAM)--combined federal database that includes the Excluded Parties List System (EPLS).

(68) Systematic Alien Verification for Entitlements (SAVE)--automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

~~(6348) Targeting--Focusing assistance to Households with the highest program applicable needs.~~

~~(6449) Terms and Conditions--Binding provisions provided by a funding organization to grantees accepting a grant award for a specified amount of time.~~

~~(6269) Texas Administrative Code (TAC)-- a compilation of all state agency rules in Texas.~~

~~(6570) Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.~~

(71) Uniform Grant Management Standards (UGMS)-- established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. In addition, Chapter 2105, Texas Government Code, subjects all subrecipients of federal block grants to the Uniform Grant and Contract Management Standards.

~~(6672) Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.~~

~~(6773) United States Code (U.S.C.)--a consolidation and codification by subject matter of the general and permanent laws of the United States.~~

~~(7174) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving ESG and LIHEAP beneficiaries.~~

(7275) Weatherization Assistance Program (WAP)-- DOE and LIHEAP funded program designed to reduce the energy cost burden of low income households through the installation of energy efficient weatherization materials and education in energy use.

~~(7376) Weatherization Assistance Program Policy Advisory Council (WAP PAC) -- The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.~~

~~(7477) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.~~

~~(7578) Weatherization Project--A project conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.~~

§5.19. Client Income Eligibility Guidelines.

(a) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. ~~Except for ESG and HHSP, the Department has defined eligibility for program assistance under the Poverty Income Guidelines.~~

~~(b) For all programs except ESG, Subrecipients will use the list of included and excluded income to determine eligibility for all programs. , as described in paragraphs (1) and (2) of this subsection~~ Income

means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross income is to be used, not net income.

(1) If an income source is not excluded below, it must be included when determining income eligibility.

~~—(1) Included Income:~~

~~—(A) Temporary Assistance for Needy Families (TANF);~~

~~—(B) Money, wages and salaries before any deductions;~~

~~—(C) Net receipts from non farm or farm self employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);~~

~~—(D) Regular payments from social security, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI);~~

~~—(E) Railroad retirement;~~

~~—(F) Unemployment compensation;~~

~~—(G) Strike benefits from union funds;~~

~~—(H) Worker's compensation;~~

~~—(I) Training stipends;~~

~~—(J) Alimony;~~

~~—(K) Military family allotments;~~

~~—(L) Private pensions;~~

~~—(M) Government employee pensions (including military retirement pay);~~

~~—(N) Regular insurance or annuity payments; and~~

~~—(O) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.~~

(2) Excluded Income:

(A) Capital gains;

(B) Any assets drawn down as withdrawals from a bank;

(C) Balance of funds in a checking or savings account;

(D) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(E) The sale of property, a house, or a car;

(F) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(G) Tax refunds, Earned Income Tax Credit refunds;

(H) Jury duty compensation;

(I) Gifts, loans, and lump-sum inheritances;

(J) One-time insurance payments, or compensation for injury;

(K) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(L) Reimbursements (for mileage, gas, lodging, meals, etc.)

(M) Food or housing received in lieu of wages;

(N) The value of food and fuel produced and consumed on farms;

(O) The imputed value of rent from owner-occupied non-farm or farm housing;

- (P) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches (Medicare deduction from Social Security Administration benefits should not be counted as income);
- (Q) Housing assistance and combat zone pay to the military;
- (R) Veterans (VA) Disability Payments;
- (S) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- (T) Child support payments (amount paid by payor may not be deducted from income) whether received by the payee or paid by the payor;
- (U) Income of Household members under eighteen (18) years of age;
- (V) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;
- (W) AmeriCorps Program payments, allowances, earnings, and in-kind aid;
- (X) Depreciation for farm or business assets;
- (Y) Reverse mortgages;
- (Z) Payments for care of Foster Children;
- (AA) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- (BB) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));
- (CC) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).
- (DD) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));
- (EE) Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);
- (FF) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- (GG) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- (HH) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- (II) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, section 6);

- (JJ) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;
- (KK) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.);
- (LL) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);
- (MM) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);
- (NN) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);
- (OO) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));
- (PP) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. § 1437a(b)(4));
- (QQ) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);
- (RR) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 “Exclusion from Income of Payments under Recent Tribal Trust Settlements” (25 U.S.C. 117b(a)); and
- (SS) Any other income required to be excluded by the federal or state funding program.

(b) ~~For ESG, Subrecipients must use the income determination method outlined in 24 CFR 5.609, must use the list of income included in HUD’s Section 8 Income Limits to determine income eligibility for persons receiving prevention assistance, and must use HUD Handbook 4350, and must exclude from income those items listed in HUD’s Updated List of Federally Mandated Exclusions from Income. To determine income eligibility for USDHHS and DOE funded programs, Subrecipients must base annualized eligibility determinations on Household income from thirty (30) days prior to the date of application for assistance. Each Subrecipient must maintain documentation of included and excluded cash income from all sources for all Household members for the entire thirty (30) day period prior to the date of application and multiply the monthly amount by twelve (12) to annualize income.~~

(c) ~~To determine income for HHSP, Subrecipients may select either of the methods described in either (a) or (b)§5.19(b) of this chapter (relating to Client Income Guidelines) or used by ESG above, but once selected the method must be used consistently throughout the contract term.~~

(d) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to project or estimate the annual income that the Household expects to receive. The following are two acceptable methods for calculating the annual income anticipated for the coming year:

1. Generally the Subrecipient must use current circumstances to anticipate income. The Subrecipient calculates projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

2. If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the Subrecipient may add the total income for the months before, and the total for the months after the increase.

3. Once all sources of income are known, Subrecipients must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

A. Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

B. Weekly wages by 52;

C. Bi-weekly wages (paid every other week) by 26;

D. Semi-monthly wages (paid twice each month) by 24; and

E. Monthly wages by 12.

~~If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. The DIS must be notarized. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory, part-time, temporary, self-employed, or seasonal in nature. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.~~

(e) Except for ESG, to annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work. To determine income for HHSP, Subrecipients may select either the method described in §5.19(b) of this chapter (relating to Client Income Guidelines) or used by ESG, but must be consistent throughout the contract term.

~~(f) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. The DIS must be notarized. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, or applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory, part-time, temporary, self-employed, or seasonal in nature. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits. .-Except for ESG, in the case of migrant,~~

~~seasonal, part-time, temporary, or self-employed workers a longer period than thirty (30) days may be used for annualizing income. However, the same method must be used for all similarly situated workers.~~

(g) The DIS must be notarized. Attainment of notary public commission is an allowable activity as an administrative cost.

(h) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

1c

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC §5.16 concerning Monitoring and Single Audit Requirement and §5.20 concerning Determining Income Eligibility and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Texas Government Code, §§2306.053 and .092, the Department is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs and

WHEREAS, the requirements of 10 TAC §5.16 concerning Monitoring and Single Audit Requirement are included in 10 TAC §1.3 concerning Delinquent Audits and Related Issues and 10 TAC §5.2101 concerning Compliance Monitoring; and the requirements of §5.20 concerning Determining Income Eligibility are being incorporated into 10 TAC §5.19 through a separate action item;

NOW, therefore, it is hereby

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 publication of the proposed repeal of 10 TAC §§5.16 and 5.20, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of a subchapter specific preamble.

BACKGROUND

The requirements of 10 TAC §5.16 concerning Monitoring and Single Audit Requirement are included in 10 TAC §1.3 concerning Delinquent Audits and Related Issues and 10 TAC §5.2101 concerning Compliance Monitoring and is no longer required as a separate section. The requirements of §5.20 concerning Determining Income Eligibility are being incorporated into 10 TAC §5.19 through a separate action item at this meeting.

Attachment A. Preamble and proposed repeal of 10 TAC §5.16, concerning Monitoring and Single Audit Requirement, and §5.20 concerning Determining Income Eligibility

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC §5.16, concerning Monitoring and Single Audit Requirement and §5.20 concerning Determining Income Eligibility. The purpose of the proposed repeal is to consolidate requirements and to avoid redundancy. The requirements of 10 TAC §5.16 concerning Monitoring and Single Audit Requirement are included in 10 TAC §1.3 concerning Delinquent Audits and Related Issues and 10 TAC §5.2101 concerning Compliance Monitoring and is no longer required as a separate section. The requirements of §5.20 concerning Determining Income Eligibility are proposed for incorporation into 10 TAC §5.19 through a concurrent rulemaking.

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

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

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

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, and §2306.092, which authorizes the Department to administer its Community Affairs programs.

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

§5.16 Monitoring and Single Audit Requirement

§5.20 Determining Income Eligibility

1d

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §5.204 concerning Use of Funds, §5.207 concerning Subrecipient Performance, §5.210 concerning Community Needs Assessment and Community Action Plan, and §5.213 concerning Board Structure and directing their publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Texas Government Code §§2306.053 and .092, the Texas Department of Housing and Community Affairs (“the Department”) is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs and

WHEREAS, the proposed amendments to 10 TAC §§5.204, 5.207, 5.210, and 5.213 remove reference to certain Office of Management and Budget (“OMB”) circulars, delete a portion of the rule for inclusion in a different section of the rule, clarify requirements for submission of the Community Needs Assessment and Community Action Plan, and clarify requirements for adequate representation on boards of directors; and

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered and directed, for and on behalf of the Department to cause the publication of the proposed amendments, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The proposed amendments to 10 TAC §5.204 remove current reference to certain OMB circulars because those requirements are included in 10 TAC Chapter 5, Subchapter A.

The proposed amendments to 10 TAC §5.207 update requirements for Subrecipient performance by indicating which rules apply to Eligible Entities and which to other Community Services Block Grant

(“CSBG”) Subrecipients, including federal and state requirements for Subrecipient activities, and further explaining state requirements for client case management.

The proposed amendments to 10 TAC §5.210 clarify requirements for submission of the Community Needs Assessment and Community Action Plan and delete a portion of the rule which will be moved to 10 TAC §5.207, Subrecipient Performance.

The proposed amendments to 10 TAC §5.213 clarify requirements for adequate representation on boards of directors.

Attachment A: Preamble and proposed amendments to 10 TAC Chapter 5, Subchapter B, §§5.204, 5.207, 5.210 and 5.213

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter B, Community Services Block Grant, §5.204 concerning Use of Funds, §5.207 concerning Subrecipient Performance, §5.210 concerning submission of the Community Needs Assessment and Community Action Plan and §5.213 concerning Board Structure. The purpose of the amendments is to remove reference to certain OMB circulars, update requirements for Subrecipient performance by indicating which rules apply to Eligible Entities and which to other CSBG Subrecipients, including federal and state requirements for Subrecipient activities, and further explaining state requirements for client case management, to delete a portion of §5.210 which will be moved to §5.207, to clarify requirements for submission of the two plans, and to clarify requirements for adequate representation on boards of directors.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be to remove redundant or unnecessary references, and provide for greater and more efficient use of funds and greater flexibility for Subrecipients within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

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

REQUEST FOR PUBLIC COMMENT. Written comments to the rule may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

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

§5.204. Use of Funds

(a) CSBG funds distributed to Eligible Entities for a fiscal year may be available for obligation during that fiscal year and the succeeding fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, i.e., utilities, rent, food, shelter, clothing etc. ~~For additional requirements reference 42 U.S.C. §9908(b)(A)(i-vii) and Office of Management and Budget (OMB) Circulars A-122 and A-87.~~

(b) Utility and rent deposit refunds from vendors must be reimbursed to the Subrecipient and not the client. ~~Funds~~ Refunds should be treated as program income.

§5.207. Subrecipient Performance

(a) ~~Budgets. CSBG Eligible Entities and any other funded organizations shall submit a budget to facilitate the contract execution process. A certification of board approval of CSBG budget form issued by the Department must also be submitted with planned budgets. Eligible Entities shall submit information regarding the use of funds as part of the Community Action Plan as described in §5.210 of this chapter.~~

(b) Unexpended Funds. The Department reserves the right to deobligate or recapture funds from CSBG Eligible Entities and any other CSBG-funded organizations.

(1) ~~The U.S. Department of Health and Human Services (HHS) Administration for Children and Families~~ issues terms and conditions for receipt of funds under the CSBG. Subrecipients ~~of CSBG funds~~ will comply with the requirements of the terms and conditions of the CSBG award.

(2) The Coats Human Services Reauthorization Act of 1998, allows states to recapture unexpended CSBG funds in excess of 20% of the CSBG funds obligated to an Eligible Entity unless. ~~This may be~~ superseded by Congressional action in the appropriation process or by the terms and conditions issued by HHS ~~U.S. Department of Health and Human Services~~ in the CSBG award letter.

(c) Services to Poverty Population. ~~Eligible Entities~~ Subrecipients administering services to clients in one or more CSBG service area counties shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the service area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a finding. Eligible Entities ~~Subrecipients~~ with a service area of a single county shall demonstrate marketing and outreach efforts to render direct services to a reasonable percentage of the county's eligible population based on the most recent ~~decennial~~-census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG contract.

(d) In keeping with the regulations issued under Title II, §676(b)(3)(C), §676(5),(6),(9) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG organizations where applicable, to coordinate CSBG funds and form partnerships with other public and private

resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(e) In keeping with the regulations issued under Title II, §676(b)(4), CSBG Eligible Entities shall provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract the conditions of starvation and malnutrition. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(f) In keeping with the regulations issued under Title II, §676(b)(5), CSBG Eligible Entities, shall coordinate the provision of employment and training activities through local workforce investment systems under the Workforce Investment Act of 1998.

(g) In keeping with the regulations issued under Title II, §678G(b)(1-2), CSBG Eligible Entities Subrecipients shall inform custodial parents in single-parent families that participate in programs, activities, or services about the ~~services~~ resources available through the Texas Attorney General's Office with respect to the collection of child support payments and/or refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(h) Documentation of Services – Subrecipients must maintain a record of referrals and services provided.

(i) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form that documents income, assesses client needs, and captures which includes the demographic and household characteristic data required for the monthly performance and expenditure report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. ~~A new CSBG Subrecipients must complete and maintain a manual or electronic intake form for all clients or a centralized intake form must be completed and maintained for each program year on an annual basis to coincide with the CSBG program year of January 1st through December 31st.~~

(j) Case Management.

(1) In keeping with the regulations issued under Title II, §676(b) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG Subrecipients where applicable, Subrecipients to incorporate integrated case management systems in the administration of their CSBG program (Title II, §676(b)). Incorporating case management in the service delivery system and providing assistance that has a long-term impact on the client, such as enabling the client to move from poverty to self-sufficiency, to maintain stable families, and to revitalize the community, supports the requirements of Title II, §676(b). An integrated case management system improves the overall provision of assistance and improves each Subrecipient's ability to transition persons from poverty to self-sufficiency. Case management can be provided on a short-term basis to meet immediate needs, or for Eligible Entities it can be provided on a long-term basis to persons working to transition out of poverty and achieve self-sufficiency.

(2) Subrecipients must have and maintain documentation of ~~a case management services provided. program that has the components described in subparagraphs (A) – (H) of this paragraph:~~

(3) Eligible Entities must provide ongoing case management services for persons working to transition out of poverty and achieve self-sufficiency. The case management services must include the components described in subparagraphs (A) – (N) ~~(H)~~ of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form, including but not limited to:

(A) Self-Sufficiency Client Questionnaire to assess a client’s status in the areas of employment, job skills, education, income, housing, food, utilities, child care, transportation, and health insurance; Intake Form;

(B) Self-Sufficiency Outcomes Matrix to assess the client’s status in the self-sufficiency domains noted in (3)(A); ~~Pre-assessment to determine service needs, to determine the need for case management, and to determine which individuals/families to consider enrolling in case management program;~~

(C) Case Management Screening Questions to assess the client’s willingness to participate in case management services on an on-going basis; ~~Integrated assessment of individual/family service needs of those accepted into case management program;~~

(D) Case Management Agreement between Subrecipient and client; ~~Development of case management service plan to meet goals and become self-sufficient;~~

(E) Release of Information Form; ~~Provision of services and coordination of services to meet needs and achieve self-sufficiency;~~

(F) Case Management Service Plan to document steps and timeline to achieve goals; ~~Monitoring and follow-up of participant's progress;~~

(G) Case management follow-up - A system to document client progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or e-mail. In person meetings should occur, at a minimum, once a quarter; ~~Case closure, once individual has become self-sufficient; and~~

(H) A record of referral resources and documentation of the results; ~~Evaluation process to determine effectiveness of case management system.~~

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Poverty Income Guidelines for 90 days;

(L) Client Satisfaction Survey;

(M) A system to document and notify clients of termination of case management services; and

(N) Evaluation System – a process to determine the effectiveness of case management services and CSBG services.

(k) Subrecipient Requirements for Review Process for Applicants Denied based on Income Eligibility. When an applicant is denied services based solely on income eligibility, the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the

person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing and no further appeal is afforded to the applicant.

~~(k)(1)~~Subrecipient Requirements for Appeals Process for CSBG Applicants/Clients Denied for Reasons other than Income Eligibility. Subrecipients shall establish a CSBG denial of service complaint procedure ~~to address written complaints from program applicants/clients.~~ At a minimum, the procedures described in paragraphs (1) - ~~(87)~~ of this subsection shall be included:

(1) Subrecipients shall provide a written denial of assistance notice to applicant/client within ten (10) business days of the adverse determination. This notification shall include written notice of the right to a hearing and specific reasons for the denial by component. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice;

(2) Subrecipient who receives an appeal or client complaint shall establish an appeal committee composed of at least three persons. Subrecipient shall maintain documentation of appeals/complaints in their client files;

(3) Subrecipient shall hold the hearing within twenty (20) days after the Subrecipient received the appeal/complaint request from the applicant/client;

(4) Subrecipient shall record the hearing;

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case;

(6) The hearing shall allow the applicant/client at least equal time, if requested, to present relevant information contesting the decision;

(7) Subrecipient shall notify applicant/client of the decision in writing. The Subrecipient shall mail the notification by close of business on the business day following the decision (one (1) day turnaround). In the event of an adverse decision, the notice must inform the applicant of their ability to appeal to the Department and must state that the applicant must appeal the decision in writing within ten (10) days of the decision.

~~—(8) If the denial is solely based on income eligibility, the provisions in paragraphs (2) — (7) of this subsection, do not apply and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing and no further appeal is afforded to the applicant.~~

~~(l) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision.~~

(m) In the event of an adverse decision by the Department under §5.207(l), applicants/clients who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Texas Government Code, Chapter 2001.

(n) The hearing shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient.

(o) If client appeals to the Department, the funds should remain encumbered until the Department completes its decision.

§5.210. CSBG Needs Assessment and Community Action Plan.

(a) In accordance with ~~the CSBG Act and~~ §676 of the CSBG Act, the Department is required to secure a Community Action Plan on an annual basis from each CSBG Eligible Entity. The Community Action Plan shall be submitted to the Department on or before a date specified by the Department in the Eligible Entity contract. ~~October 1 of each year.~~

(b) Every five (5) years each CSBG Eligible Entity shall complete a community needs assessment, upon which the CSBG Community Action Plan will be based. ~~include a community needs assessment from every CSBG Eligible Entity.~~ The community needs assessment shall be submitted to the Department on or before a date specified by the Department in the Eligible Entity contract. ~~August 1 each fifth (5th) year according to the CSBG Eligible Entity(ies') established schedule.~~

(c) The Community Action Plan shall at a minimum include a budget, a description of the delivery of services for the case management system in accordance with the National Performance Indicators and shall include a performance statement that describes the services, programs and activities to be administered by the organization.

(d) Hearing. In conjunction with the Submission of the Community Action Plan, the Eligible Entity must submit to the Department a certification from its board that ~~A board certification that~~ a public hearing was conducted on the proposed use of funds. ~~for the Community Action Plan must be submitted to the Department with the plan.~~

(e) ~~Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form which includes the demographic and household characteristic data required for the monthly performance and expenditure report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. A new CSBG intake form or a centralized intake form must be completed and maintained on an annual basis to coincide with the CSBG program year of January 1st through December 31st.~~

(f) ~~Case Management.~~

~~(1) In keeping with the regulations issued under Title II, §676(b) State Application and Plan, the Department requires CSBG Subrecipients to incorporate integrated case management systems in the administration of their CSBG program (Title II, §676(b)). Incorporating case management in the service delivery system and providing assistance that has a long-term impact on the client, such as enabling the client to move from poverty to self-sufficiency, to maintain stable families, and to revitalize the community, supports the requirements of Title II, §676(b). An integrated case management system improves the overall provision of assistance and improves each Subrecipient's ability to transition persons from poverty to self-sufficiency.~~

~~(2) Subrecipients must have and maintain documentation of a case management program that has the components described in subparagraphs (A)–(H) of this paragraph:~~

- ~~—(A) Intake Form;~~
 - ~~—(B) Pre assessment to determine service needs, to determine the need for case management, and to determine which individuals/families to consider enrolling in case management program;~~
 - ~~—(C) Integrated assessment of individual/family service needs of those accepted into case management program;~~
 - ~~—(D) Development of case management service plan to meet goals and become self-sufficient;~~
 - ~~—(E) Provision of services and coordination of services to meet needs and achieve self-sufficiency;~~
 - ~~—(F) Monitoring and follow-up of participant's progress;~~
 - ~~—(G) Case closure, once individual has become self-sufficient; and~~
 - ~~—(H) Evaluation process to determine effectiveness of case management system.~~
- ~~—(3) As required by 42 U.S.C. §678G(b)(1-2), CSBG Subrecipients shall inform custodial parents in single-parent families that participate in programs, activities, or services about the services available through the Texas Attorney General's Office with respect to the collection of child support payments and/or refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.~~
- ~~(e)(g) Subrecipients Non-CSBG Eligible Entities~~ receiving state discretionary funds under §5.203(b) of this subchapter (relating to Distribution of CSBG Funds) are not required to submit a Community Action Plan. All CSBG Subrecipients must develop a performance statement which identifies the services, programs, and activities to be administered by the organization.
- ~~(h) Subrecipient Requirements for Appeals Process for CSBG Applicants/Clients.~~ Subrecipients shall establish a CSBG denial of service complaint procedure to address written complaints from program applicants/clients. At a minimum, the procedures described in paragraphs (1)–(8) of this subsection shall be included:
- ~~—(1) Subrecipients shall provide a written denial of assistance notice to applicant/client within ten (10) business days of the adverse determination. This notification shall include written notice of the right to a hearing and specific reasons for the denial by component. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice;~~
 - ~~—(2) Subrecipient who receives an appeal or client complaint shall establish an appeal committee composed of at least three persons. Subrecipient shall maintain documentation of appeals/complaints in their client files;~~
 - ~~—(3) Subrecipient shall hold the hearing within twenty (20) days after the Subrecipient received the appeal/complaint request from the applicant/client;~~
 - ~~—(4) Subrecipient shall record the hearing;~~
 - ~~—(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case;~~
 - ~~—(6) The hearing shall allow the applicant/client at least equal time, if requested, to present relevant information contesting the decision;~~
 - ~~—(7) Subrecipient shall notify applicant/client of the decision in writing. The Subrecipient shall mail the notification by close of business on the business day following the decision (one (1) day turnaround);~~
 - ~~—(8) If the denial is solely based on income eligibility, the provisions in paragraphs (2)–(7) of this subsection, do not apply and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an~~

~~analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing and no further appeal is afforded to the applicant.~~

~~(i) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision.~~

~~(j) Applicants/clients who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Texas Government Code, Chapter 2001.~~

~~(k) The hearing shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient.~~

~~(l) If client appeals to the Department, the funds should remain encumbered until the Department completes its decision.~~

§5.213. Board Structure.

(a) Eligible Entities that are Private Nonprofit Organizations ~~entities~~, shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Some of the members of the board shall be selected by the Private Nonprofit entity Organization and others through a democratic process; the board shall be composed so as to assure that the requirements of §676B(a)(2) of the CSBG Act are followed and are composed as:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement. Refer to subsection (d)(1)(B) of this section entitled "Permanent Representatives and Alternates" for related information;

(2) not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community under subsection (b)(1)(B) of this section, resides in the neighborhood represented by the member;

(3) the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) For public organizations to be considered to be an Eligible Entity for purposes of the CSBG Act, §676B(b), the entity shall administer the CSBG grant through tripartite boards ~~as:~~ that fully participate in the development, planning, implementation and evaluation of programs that serve low-income communities or acts as an advisory board.

~~—(1) A tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members:~~

~~—(A) are representative of low income individuals and families in the neighborhood served;~~

~~—(B) reside in the neighborhood served; and~~

~~—(C) are able to participate actively in the development, planning, implementation, and evaluation of programs funded under this chapter; or~~

~~—(D) If conditions in subparagraphs (A) — (C) of this paragraph are not utilized, then another mechanism specified by the state which meets the tripartite requirements may be used. Public organizations that choose to utilize another mechanism must submit to the Department, for review and approval, a description of the mechanism to be utilized to select low income representatives. The mechanism must assure decision-making and participation by low income individuals in the development, planning, implementation, and evaluation of programs funded under this chapter.~~

(c) For a Public Organization to administer the CSBG grant as an Eligible Entity through an advisory board or other qualifying method, prior review and approval from the Department is required.

(d) All Public Organization Boards must have a tripartite structure where:

(2)(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement. Refer to subsection (g)(1)(B) of this section, entitled "Permanent Representatives and Alternates" for related information;

(2) not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; reside in the neighborhood served; and are able to participate actively in the development, planning implementation, and evaluation of programs funded by CSBG under this chapter;

(3) the remainder of the members are officials or are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(e) Another mechanism specified by the Department which meets the tripartite requirements, such as an advisory board, may be used. However, the mechanism the Public Organization wishes to use must be submitted to the Department for review and approval. The mechanism must assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded by CSBG.

~~(e)(f)~~ Eligible Entities administering the Head Start Program must comply with, the Head Start Act (42 U.S.C. §9837) that requires the governing body membership to comply with the requirements of §642(c)(1) of the Head Start Act. Exceptions shall be made to the requirements of clauses (i) - (iv) of §642(c)(1) of the Head Start Act for members of a governing body when those members oversee a

public entity and are selected to their positions with the public entity by public election or political appointment.

~~(d)~~(g) Selection. Pursuant to §676B of the CSBG Act, Eligible Entities that are Private Nonprofit Organizations ~~entities~~ and Public Organizations have the responsibility for selection and composition of the board.

(1) Public Officials:

(A) Elected public officials or appointed public officials, selected to serve on the board, shall have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues; and

(B) Permanent Representatives and Alternates. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board.

(i) Permanent Representatives. The public officials selected by a private nonprofit entity or public organization to serve on the board may each choose one permanent representative to serve on the board in a full-time capacity. The public officials of the public organization may choose a representative to serve on the board or other governmental body. The representative need not be a public official but shall have full authority to act for the public official at meetings of the board. Permanent representatives may hold an officer position on the board. If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board. Alternates may not hold an officer position on the board.

(ii) Alternate Representatives. If the private nonprofit entity or public organization board chooses to allow alternates, the alternates for low-income representatives shall be elected at the same time and in the same manner as the board representative is elected to serve on the board. Alternates for representatives of private sector organizations may be designated to serve on the board and should be selected at the same time the board representative is selected. In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board. Alternates may not hold an officer position on the board.

(2) Low-Income Representatives:

(A) An essential objective of community action is participation by low-income individuals in the programs which affect their lives; therefore, the CSBG Act and its amendments require representation of low-income individuals on boards or state-specified governing bodies. The CSBG statute requires that not fewer than one-third of the members shall be representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member; or

(B) Board members representing low-income individuals and families must be selected in accordance with a democratic procedure. This procedure, as detailed in subparagraph (D) of this paragraph, may be either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization

such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider;

(C) Every effort should be made by the nonprofit entity or public organization to assure that low-income representatives are truly representative of current residents of the geographic area to be served, including racial and ethnic composition, as determined by periodic selection or reselection by the community. "Current" should be defined by the recent or annual demographic changes as documented in the needs/community assessment. This does not preclude extended service of low-income community representatives on boards, but it does suggest that continued board participation of longer term members be revalidated and kept current through some form of democratic process; and

(D) The procedure used to select the low-income representative must be documented to demonstrate that a democratic selection process was used. Among the selection processes that may be utilized, either alone or in combination, are:

(i) Selection and elections, either within neighborhoods or within the community as a whole; at a meeting or conference, to which all neighborhood residents, and especially those who are poor, are openly invited;

(ii) Selection of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents;

(iii) Selection, on a small area basis (such as a city block); or

(iv) Selection of representatives by existing organizations whose membership is predominately composed of poor persons.

(3) Representatives of Private Groups and Interests:

(A) The private nonprofit entity or public organization shall select the remainder of persons to represent the private sector on the board or it may select private sector organizations from which representatives of the private sector organization would be chosen to serve on the board; and

(B) The individuals and/or organizations representing the private sector shall be selected in such a manner as to assure that the board will benefit from broad community involvement. The board composition for the private sector shall draw from officials or members of business, industry, labor, religious, law enforcement, education, school districts, representatives of education districts and other major groups and interests in the community served.

(h) Eligible Entities must have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation as described in (a) – (g) above if such persons or organizations consider there to be inadequate representation on the board of the Eligible Entity.

1e

**BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 4, 2014**

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §5.423 concerning Household Crisis Component and directing its publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Texas Government Code §§2306.053 and .092, the Texas Department of Housing and Community Affairs (“the Department”) is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs and

WHEREAS, the proposed amendments to 10 TAC §5.423 clarify requirements for purchase of portable heating and cooling units;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered and directed, for and on behalf of the Department to cause the publication of the proposed amendments, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The proposed amendments to 10 TAC §5.423 clarify requirements for purchase of portable heating and cooling units to change from an appliance-size based requirement to a requirement based on needed work to install the appliance.

Attachment A: Preamble and proposed amendments to 10 TAC Chapter 5, Subchapter D, §5.423

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, Comprehensive Energy Assistance Program, §5.423 concerning the Household Crisis Component. The purpose of the amendments is to clarify requirements for purchase of portable heating and cooling units to change from an appliance size-based requirement to a requirement that addresses the work that must be completed to install the appliance.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be clarification of existing requirements, greater and more efficient use of funds, and greater flexibility for Subrecipients within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

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

REQUEST FOR PUBLIC COMMENT. Written comments to the rule may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code §2306.092, which authorizes the Department to administer its Community Affairs programs.

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

§5.423. Household Crisis Component.

(a) A bona fide Household crisis exists when extraordinary events or situations resulting from extreme weather conditions or fuel supply shortages or a terrorist attack have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills

for energy so as to constitute a threat to the well-being of the Household, particularly the ~~e~~Elderly, the ~~d~~Disabled, or a ~~Child~~children age 5 and younger.

(b) A utility disconnection notice may constitute a Household crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criteria are not required to provide assistance due to a disconnection notice.

~~(e) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one year. Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis. If the client's crisis requires more than the Household limit to resolve, it exceeds the scope of this program. If the crisis exceeds the Household limit, Subrecipient may pay up to the Household limit but the rest of the bill will have to be paid from other funds to resolve the crisis. Payments may not exceed client's actual utility bill. The assistance must result in resolution of the crisis.~~

(c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; i.e. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds are available to cover the Household's remaining crisis need.

(d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this program.

(e) Payments may not exceed Household's actual utility bill.

~~(d)~~(f) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may directly issue vouchers to provide:

(1) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(2) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(3) Service and repair of existing heating and cooling units not to exceed \$2,500 during the contract period when Subrecipient has met local weather crisis criteria. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Documentation of service/repair and related warranty must be included in the client file;

(4) Portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) may be purchased for households that include at least one member that is ~~e~~Elderly, ~~d~~Disabled, or a ~~e~~Child age 5 or younger, when Subrecipient has met local weather crisis criteria;

(5) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(6) Purchase of portable heating/cooling units which require performance of electrical work for proper installation ~~voltage exceeds 110 volt~~ requires prior written approval from the Department;

(7) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(8) Portable heating/cooling units must be Energy Star® and compliant with the 2009 International Residential Code (IRC).

~~(e)~~(g) Crisis funds, whether for emergency fuel deliveries, repair of existing heating and cooling units, purchase of portable heating/cooling units, or temporary shelter, shall be considered part of the total maximum Household allowable assistance.

~~(f)~~(h) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

~~(g)~~(i) Time Limits for Assistance--Subrecipients shall ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

~~(h)~~(j) Subrecipient must maintain written documentation in client files showing crises resolved within appropriate timeframes. The Department may disallow improperly documented expenditures.

1f

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §5.502 concerning Purpose and Goals, and §5.528 concerning Health and Safety and directing their publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Texas Government Code §§2306.053 and .092, the Texas Department of Housing and Community Affairs (“the Department”) is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs and

WHEREAS, the proposed amendment to 10 TAC §5.502 clarifies requirements for administration of the Weatherization Assistance Program (“WAP”), and the proposed amendment to §5.528 clarifies expenditure of health and safety funds;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered and directed, for and on behalf of the Department to cause the publication of the proposed amendments, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The Department funds its Weatherization Assistance programs through the Department of Energy Weatherization Assistance Program for Low Income Persons grant (“DOE-WAP”) and the Department of Health and Human Services’ Low-Income Home Energy Assistance Program grant (“LIHEAP-WAP”). The proposed amendment to §5.502 clarifies that an organization that administers the WAP must administer both programs. The proposed amendment to §5.528 clarifies that the allowable amount of health and safety funds is based on 20% of total unit expenditures and not on 20% of the program budget.

Attachment A: Preamble and proposed amendments to 10 TAC Chapter 5, Subchapter E, §§5.502 and 5.528

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter E, Weatherization Assistance Program General, §5.502 concerning Purpose and Goals and §5.528 concerning Health and Safety. The purpose of the amendments is to clarify requirements for administration of the program, adding text stating that an organization that administers the WAP must administer both programs, and that allowable health and safety funds are limited to 20% of total unit expenditures and not on 20% of the program budget.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be clarification of requirements and greater and more efficient use of funds and expenditure of funds within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

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

REQUEST FOR PUBLIC COMMENT. Written comments to the rule may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to administer its Community Affairs programs.

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

§5.502. Purpose and Goals.

(a) DOE-WAP and LIHEAP-WAP offers awards ~~grants~~ to eligible Community Action Agencies, Private Nonprofit Organizations ~~nonprofits~~, and Public Organizations with targeted beneficiaries being households with low incomes, with priority given to the Elderly; Persons with Disabilities; Families

with Young Children; Households with the highest energy costs or needs in relation to income; and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) Organizations administering a Department-funded weatherization program must administer both the DOE-WAP and the LIHEAP-WAP.

§5.528. Health and Safety.

(a) Health and Safety funds expenditures may not exceed ~~will have a maximum of 20% of the total unit expenditures (Materials, Labor, and Program Support, and Health and Safety) budgets. at the end of the contract period.~~

(b) Subrecipients shall provide weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from weatherization work.

(c) If health and safety issues identified on an individual unit (which would be exacerbated by any weatherization work performed) cannot be abated within the allowable WAP limits, the unit exceeds the scope of this program.

(d) Subrecipients must test for high carbon monoxide (CO) levels and bring CO levels to acceptable levels before weatherization work can start. The Department has defined maximum acceptable CO readings as follows:

- (1) 25 parts per million for cook stove burners and unvented space heaters;
- (2) 100 parts per million for vented combustion appliance; and
- (3) 150 parts per million for cook stove ovens.

1g

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on proposed new 10 TAC §5.2013 concerning Environmental Clearance and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

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

WHEREAS, the proposed new 10 TAC §5.2013 clarifies requirements for environmental clearance prior to commencing associated activities with regard to the Emergency Solutions Grants (“ESG”) program, and informs ESG Subrecipients that the Department will not provide reimbursement for activities for which the Subrecipient did not complete the Department’s environmental review process beforehand;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered and directed, for and on behalf of the Department to cause the publication of the proposed new section, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The addition of this rule to 10 TAC Chapter 5 clarifies that awardees in the ESG program must complete the environmental review process prior to commencing associated activities. The addition informs ESG Subrecipients that the Department will not provide reimbursement for activities for which the Subrecipient did not complete the Department’s environmental review process beforehand.

Attachment B: Preamble and proposed new 10 TAC Chapter 5, Subchapter K, §5.2013

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 5, Community Affairs Programs, Subchapter K, Emergency Solutions Grant, §5.2013, concerning Environmental Clearance. The purpose of the proposed new section is to clarify that awardees must complete the environmental review process prior to commencing associated activities and that the Department will not provide reimbursement for activities for which the Subrecipient did not complete the Department’s environmental review process beforehand.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be assurance of Subrecipient compliance with federal rules. There are no anticipated additional economic costs to individuals required to comply with the section as a result of this action.

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

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

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

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

§5.2013. Environmental Clearance

All ESG activities require some level of environmental clearance. Subrecipients must obtain the correct level of environmental clearance prior to commencing associated activities. Activities for which the Subrecipient did not properly complete the Department’s environmental review process before commencing an activity are ineligible and funds will not be reimbursed or will be required to be repaid.

1h

BOARD ACTION REQUEST

LEGAL DIVISION

SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on the adoption of amendments to 10 TAC §1.13, concerning Adjudicative Hearing Procedures.

RECOMMENDED ACTION

WHEREAS, Pursuant to Texas Government Code §§2306.053 and 2306.045, the Board has adopted 10 TAC §1.13, setting forth procedures for adjudicative hearings;

WHEREAS, the Board finds that the proposed amendments to the rule are needed to eliminate inefficiencies in the pre-hearing process, including the filing of unnecessary documents, and to conform terms used in the rule to terms used in the rules of the State Office of Administrative Hearing (“SOAH”);

WHEREAS, such proposed amendments were published in the *Texas Register* for public comment from July 11, 2014, through August 11, 2014; and

WHEREAS, no public comments were received on the proposed amendments;

NOW, therefore, it is hereby

RESOLVED, that the adoption of the amendments to 10 TAC §1.13, concerning Adjudicative Hearing Procedures, is hereby ordered, adopted and approved, together with the preamble presented to this meeting, and the Executive Director and his designees are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted rule, in the form presented to this meeting, to be published in the *Texas Register*, and in connection therewith to make such non-substantive technical corrections as they deem necessary to effectuate the foregoing.

BACKGROUND

At the Board meeting of June 26, 2014, staff recommended and the Board approved the publication for public comment of proposed amendments described above.

The proposed amendments were published in the *Texas Register* with public comment from July 11, 2014, through August 11, 2014. No comments were received. Staff recommends adoption of the amendments as published.

Attachment A: Preamble for Adoption of Amendments to 10 TAC §1.13 concerning Adjudicative Hearing Procedures

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §1.13, concerning Adjudicative Hearing Procedures, without changes to the proposed text as published in the July 2014 issue of the *Texas Register* (39 TexReg 5274) and will not be republished.

REASONED JUSTIFICATION: The current Department rule requires filing a "complaint" at the State Office of Administrative Hearings ("SOAH") in order to initiate an adjudicative hearing. Staff currently produces a "Notice of Report to the Board," a document required by Tex. Gov't. Code §2306.043, that contains all the elements of a complaint. The creation and filing of both documents is inefficient and may create confusion. Accordingly, the Board finds that the practice of filing a complaint to initiate a hearing should be discontinued and the rule should instead require the filing of the Notice of Report to the Board. The Board further finds that the other amendments are necessary to conform this rule with the rules of SOAH.

The Department accepted public comments between July 11, 2014, and August 11, 2014. Comments regarding the amendments were accepted in writing and by fax. No comments were received.

The Board approved the final order adopting the proposed amendments on September 4, 2014.

STATUTORY AUTHORITY: The amendments are adopted pursuant to the authority of Tex. Gov't Code Ann. §2306.053 which authorizes the Department to adopt rules, and more specifically, Tex. Gov't Code Ann. §2306.045 which authorizes the director to set a hearing at SOAH and requires giving written notice to the respondent.

1i

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 4, 2014

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

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs and

WHEREAS, staff proposes clarifications and changes to the existing rules to better serve the post award and asset management requirements of multifamily developments awarded funds under various Department programs;

Now, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements and a proposed new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements are hereby approved, together with the preambles presented to this meeting, for publishing in the *Texas Register* for public comment and

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the draft repeal of and new 10 TAC Chapter 10, Subchapter E, Post Award and Asset Management Requirements, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

At the November 7, 2013 meeting, the TDHCA Board approved for publication in the *Texas Register* the final adoption of the new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements, §§10.400 – 10.408. The Asset Management Division has been working under the adopted rule which now needs to be revised to further correct or clarify information provided to Development Owners on the processes and procedures related to Asset Management.

Attachment A: Preamble and Proposed repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408, General Provisions, Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408. The new 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408 is being proposed concurrently with this repeal. The purpose of the repeal is to allow for clarification and correction of information in certain sections of the rule and to allow for the adoption of new sections that will ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be to allow for the adoption of new rules to enhance the State’s ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held until October 20, 2014 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia, or by email to cari.garcia@tdhca.state.tx.us or by FAX to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. The proposed repeal affects no other code, article or statute.

§10.400. Purpose.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments

§10.403. Direct Loans.

§10.404. Reserve for Replacement Requirements.

§10.405. Amendments and Extensions.

§10.406. Ownership Transfers (§2306.6713).

§10.407. Right of First Refusal.

§10.408. Qualified Contract Requirements.

Attachment B: Preamble and Proposed new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408. The purpose of the new rule is to clarify and correct information in all sections of the adopted rule to ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department. Post award activities include requests for action to be considered on developments awarded funding from the Department through the end of the affordability period.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will improve the State's ability to ensure that State resources used for affordable multifamily housing are efficient and result in viable developments. There will not be any new, increased economic cost to any individuation required to comply with the new sections in addition to the costs under current program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small businesses or micro-businesses in addition to the costs under current program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be until October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia, or by email to cari.garcia@tdhca.state.tx.us or by FAX to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed new sections affect no other code, article or statute.

§10.400 Purpose

The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the Corrective Action Period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved, as detailed in each subsection, before a request for any post award activity described in this subchapter will be completed.

§10.401 General Commitment or Determination Notice Requirements and Documentation

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all provision of law and rule, including compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, completion of underwriting and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract or any other matters.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) the Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

(e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. Department staff may choose to issue an "Award Letter" in lieu of a Commitment in instances in which a Federal Commitment cannot be made until loan closing or until all financing is secured. An Award Letter is subject to all of the same terms and conditions as a Commitment except that it may not constitute a Federal Commitment. For HOME Direct Loans, an actual Federal Commitment may not occur in the HUD IDIS system until all financing is secured or loan closing, whichever comes first, at which time all terms and conditions will be included in the loan documents. The Award Letter shall list an expiration date no earlier than thirty (30) days from the date issued by the Department unless signed and returned. To the extent the terms reflected in an Award Letter are amended by the Department, a new Award Letter would be issued by the Department to govern the award.

§10.402 Housing Tax Credit and Tax Exempt Bond Developments

(a) Commitment. For Competitive HTC Developments the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice or if the financing or Development changes significantly as determined by the

Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director. Increases to the tax credit amount are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) evidence of satisfaction of any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in Section 10.617 of Subchapter F

- (B) A training certificate from a Department approved “property owner and manager Fair Housing trainer” showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training within the last year;;
 - (C) A training certificate from a Department approved “architect and engineer Fair Housing trainer” showing that the lead architect or engineer responsible for certifying compliance with the Department’s accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year;
 - (D) evidence that the financing has closed, such as an executed settlement statement; and
 - (E) if the Development has an existing LURA with the Department, a fully executed and recorded Agreement of Assignment and Assumption of LURA (aka "Agreement to Comply").
- (2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than two (2) years from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination staff is directed to award the credits to other qualified Applicants based on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department and a reduction of credit or change in conditions may result.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control must be identical to the Development Site that was submitted at the time of Application submission as determined by the Department.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (5) of this subsection, along with all information outlined in the Post Carryover Activities Manual. Satisfaction of the 10 Percent Test will be

contingent upon the submission of the items described in paragraphs (1) - (5) of this subsection as well as all other conditions placed upon the Application in the Commitment. Documentation to be submitted includes:

(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner.

(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site;

(3) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially and adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of such supporting documents will be provided upon request;

(4) For the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Training certificates must demonstrate training on or before the date the 10 Percent Test Documentation is submitted. ; and

(5) a Certification from the lender and syndicator identifying all Guarantors known at that time.

(h) Construction Status Report. Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. . Construction status reports shall be due by the tenth day of the month following each quarter end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA Document G702 and G703) or or equivalent form approved for submission by the construction lender and/or investor. The construction status report submission consists of:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or other documents setting forth the legal structure and ownership;

(2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and

(4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. The executed LURA and all exhibits and addendums will be sent to the Development Owner whereupon the Development Owner will then execute the LURA and have the fully-executed document recorded in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. In instances where the document is electronically recorded and the electronic recorded file is provided to the Department, the Development Owner will not be responsible for returning the original and executed LURA in addition to the electronic version.

(j) Cost Certification. The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (H) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses

(i) - (xxxviii) of this subparagraph, and pursuant to the Post Carryover Activities Manual. If any

item on this list is determined to be deficient or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) will be reported to the EARAC during any related party previous participation review conducted by the Department.

- (i) Cost Certification Requirements List
- (ii) Owner's Statement of Certification
- (iii) Owner Summary & Organization Chart
- (iv) Carryover or Determination Notice
- (v) Evidence of Nonprofit and CHDO Participation
- (vi) Evidence of Historically Underutilized Business (HUB) Participation
- (vii) Development Team
- (viii) Development Summary with Architect's Certification
- (ix) Development Change Documentation
- (x) As Built Survey
- (xi) Closing Statement
- (xii) Title Policy
- (xiii) Title Policy Update
- (xiv) Placement in Service
- (xv) Evidence of Placement in Service
- (xvi) Architect's Certification of Completion Date and Date Ready for Occupancy
- (xvii) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election
- (xviii) Independent Auditor's Report
- (xix) Independent Auditor's Report of Bond Financing
- (xx) Development Cost Schedule
- (xxi) Contractor's Application for Final Payment (G702/G703)
- (xxii) Additional Documentation of Offsite Costs
- (xxiii) Rent Schedule
- (xxiv) Utility Allowances
- (xxv) Annual Operating Expenses
- (xxvi) 15 Year Rental Housing Operating Pro Forma
- (xxvii) Current Operating Statement
- (xxviii) Current Rent Roll
- (xxix) Summary of Sources and Uses of Funds
- (xxx) Financing Narrative
- (xxxi) Final Limited Partnership Agreement
- (xxxii) Loan Agreements and Promissory Notes
- (xxxiii) Architect's Certification of Fair Housing Requirements
- (xxxiv) Development Owner Assignment of Individual to Compliance Training
- (xxxv) TDHCA Compliance Training Certificate
- (xxxvi) Recorded Land Use Restriction Agreement (LURA)

(xxxvii) TDHCA Final Inspection Clearance Letter

(xxxviii) Other Documentation as Required

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713))

(D) paid all applicable Department fees, including any past due fees;

(E) met all conditions noted in the Department underwriting report; and

(F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee

(G) received all required environmental clearances and met all mitigation requirements. Developments that received HOME funding from the Department will not be issued IRS Forms(s) 8609 until a certification has been received from the Architect or Engineer of record stating that all clearance and mitigation requests have been met.

(H) completion by the Department of an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.403 Direct Loans

(a) Loan Closing. The loan closing must occur no more than nine (9) months from the date the Commitment or similar document is executed, which may be extended in accordance with the provisions in this subchapter. In preparation for closing any Direct Loan the Development Owner must submit the items described in paragraphs (1) - (10) of this subsection:

(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(3) Owner/General Contractor agreement and Owner/ Architect agreement;

- (4) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;
- (5) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);
- (6) a revised development cost schedule, sources and uses, operating proforma, planned cost categories for the use of Direct Loan funds, updated written financial commitments/term sheets and any additional budget schedules that have changed since the time of application. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy);
- (7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of:
 - (A) environmental clearance;
 - (B) verification of HUD Site and Neighborhood clearance;
 - (C) documentation necessary to show compliance with the Uniform Relocation Act and any other relocation requirements that may apply; and
 - (D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement, LURA, HOME contract, Architect and/or licensed engineer certification of understanding to complete environmental mitigation identified in HUD's environmental clearance and by the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliate grants the Department any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the program's requirements. Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1) - (10) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:

- (1) except for disbursement requests made for acquisition and closing costs or requests made for soft costs only, a down-date endorsement to the title policy not older than the Architect's certification date on AIA form G702 or sixty (60) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704);

- (2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;
- (3) the Department will require that at least 50 percent of the funds be withheld from the initial disbursement to allow for periodic disbursements as may be necessary to meet federal requirements. For HOME Direct Loans: The initial draw request for the development must be entered no later than ten business days prior to the one year anniversary of the commitment date (as defined in 24 CFR Part 92) or funds may be cancelled in HUD's IDIS system;
- (4) if applicable, up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match in the form of a formal contract or commitment with the vendor clearly delineating the donated portion of the contract price, invoices showing the forgiven amount, or other equally verifiable third party documentation prior to release of the final 25 percent of funds. If funds are requested on the day of closing, an executed formal contract specifying the terms of the Match must be provided;
- (5) Developer fee disbursement shall be conditioned upon:
- (A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or
- (B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and
- (C) the Department may reasonably withhold any disbursement of developer fees if it is determined that the Development is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;
- (6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements. For HOME Direct Loans: Pre-award costs for predevelopment activities, as specified in the loan documents, are allowable only if they were incurred less than 24 months prior to the commitment date (as defined in 24 CFR Part 92) and were associated with the Application Round in which the project was awarded;
- (7) table funding requests will not be considered unless:
- (A) a "Commitment to a specific local project" as defined in 24 CFR Part 92 has been made, if applicable; and

- (B) ten (10) days prior to anticipated closing, all table funding draw documentation has been completed and submitted to the Department;
- (8) each Development Owner must request a progress inspection from Department staff once the property passes 25 percent construction completion based on the AIA G702-703. Up to 50 percent of the HOME award will be released prior to receipt of documentation that the progress inspection has occurred;
- (9) Following fifty percent construction completion, the remaining HOME funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A)-(G) of this paragraph are received.
- (A) Certificate of Substantial Completion (AIA Form G704); (B) A down date endorsement dated at least 30 calendar days after the date of completion on AIA Form G704.
- (C) For developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department,
- (D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;
- (E) receipt of Certificates of Occupancy for New Construction or a certification of completion from the Development architect for Rehabilitation; and
- (F) Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, Davis-Bacon Act, Section 3 and any other applicable requirements.
- (G) Certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

§10.404 Reserve Accounts

- (a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Texas Government Code, §2306.186. The reserve account must be established, in accordance with subsections (3), (4), (5), and (6) of this section, and maintained through annual deposit, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other workout request, and the Development does not have an existing replacement reserve account sufficient to meet future capital expenditure needs of the Development, the Development Owner will be required to establish and maintain a replacement reserve account regardless of the number of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section.
- (1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:
- (A) date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or
- (B) the date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) date on which the Development is demolished;

(C) date on which the Development ceases to be used as a multifamily rental property; or

(D) end of the Affordability Period specified by the LURA or the end of the repayment period of the first lien loan.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (a)(2) of this section.

(A) For New Construction Developments, not less than \$250 per Unit; or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(4) For all Developments, a Property Condition Assessment ("PCA") will be conducted at appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA will be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in subsection (3) of this section. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a statement describing:

(A) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) compliance with the first lien lender requirements outlined in paragraph (A) of this subsection; and

(C) if the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow

agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(A) a Reserve Account, as described in this section, has not been established for the Development;

(B) the Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance or

(ii) falls below mandatory deposit levels;

(D) Development Owner fails to make a required deposit;

(E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section; or

(F) Development Owner fails to make necessary repairs in accordance with the third party property condition assessment or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party

lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(A) The Special Reserve Account is funded annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to related parties, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.

(B) All disbursements from the account must be approved by the Department.

(C) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted, at the Department's discretion, and executed by the Department, Development Owner and financial institution representative.

(D) Use of the funds in the Special Reserve Account is determined by a plan that is preapproved by the Department. The Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender or syndicator.

§10.405 Amendments and Extensions

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development and for Competitive HTC Applications, and reallocates the credits to other Applicants on the waiting list.

(1) If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.

(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

- (B) a modification of the number of units or bedroom mix of units;
- (C) a substantive modification of the scope of tenant services;
- (D) a reduction of 3 percent or more in the square footage of the units or common areas;
- (E) a significant modification of the architectural design of the Development;
- (F) a modification of the residential density, other than changes under subparagraph (G) which are the result of a change required by local government, of at least 5 percent;
- (G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;
- (H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications); or
- (I) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the

provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:

- (1) the Development Owner must submit a written request accompanied by an amendment fee as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;
- (2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;
- (3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;
- (4) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request,. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and
- (5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(c) Amendments to Direct Loan Terms. An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as a loan modification and may require additional approval by the Department's Asset Management Division The Executive Director or authorized designee may approve amendments to loan terms as described in paragraphs (1) - (6) of this subsection prior to closing. Board approval is necessary for any other changes prior to closing. A post closing loan modification that is the result of a Department work out arrangement or other condition recommended by the Department's Asset Management Division will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff:

- (1) extensions of up to twelve (12) months to the loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;
- (2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;
- (3) extensions of up to six (6) months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;
- (4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;
- (5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and
- (6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406 Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement

was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. . In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

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

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

(e) Historically Underutilized Business ("HUB") Organizations. If the ownership transfer request is to replace a HUB within the Development ownership entity, the replacement HUB must meet the ownership requirements stated in the LURA, including material participation. A

HUB cannot be replaced by a Non-Profit Organization unless the Board finds there is a good cause and that doing so would further the purposes of Section 2306 more than not allowing such replacement.

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

- (1) a written explanation outlining the reason for the request;
- (2) a list of the names of transferees and Related Parties;
- (3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;
- (4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

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

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

- (1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or
- (2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407 Right of First Refusal

(a) General. This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal (ROFR) to a Qualified ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c) of the Code or tenant organizations. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR

Organization without going through the ROFR process outlined in this section. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract until the requirements outlined in this section have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, ownership transfers to a Qualified ROFR Organization during the ROFR period are subject to §1.5 of this title (relating to Previous Participation Reviews). A Qualified ROFR Organization that wishes to pursue the acquisition of a Development through a ROFR but that is not approved for transfer under the Previous Participation Review, pursuant to §1.5 of this title, may appeal the denial to the Board. Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to an entity other than a Qualified ROFR Organization, the Development Owner shall provide a notice of intent to the Department and to such other parties as the Department may direct at that time. If the LURA

identifies a Qualified ROFR Organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property and the ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met. In the event that the organization is not operating or in existence when the ROFR is to be made, the ROFR must be provided to another Qualified ROFR Organization that is not related to or affiliated with the current Development Owner. Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing whether the ROFR requirement has been satisfied or not. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to another buyer at or above the posted price;

(2) documentation verifying the ROFR offer price of the property;

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified ROFR Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or (B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three

(3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) the most recent Physical Needs Assessment, pursuant to Texas Government Code, §2306.186(e), conducted by a Third-Party and in the Development Owner's possession;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

- (11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and
- (12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within thirty (30) calendar days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ROFR Organization, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ROFR Organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) - (3) of this subsection:

(1) if the LURA requires a ninety (90) day ROFR posting period, within ninety (90) days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to §1.5 of this title, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

(C) if an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ninety (90) day period;

(D) if no bona fide offers are received during the ninety (90) day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted within two (2) years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance

Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a tenant organization approved by the Department; and

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department;

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ROFR Organization or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.;

(3) If the LURA does not specify a required ROFR posting timeframe, or, in the sole determination of the Department, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, the Development Owner must adhere to the timeframe described in Texas Government Code, §2306.6726.

(e) Closing the Transaction. The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Carryover Activities Manual, the final

settlement statement and final sales contract with all amendments. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.

(2) If the closing price is less than the amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

- (1) the best interests of the residents of the Development;
- (2) the impact the decision would have on other Developments in the Department's portfolio;
- (3) the source of the data used as the basis for the Development Owner's appeal;
- (4) the rights of nonprofits under the ROFR;
- (5) any offers from an eligible nonprofit to purchase the Development; and
- (6) other factors as deemed relevant by the Executive Director.

§10.408 Qualified Contract Requirements

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002 are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service. (§2306.185) Unless otherwise stated in the LURA, Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th

year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Property does not have any uncorrected issues of noncompliance outside the Corrective Action Period;

(B) there is a Right of First Refusal (ROFR) connected to the Property that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the property (non-TDHCA); and

(D) local code compliance report, TDHCA UPCS Inspection Report, or HUD-certified REAC or UPCS inspection within the last twelve (12) months; and

(E) a copy of the most recent property condition assessment of the property consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e).

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax

returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within three months prior to the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent property condition assessment of the property, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

- (1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;
- (2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and
- (3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. The Department will assess if the prospective purchaser is a Qualified Purchaser during the Ownership Transfer review process. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

- (1) allow access to the Property and tenant files;
- (2) keep the Department informed of potential purchasers; and
- (3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Property.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to Compliance Monitoring).

§10.400 Purpose

The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the Corrective Action Period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved, as detailed in each subsection, before a request for any post award activity described in this subchapter will be completed.

§10.401 General Commitment or Determination Notice Requirements and Documentation

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board, ~~unless staff makes a recommendation that is clearly documented to the Board based on the need to fulfill the goals of the applicable multifamily program as expressed herein and other applicable Department rules, and the Board accepts the recommendation.~~

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all provision of law and rule, including compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, completion of underwriting and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract or any other matters.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

- (1) the Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;
- (2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;
- (3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of

Rules or Pre-Clearance for Applications) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) the Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

(e) Direct Loan Commitment/Contract. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. Department staff may choose to issue an "Award Letter" ~~in lieu of~~ prior to a Direct Loan Commitment—in instances in which a commitment to a specific local project as defined in 24 CFR 92~~Federal Commitment~~ cannot be made until loan closing or until all financing is secured. An Award Letter is subject to all of the same terms and conditions as a Direct Loan Commitment except that it may not constitute a commitment to a specific local project~~Federal Commitment~~. For HOME Direct Loans, ~~an actual Federal Commitment~~ a commitment to a specific local project may not occur in the HUD IDIS system until all financing is secured or loan closing, whichever comes first, at which time all terms and conditions will be included in the loan documents. The Award Letter shall list an expiration date no earlier than thirty (30) days from the date issued by the Department unless signed and returned. To the extent the terms reflected in an Award Letter are amended by the Department, a new Award Letter would be issued by the Department to govern the award.

§10.402 Housing Tax Credit and Tax Exempt Bond Developments

(a) Commitment. For Competitive HTC Developments the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board

approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for ~~under the Certificate of Reservation by which the Application was approved by the Board on its approval of the Determination Notice~~ or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.;

(c) The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director. Increases to the tax credit amount are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) evidence of satisfaction of any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in Section 10.617 of Subchapter F (as further described in the Tax Exempt Bond Process Manual);

(B) A training certificate from a Department approved "property owner and manager Fair Housing trainer/training" showing that the Development Owner and lead development on-site or regional property manager management agent ions that the Development Owner or management company has attended Department approved at least five (5) hours of Fair Housing training within the last year; relating to leasing and management issues, for at least five (5) hours;

(C) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year; certifications that the Development architect or engineer responsible for Fair Housing compliance for the Development has attended Department approved Fair Housing training, relating to design issues, for at least five (5) hours;

(D) evidence that the financing has closed, such as an executed settlement statement; and

(E) if the Development has an existing LURA with the Department, a fully executed and recorded Agreement of Assignment and Assumption of LURA (aka "Agreement to Comply").

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than two (2) years from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination staff is directed to award the credits to other qualified Applicants based on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department and a reduction of credit or change in conditions may result.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control must be identical to the Development Site that was submitted at the time of Application submission as determined by the Department.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas

Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, ~~the Development Owner must~~ documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10 Percent Test Documentation Delivery Date as identified in §11.2 of this title. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (54) of this subsection, along with all information outlined in the Post Carryover Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (54) of this subsection as well as all other conditions placed upon the Application in the Commitment. Documentation to be submitted includes:

(1) ~~an independent accountant's report and an Independent Accountant's Report and Taxpayer's Basis Schedule form.~~ The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner.

(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site;

(3) ~~for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially and adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of such supporting documents will be provided upon request;~~

(4) ~~For the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Training certificates must demonstrate training on or before the date the 10 Percent Test Documentation is submitted. certification confirming attendance of the Development Owner or management company attended at least five (5) hours of a at Department approved Fair Housing training, relateding to leasing and management issues and, for at least five (5) hours and of the Development architect or engineer responsible for Fair Housing compliance attended at least five (5) hours of a at Department approved Fair Housing training, relateding to design issues. Certifications must demonstrate the training, for at least five (5) hours on or before the time the 10 Percent Test Documentation is submitted. Certifications must occurred on or no more than two (2) years before the submission date of the 10 Percent Test Documentation not be older than two (2) years from the date of submission of the 10 Percent Test Documentation; and~~

(54) a Certification from the lender and syndicator identifying all Guarantors known at that time.

(h) Construction Status Report. Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection ~~unless changes to the original submissions of paragraphs (1) and (2) of this subsection have occurred, in which case such and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. shall also be submitted with the subsequent report.~~ Construction status reports shall be due by the tenth day of the month following each quarter end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA Document G702 and G703) or or equivalent form approved for submission by the construction lender and/or investor. and all units are placed in service, evidenced by the Development Owner's request of a Final Construction Inspection or submission of the cost certification package. The construction status report submission consists of:

- (1) the executed partnership agreement with the investor (identifying all Guarantors) or other documents setting forth the legal structure and ownership;
- (2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;
- (3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and
- (4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Department will ~~generate draft~~ a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to, specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. The executed LURA and all exhibits and addendums will be sent to the Development Owner whereupon the Development Owner will then execute the LURA and have the fully-executed document ~~and all exhibits and attachments~~ recorded in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, ~~in writing~~, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. In instances where the document is electronically recorded and the electronic recorded file is provided to the Department, the Development Owner is still will not be responsible for returning the original and executed LURA in addition to the electronic version.

(j) Cost Certification. The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (GH) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses

(i) - (xxxviii) of this subparagraph, and pursuant to the Post Carryover Activities Manual. If any item on this list is determined to be deficient or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request, ~~the cost certification review~~ may result in the termination of the cost certification review and request for 8609s and require a new request to be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) will be reported to the EARAC during any related party previous participation review conducted by the Department.

(i) Cost Certification Requirements List

(ii) Owner's Statement of Certification

(iii) Owner Summary & Organization Chart

(iv) Carryover or Determination Notice

(v) Evidence of Nonprofit and CHDO Participation

(vi) Evidence of Historically Underutilized Business (HUB) Participation

(vii) Development Team

(viii) Development Summary with Architect's Certification

(ix) Development Change Documentation

(x) As Built Survey

(xi) Closing Statement

- (xii) Title Policy
- (xiii) Title Policy Update
- (xiv) Placement in Service
- (xv) Evidence of Placement in Service
- (xvi) Architect's Certification of Completion Date and Date Ready for Occupancy
- (xvii) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election
- (xviii) Independent Auditor's Report
- (xix) Independent Auditor's Report of Bond Financing
- (xx) Development Cost Schedule
- (xxi) Contractor's Application for Final Payment (G702/G703)
- (xxii) Additional Documentation of Offsite Costs
- (xxiii) Rent Schedule
- (xxiv) Utility Allowances
- (xxv) Annual Operating Expenses
- (xxvi) 15 Year Rental Housing Operating Pro Forma
- (xxvii) Current Operating Statement
- (xxviii) Current Rent Roll
- (xxix) Summary of Sources and Uses of Funds
- (xxx) Financing Narrative
- (xxxi) Final Limited Partnership Agreement
- (xxxii) Loan Agreements and Promissory Notes
- (xxxiii) Architect's Certification of Fair Housing Requirements
- (xxxiv) Development Owner Assignment of Individual to Compliance Training
- (xxxv) TDHCA Compliance Training Certificate
- (xxxvi) Recorded Land Use Restriction Agreement (LURA)
- (xxxvii) TDHCA Final Inspection Clearance Letter
- (xxxviii) Other Documentation as Required
- ~~(i) Carryover Allocation Agreement/Determination Notice and Election Statement;~~
- ~~— (ii) Development Owner's Statement of Certification;~~
- ~~— (iii) Development Owner Summary;~~
- ~~— (iv) Evidence of Nonprofit and CHDO Participation;~~
- ~~— (v) Evidence of Historically Underutilized Business (HUB) Participation;~~
- ~~— (vi) Development Summary with Architect Certification (including a list of unit and common amenities);~~
- ~~— (vii) As-Built Survey;~~
- ~~— (viii) Closing Statement;~~
- ~~— (ix) Title Policy;~~
- ~~— (x) Evidence of Placement in Service;~~
- ~~— (xi) Independent Auditor's Reports;~~
- ~~— (xii) Total Development Cost Schedule;~~
- ~~— (xiii) AIA Form G702 and G703, Application and Certificate for Payment;~~
- ~~— (xiv) Rent Schedule;~~
- ~~— (xv) Utility Allowance;~~
- ~~— (xvi) Annual Estimated Operating Expenses and 15 Year Pro forma;~~
- ~~— (xvii) Current Annual Operating Statement and Rent Roll;~~
- ~~— (xviii) Final Sources of Funds;~~

~~—(xix) Executed Limited Partnership Agreement;~~
~~—(xx) Permanent Loan Agreement(s) or Firm Commitment and lender's closing timeline;~~
~~—(xxi) Architect's Certification of Fair Housing Requirements; and~~
~~—(xxii) TDHCA Compliance Workshop Certificate.~~
~~—(C) received written notice from the Department that all deficiencies noted during the final construction inspection have been resolved in accordance with Subchapter F of this chapter (relating to Compliance Monitoring);~~
~~(CD) informed the Department of and received written approval for all amendments, extensions, and changes in ownership transfers relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713))~~
~~(E) submitted to the Department the recorded LURA in accordance with subsection (i) of this section;~~
~~(FD) paid all applicable Department fees, including any past due fees;~~
~~(E) met all conditions noted in the Department underwriting report; and~~
~~(FG) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee, or conditionally accepted by the Compliance Committee.~~
(G) received all required environmental clearances and met all mitigation requirements. Developments that received HOME funding from the Department will not be issued IRS Forms(s) 8609 until a certification has been received from the Architect or Engineer of record stating that all clearance and mitigation requests have been met.
(H) completion by the Department of an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.403 Direct Loans

(a) Loan Closing. The loan closing must occur no more than ~~six (6)~~ nine (9) months from the date ~~the Direct Loan Commitment or similar document is executed,~~ which may be extended in accordance with the provisions in this subchapter. In the case where an Award Letter is issued, loan closing must occur no more than nine (9) months from the date the Award Letter is issued, which may be extended for good cause. In preparation for closing any Direct Loan the Development Owner must submit the items described in paragraphs (1) - (10) of this subsection:
(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department

must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(3) Owner/General Contractor agreement and Owner/ ~~a~~Architect agreement;

(4) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(5) if layered with ~~Competitive~~ Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(6) a revised development cost schedule, sources and uses, operating proforma, planned cost categories for the use of Direct Loan funds, updated written financial commitments/term sheets and any additional budget schedules that have changed since the time of application. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of:

(A) environmental clearance;

(B) verification of HUD Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Act and any other relocation requirements that may apply; and

(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement, LURA, ~~HOME~~ Direct Loan contract, Architect and/or licensed engineer certification of understanding to complete environmental mitigation identified in HUD's environmental clearance and by the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliate grants the Department any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the program's requirements. Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1) - (10) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:

(1) except for disbursements requests made for acquisition and closing costs or ~~disbursement~~ requests made for soft costs only, a down-date endorsement to the title policy not older than the Architect's certification date of the last disbursement of funds on AIA form G702 or forty five (45)– sixty (60) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) the Department ~~may~~will require that sufficient funds at least 50 percent of the funds be held back–withheld from the initial disbursement to allow for periodic disbursements as may be necessary to meet federal requirements. For HOME Direct Loans: The initial draw request for the development must be entered no later than ten business days prior to the one year anniversary of the commitment date (as defined in 24 CFR Part 92) or funds may be cancelled in HUD's IDIS system;

(4) if applicable, up to ~~90~~75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match in the form of a formal ~~services~~ contract or commitment with the vendor clearly delineating the donated portion of the contract price, ~~third party invoicing invoices~~ showing the forgiven amount, or other equally verifiable third party documentation prior to release of the final ~~40~~25 percent of funds. If funds are requested on the day of closing, an ~~executed~~ executed ~~services~~ contract specifying the terms of the Match must be provided;

(5) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement of developer fees if it is determined that the Development is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur; (6) expenditures must be allowable and reasonable

in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements. For HOME Direct Loans: Pre-award costs for predevelopment activities, as specified in the loan documents, are allowable only if they were incurred less than 24 months prior to the commitment date (as defined in 24 CFR Part 92) and were associated with the Application Round in which the project was awarded;

(7) table funding requests will not be considered unless:

(A) a ~~Federal Commitment~~ Commitment to a specific local project as defined in 24 CFR Part 92 has been made, if applicable; and

(B) ten (10) days prior to anticipated closing, all table funding draw documentation has been completed and submitted to the Department;

(8) each Development Owner must ~~schedule request a progress inspection with from~~ Department staff once the property passes 25 percent construction completion based on the AIA G702-703. ~~Only up to~~ Up to 50 percent of the HOME award will be released prior to receipt of documentation that the progress inspection has occurred;

(9) ~~include the withholding of 10 percent of the construction contract for retainage. Retainage will be held until at least thirty (30) calendar days after all of the items described in subparagraphs (A)–(D) of this paragraph are received.~~ Following fifty percent construction completion, the remaining HOME funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A)-(G) of this paragraph are received.

(A) ~~completion of construction;~~ Certificate of Substantial Completion (AIA Form G704);

(B) A down date endorsement dated at least 30 calendar days after the date of completion on AIA Form G704.

(~~B~~C) For developments not layered with Housing Tax Credits, a final inspection Closed Final Development Inspection Letter from the Department, after which receipt, a clearance is issued by the Department;

(~~C~~D) For developments subject to the Davis-Bacon labor standards final wage compliance report; Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;

(~~D~~E) receipt of eCertificates of eOccupancy for New Construction or a certification of completion from the Development architect for Rehabilitation; and

(~~E~~F) for final disbursement requests, the Development Owner must submit documentation required for Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, Davis-Bacon Act, Section 3 and any other applicable relocation requirements.

(G) Certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

§10.404 Reserve Accounts

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing

and maintaining a reserve for replacement account for the Development in accordance with Texas Government Code, §2306.186. The reserve account must be established, in accordance with subsections (~~b~~3), (~~e~~4), (~~d~~5), and (~~e~~6) of this section, and maintained through annual deposit, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other workout request, and the Development does not have an existing replacement reserve account sufficient to meet future capital expenditure needs of the Development, the Development Owner will be required to establish and maintain a replacement reserve account regardless of the number of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or

(B) the date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) date on which the Development is demolished;

(C) date on which the Development ceases to be used as a multifamily rental property; or

(D) end of the Affordability Period specified by the LURA or the end of the repayment period of the first lien loan.

(~~b~~3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (a)(2) of this section.

(~~1~~A) For New Construction Developments, not less than \$250 per Unit; or

(~~2~~B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(~~e~~4) For all Developments, a Property Condition Assessment ("PCA") will be conducted at appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA will be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department.

(~~d~~5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the

lesser of the replacement reserve requirements of the First Lien Lender or the requirements in subsection (b3) of this section. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a statement describing:

(4A) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(2B) compliance with the first lien lender requirements outlined in paragraph (A4) of this subsection; and

(3C) if the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements.

(e6) Where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(f7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(4A) a Reserve Account, as described in this section, has not been established for the Development;

(2B) the Department is not a party to the escrow agreement for the Reserve Account, if required;

(3C) money in the Reserve Account:

(A_i) is used for expenses other than necessary repairs, including property taxes or insurance or

(B_{ii}) falls below mandatory deposit levels;

(4D) Development Owner fails to make a required deposit;

(5E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section; or

(6F) Development Owner fails to make necessary repairs in accordance with the third party property condition assessment or §10.621 of this chapter (relating to Property Condition Standards).

(g8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the

Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(4A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer; or

(2B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(h9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. The~~During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner may~~will be considered and restricted as developer fee.

(ic) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of ~~other~~ third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

(jd) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with ~~the program's~~ a written agreement with the Development Owner.

(~~4~~A) The Special Reserve Account is ~~generally~~ funded annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to related parties, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.

(B) All disbursements from the account must be approved by the Department. ~~For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made for related party loans.~~

(C) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. ~~For those financial institutions that are unable to set up the account with Department approval authority for disbursements,~~ a Special Reserve Account Agreement will be drafted, at the Department's discretion, and executed by the Department, Development Owner and financial institution representative.

(~~2~~D) Use of the funds in the Special Reserve Account is determined by a plan that is preapproved by the Department. The ~~owner~~ Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

(ke) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender or syndicator.

§10.405 Amendments and Extensions

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development and for Competitive HTC Applications, and reallocates the credits to other Applicants on the waiting list.

(1) If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.

(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of 3 percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density, other than changes under subparagraph (G) which are the result of a change required by local government, of the Development of at least 5 percent;

(G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;

(H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications); or

(I) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, -the lender and syndicator that includes must submit written confirmation that the Development from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award an allocation of credits would not have been made in the year of allocation ~~because the loss of low-income targeting points would have resulted in the Application not receiving an allocation~~, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee ~~or conditionally accepted by the Compliance Committee~~. LURAs will not be amended if the Development Owner owes fees to the Department. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement ~~or loan modification or other conditions~~ recommended by the Department's Asset ~~Review Committee~~ Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:

(1) the Development Owner must submit a written request accompanied by an amendment fee as identified in §10.901 of this chapter, specifying the requested change, the reason the change is

necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;

(2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;

(3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;

(4) the Development Owner must hold a public hearing at least seven (7) business days before prior to the Board meeting when the Development Owner would like the Board where the Board will to consider their request, the Development Owner must hold a public hearing. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and

(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(c) Amendments to Direct Loan Terms. An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as a loan modification and may require additional approval by the Department's Asset ~~Review Committee~~Management Division pursuant to ~~§1.20 of this title (relating to Asset Review Committee).~~ The Executive Director or authorized designee may approve amendments to loan terms as described in paragraphs (1) - (6) of this subsection prior to closing. Board approval is necessary for any other changes prior to closing. A post closing loan modification that is the result of a Department work out arrangement or other condition recommended by the Department's Asset ~~Review Committee~~Management Division will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff:

(1) extensions of up to twelve (12) months to the loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to six (6) months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;

(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and

(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406 Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule, §60.309 of this title (relating to Debarment). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development, Exceptions include ~~except for~~ changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, —or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an

allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

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

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

(e) Historically Underutilized Business (“HUB”) Organizations. If the ownership transfer request is to replace a HUB within the Development ownership entity, the replacement HUB must meet the ownership requirements stated in the LURA, including material participation. A HUB cannot be replaced by a Non-Profit Organization unless the Board finds there is a good cause and that doing so would further the purposes of Section 2306 more than not allowing such replacement.

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

- (1) a written explanation outlining the reason for the request;
- (2) a list of the names of transferees and Related Parties;
- (3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

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

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

- (1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or
- (2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(~~i~~h) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(~~j~~i) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407 Right of First Refusal

(a) General. This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal (ROFR) to a Qualified ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c) of the Code or tenant organizations. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization without going through the ROFR process outlined in this section. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract until the requirements outlined in this section have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, ownership transfers to a Qualified ROFR Organization during the ROFR period are subject to §1.5 of this title (relating to Previous Participation Reviews). A Qualified ROFR

Organization that wishes to pursue the acquisition of a Development through a ROFR but that is not approved for transfer under the Previous Participation Review, pursuant to §1.5 of this title, may appeal the denial to the Board. Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) ~~the~~ Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to an entity other than a Qualified ROFR Organization, the Development Owner shall provide a notice of intent to the Department and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified ROFR Organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property and the ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met. In the event that the organization is not operating or in existence when the ROFR is to be made, the ROFR must be provided to another Qualified ROFR Organization that is not related to or affiliated with the current Development Owner. Upon review and approval of the notice of intent and denial of offer letter, the Department ~~may~~ will notify the Development Owner in writing ~~that whether~~ whether the ROFR requirement has been satisfied or not. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to another buyer at or above the posted price;

(2) documentation verifying the ROFR offer price of the property;

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified ~~Nonprofit~~ ROFR Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or
(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) the most recent Physical Needs Assessment, pursuant to Texas Government Code, §2306.186(e), conducted by a Third-Party and in the Development Owner's possession;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within thirty (30) calendar days of receipt ~~five (5) business days of receipt~~ of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property ~~for~~ at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ROFR

Organization, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ROFR Organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) ~~and (32)~~ of this subsection:

(1) if the LURA requires a ninety (90) day ROFR posting period, within ninety (90) days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if an bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if an bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to §1.5 of this title, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

(C) if an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ninety (90) day period;

(D) if no bona fide offers are received during the ninety (90) day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted within two (2) years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a tenant organization approved by the Department; and

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department;

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ROFR Organization or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.;

(3) If the LURA does not specify a required ROFR posting timeframe, or, in the sole determination of the Department, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, the Development Owner must adhere to the timeframe described in Texas Government Code, §2306.6726.

(e) Closing the Transaction. The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Carryover Activities Manual, the final settlement statement and final sales contract with all amendments. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.

(2) If the closing price is ~~materially~~ less than the amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the

ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

- (1) the best interests of the residents of the Development;
- (2) the impact the decision would have on other Developments in the Department's portfolio;
- (3) the source of the data used as the basis for the Development Owner's appeal;
- (4) the rights of nonprofits under the ROFR;
- (5) any offers from an eligible nonprofit to purchase the Development; and
- (6) other factors as deemed relevant by the Executive Director.

§10.408 Qualified Contract Requirements

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. Development Owners who received an ~~allocation-award~~ of credits on or after January 1, 2002 are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service. (§2306.185) Unless otherwise stated in the LURA, Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Property does not have any uncorrected issues of noncompliance outside the Corrective Action Period;

(B) there is a Right of First Refusal (ROFR) connected to the Property that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

~~(D) the Development Owner has all of the necessary documentation to submit a Request.~~

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the property (non-TDHCA); and

(D) local code compliance report, TDHCA UPCS Inspection Report, or HUD-certified REAC or UPCS inspection within the last twelve (12) months; and

(E) a copy of the most recent property condition assessment of the property consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e).

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within three months prior to the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent property condition assessment of the property, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price; and,

~~(4) the QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR.~~

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. The Department will assess if the prospective purchaser is a Qualified Purchaser during the Ownership Transfer review process. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

- (1) allow access to the Property and tenant files;
- (2) keep the Department informed of potential purchasers; and
- (3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the

possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be ~~created~~ approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Property.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with ~~implement modified compliance monitoring policies and procedures. Refer to~~ the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to Compliance Monitoring) ~~for more information.~~

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**BOARD ACTION REQUEST
REAL ESTATE ANALYSIS
SEPTEMBER 4, 2014**

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10 Subchapter D concerning Underwriting and Loan Policy, and a proposed new 10 TAC Chapter 10 Subchapter D and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs;

WHEREAS, staff proposes clarifications and changes to the existing rules to better serve the underwriting of applications submitted under various Department programs;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10 Subchapter D Underwriting and Loan Policies and proposed new 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policies together with the preambles presented to this meeting, are approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed repeal and proposed new Underwriting and Loan Policies together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The proposed new rules presented herein include changes resulting from both public and staff input. Nine specific changes are summarized below. Other changes that are minor or clarifying in nature or changed as a result of other rule changes or definitions are not specifically discussed herein.

§10.302 Underwriting Rules and Guidelines

§10.302(d)(1)(A)(ii) clarifies the current practice of using the most current utility allowance information available at the time of underwriting.

- (ii) Net Program Rents. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents for the year that is most current at the time the underwriting begins and uses the most current utility allowance information available.

§10.302(e)(1)(B)(iii) puts forth that for identity of interest transactions where existing buildings will be demolished and therefore of no use in the new development, the acquisition cost used in the development cost analysis for determining feasibility and tax credit sizing will be the appraised value of the land. No value or acquisition cost will be attributed to the existing buildings.

- (iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

§10.302(i)(4) moves the first year DCR requirement of 1.15 from the Long Term Feasibility period [§10.302(i)(5)] to the Initial Feasibility determination.

- (4) Initial Feasibility.
 - (A) The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
 - (B) The first year DCR is below 1.15
- (5) Long Term Feasibility. The Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects a Debt Coverage Ratio below 1.15 or negative cash flow at any time during years two through fifteen.

§10.303 Market Analysis Rules and Guidelines

§10.303(c)(1) simplifies the process for a Market Analyst to remain listed on the approved Market Analyst list maintained by the Department and adds a provision for automatic removal if the Market Analyst is inactive in the Department's programs.

- (1) If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.
 - (A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).
 - (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.

- (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
- (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.
- (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.
- (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

The approved Qualified Market Analyst list will be updated annually on or about October 1st. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

§10.303(c)(3) creates a publication date of the approved Market Analyst list.

- (3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1st.

§10.305. Environmental Site Assessment Rules and Guidelines

§10.305(b)(9) adds a requirement that the ESA include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10 as required by HUD.

§10.306. Property Condition Assessment Guidelines

§10.306(a)(2) adds a requirement that for rehabilitation transactions the PCA provider must evaluate the cost estimates for a property to meet the International Existing Building Code. This requirement is applicable only to transactions where the Department is providing Direct Loan funding.

- (2) **Code Compliance.** The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;

§10.307. Direct Loan Requirements

§10.307(a)(2) adds a requirement that the loan amortization and term be no longer than six (6) months of the shortest amortization and term of any senior debt or a maximum of forty (40) years. This addition maintains the parity of terms requirement with third-party lenders but shortens the Department's exposure preventing repayment structures that could negatively impact the Department's ability to collect on debt.

- (2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.

§10.307(a)(4) clarifies the rule and current practice of structuring the Department's lien position on Direct Loans to be superior to certain other forms of debt.

- (4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for debt that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,

§10.307(b)(1) adds a construction start date pursuant to HUD guidelines and extends the construction completion date to 24 months. Adds a date for requesting the final inspection and extends the repayment start date.

- (b) HOME Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with 24 CFR 92 and as included in the HOME Direct Loan documents:

- (1) Construction must begin no later than twelve (12) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;

Attachment A: Preamble and Proposed repeal of 10 TAC Chapter 10, Subchapter D, concerning 2014 Underwriting and Loan Policies and a proposed new 10 TAC Chapter 10, Subchapter D, concerning 2015 Underwriting and Loan Policies for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes repeal of 10 TAC Chapter 10, Subchapter D, concerning 2014 Underwriting and Loan Policies. The purpose of the repeal is to allow for the adoption of a new Subchapter D. The new Subchapter D is being published concurrently with this proposed repeal.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be to allow for the adoption of new rules to enhance the State’s ability evaluate the feasibility of affordable housing developments proposed to be funded in part with limited state resources. There will not be any economic cost to any individuation required to comply with the repealed sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed repeal affects no other code, article or statute.

§10.301. General Provisions.

§10.302. Underwriting Rules and Guidelines.

§10.303. Market Analysis Rules and Guidelines.

§10.304. Appraisal Rules and Guidelines.

§10.305. Environmental Site Assessment Rules and Guidelines.

§10.306. Property Condition Assessment Guidelines.

§10.307. Direct Loan Requirements.

Attachment B: Preamble and Proposed new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307, Underwriting and Loan Policy for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307. The purpose of the new rule is to provide the Department and participants in the Department’s affordable housing programs guidance in awarding funds to properties that are economically viable and appropriate for their residents.

§10.301. General Provisions. This section provides the overall purpose of the rule and describes an appeal procedure. The rule is necessary for the underwriting review of affordable housing development’s financial feasibility and economic viability that ensures the most efficient allocation of State resources.

§10.302. Underwriting Rules and Guidelines. This section describes the general provisions, underwriting processes and contents of the underwriting reports produced by the Department. Processes for analyzing the feasibility of an affordable housing development’s operating revenue and expenses are described and procedures for development cost estimation are outlined.

§10.303. Market Analysis Rules and Guidelines. This section establishes the organization and contents of market study reports prepared by third-party market analyst professionals. The market study reports are used by the Department to assist in determining demand for the affordable housing developments being considered for funding.

§10.304. Appraisal Rules and Guidelines. This section establishes the organization and contents of appraisal reports prepared by third-party appraisers. The appraisals establish values for land and affordable housing developments and these values are used by the Department in analyzing the cost of a development which impacts feasibility.

§10.305. Environmental Site Assessment Rules and Guidelines. This section establishes the organization and contents of reports that assess the environmental conditions of an affordable housing development site. These reports are prepared by third-party environmental engineers and professionals. The reports help the Department award funding for developments that do not contain environmental conditions that could be harmful to residents.

§10.306. Property Condition Assessment Guidelines. This section establishes the organization and contents of reports that assess the physical condition of an existing affordable housing development that is proposed to be rehabilitated and repaired. The reports are prepared by third-party engineers and professionals. The reports help the Department determine the cost of the rehabilitation for feasibility purposes and to inform the Department regarding the scope of work needed to adequately rehabilitate the property.

§10.307. Direct Loan Requirements. This section discusses the repayment terms and conditions of loans made by the Department to owners of an affordable housing developments. Items such as loan amortization, term, lien position and construction loan requirements are defined.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections

does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will enhance the Department's ability to provide financially sound affordable housing developments. The cost to produce the Environmental Site Assessment report required under §10.305 may increase as a result of the additional scope of work relating to the identification of potentially hazardous explosive activities on-site or in the general area of the site. The incremental cost is not known. There are no other new or additional costs, other than those currently in effect, to persons required to comply with the new rules.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed sections affect no other code, article or statute.

Subchapter D – Underwriting and Loan Policy

§10.301. General Provisions.

(a) **Purpose.** This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this chapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) **Appeals.** Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) **General Provisions.** Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis Report used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. The Report contents will be based solely upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") or Notice of Funds Availability ("NOFA"), as applicable.

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount based on the lesser amount calculated by the program limit method, if applicable, gap/debt coverage ratio ("DCR") method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

- (1) **Program Limit Method.** For Applicants requesting a Housing Credit Allocation, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in §10.3 of this chapter (relating to Definitions). For Applicants requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on the current program rules or NOFA at the time of underwriting.
- (2) **Gap/DCR Method.** This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section.
- (3) **The Amount Requested.** The amount of funds that is requested by the Applicant as reflected in the original Application documentation.

(d) **Operating Feasibility.** The operating financial feasibility of developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from income to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio (“DCR”). The Underwriter characterizes a Development as infeasible from an operational standpoint when the DCR does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may model adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

- (1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program, and market factors. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) **Rental Income.** The Underwriter will independently calculate the Pro Forma Rent for comparison to the Applicant's estimate in the Application.

- (i) **Market Rents.** The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst, and other market data sources.
- (ii) **Net Program Rents.** The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents

for the year that is most current at the time the underwriting begins and uses the most current utility information available. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the EGI to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

- (I) Units must be individually metered for all utility costs to be paid by the tenant.
 - (II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.
 - (III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.
 - (IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the Total Housing Development Cost schedule.
- (iii) **Contract Rents.** The Underwriter reviews rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such increase.
- (B) **Miscellaneous Income.** All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.
- (i) Exceptions must be justified by operating history of existing comparable properties.
 - (ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.
 - (iii) The Applicant's operating expense schedule should reflect an itemized offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.
 - (iv) Collection rates of exceptional fee items will generally be heavily discounted.
 - (v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

- (C) **Vacancy and Collection Loss.** The Underwriter generally uses a vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.
- (D) **Effective Gross Income (“EGI”).** The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5 percent of the EGI calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.
- (2) **Expenses.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the Development type, the size of the Units, and the Applicant's expectations as reflected in their pro forma. Historical stabilized certified financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The Department's Database of properties in the same location or region as the proposed Development also provides heavily relied upon data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's (“IREM”) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority (“PHA”) Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor. Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.
- (A) **General and Administrative Expense (“G&A”)**--Expense for operational accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.
- (B) **Management Fee.** Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of Effective Gross Income as documented in a property management agreement. Typically, 5 percent of the Effective Gross Income is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.
- (C) **Payroll Expense.** Expense for direct on-site staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a comparable development. It does not, however, include direct security payroll or additional tenant services payroll.
- (D) **Repairs and Maintenance Expense.** Expense for repairs and maintenance, Third-Party maintenance contracts and supplies. It should not include capitalized expenses

that would result from major replacements or renovations. Direct payroll for repairs and maintenance activities are included in payroll expense.

- (E) **Utilities Expense.** Utilities expense includes all gas and electric energy expenses paid by the Development.
- (F) **Water, Sewer, and Trash Expense** (“WST”). Includes all water, sewer and trash expenses paid by the Development.
- (G) **Insurance Expense.** Insurance expense includes any insurance for the buildings, contents, and general liability, but not health or workman's compensation insurance.
- (H) **Property Tax.** Includes real property and personal property taxes but not payroll taxes.
 - (i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.
 - (ii) Property tax exemptions or a Proposed Payment In Lieu Of Tax (“PILOT”) agreement must be documented as being reasonably achievable. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.
- (I) **Reserves.** An annual reserve for replacements of future capital expenses and any ongoing operating reserve requirements. The Underwriter includes minimum reserves of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Property Condition Assessment (“PCA”). The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.
- (J) **Other Expenses.** The Underwriter will include other reasonable and documented expenses. These include audit fees, tenant services, security expense and compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.
 - (i) **Tenant Services.** Cost to the Development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant services expenses are considered in calculating the DCR.
 - (ii) **Security Expense.** Contract or direct payroll expense for policing the premises of the Development.
 - (iii) **Compliance Fees.** Include only compliance fees charged by the Department and are considered in calculating the DCR.
 - (iv) **Cable Television Expense.** Includes fees charged directly to the Development Owner to provide cable services to all Units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing

cable television in only the community building should be included in G&A as described in subparagraph (A) of this paragraph.

- (K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report. If the Applicant's total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.
- (3) **Net Operating Income ("NOI").** The difference between the EGI and total operating expenses. If the first year stabilized NOI figure provided by the Applicant is within 5 percent of the NOI calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter will maintain and use his independent calculation of NOI, unless the Applicant's first year stabilized EGI, total expenses, and NOI are each within 5 percent of the Underwriter's estimates.
- (4) **Debt Coverage Ratio.** DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent sources of funds. Loan principal and interest payments are calculated based on the terms indicated in the term sheet(s) for financing submitted in the Application. Unusual or non-traditional financing structures may also be considered.
- (A) **Interest Rate.** The rate documented in the term sheet(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. The Underwriter may adjust the underwritten interest rate based on data collected on similarly structured transactions or rate index history.
- (B) **Amortization Period.** The Department generally requires an amortization of not less than thirty (30) years, and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.
- (C) **Repayment Period.** For purposes of projecting the DCR over a 30-year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).
- (D) **Acceptable Debt Coverage Ratio Range.** Except as set forth in (i) or (ii), below, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35.
- (i) For Developments other than HOPE VI and USDA transactions, if the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments

to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:

- (I) a reduction of the interest rate or an increase in the amortization period for Direct Loans;
 - (II) a reclassification of Direct Loans to reflect grants, if permitted by program rules;
 - (III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
- (ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:
- (I) reclassification of Department funded grants to reflect loans, if permitted by program rules;
 - (II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;
 - (III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
- (iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the gap/DCR method described in subsection (c)(2) of this section.
- (iv) Although adjustments in debt service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.
- (5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma.
- (A) The Underwriter's first year stabilized pro forma is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5 percent of the Underwriter's estimates.
 - (B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for expenses.
 - (C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as determined by the Underwriter.

(e) **Total Housing Development Costs.** The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for acquisition/Rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's is utilized and the Applicant's line item costs are inconsistent with

documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) **Acquisition Costs.** The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) **Excess Land Acquisition.** In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) **Identity of Interest Acquisitions.**

(i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide:

(I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the

applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) **Eligible Basis on Acquisition of Buildings.** Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

- (i) the Applicant's stated eligible building acquisition cost;
- (ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;
- (iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or
- (iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the

Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

- (2) **Off-Site Costs.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.
- (3) **Site Work Costs.** The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.
- (4) **Building Costs.**
 - (A) **New Construction and Reconstruction.** The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard.
 - (B) **Rehabilitation and Adaptive Reuse.**
 - (i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.
 - (ii) The Underwriter will use cost data provided by the PCA. In the case where the PCA is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations.
- (5) **Contingency.** All contingencies identified in the Applicant's project cost schedule, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent limit, as applicable, but in no instance less than 5 percent.
- (6) **Contractor Fee.** Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16 percent on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18 percent on Developments with Hard Costs at \$2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible

contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) **Developer Fee.**

(A) For Housing Tax Credit Developments, the Developer fees and Development Consultant fees included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less.

(B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) **Financing Costs.** Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is not included in Eligible Basis.

(9) **Reserves.** The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing assumptions acceptable to the Underwriter. In no instance will

total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (including transferred replacement reserves for USDA or HUD financed rehabilitation transactions).

- (10) **Other Soft Costs.** For Housing Tax Credit Developments, all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by the Code, but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities and operating reserves. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.

(f) Development Team Capacity and Development Plan.

- (1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:
- (A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in this chapter;
 - (B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;
 - (C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;
 - (D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.
- (2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

- (1) **Floodplains.** The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:
- (A) the Applicant must pursue and receive a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F"); or

- (B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and
- (C) the Development must be designed to comply with the QAP, as proposed.
- (2) **Proximity to Other Developments.** The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.
- (3) **Supportive Housing.** The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:
 - (A) **Operating Income.** The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;
 - (B) **Operating Expenses.** A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter;
 - (C) **DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or
 - (D) **Total Housing Development Costs.** For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) **Work Out Development.** Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the

Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) **Feasibility Conclusion.** An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

- (1) **Gross Capture Rate.** The method for determining the Gross Capture Rate for a Development is defined in §10.303(d)(11)(F) of this chapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:
 - (A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
 - (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
 - (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
 - (D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent.
 - (E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
 - (i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
 - (ii) Existing Housing. The proposed Development is comprised of existing affordable housing which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.
- (2) **Deferred Developer Fee.** Applicants requesting an allocation of tax credits where the estimated deferred Developer Fee, based on the Underwriter's recommended financing structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.
- (3) **Pro Forma Rent.** The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.
- (4) **Initial Feasibility.**
 - (A) The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.

- (B) The first year DCR is below 1.15
- (5) **Long Term Feasibility.** The Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects a Debt Coverage Ratio below 1.15 or negative cash flow at any time during years two through fifteen.
- (6) **Exceptions.** The infeasibility conclusions may be excepted where either of the criteria apply.
 - (A) The requirements in this subsection may be waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.
 - (B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.
 - (i) The Development will receive Project-based Section 8 Rental Assistance for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.
 - (ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
 - (iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units or HOPE VI financed transactions.
 - (iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.
 - (v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. Market Analysis Rules and Guidelines.

(a) **General Provision.** A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications.** A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

- (1) The approved Qualified Market Analyst list will be updated and published annually on or about October 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.
 - (A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).
 - (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.
 - (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
 - (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.
 - (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.
 - (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

- (2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.
 - (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.
 - (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.
- (3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1st.

(d) **Market Analysis Contents.** A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

- (1) **Title Page.** Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
- (2) **Letter of Transmittal.** The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Market Analysis Summary.** Include the Department's Market Analysis Summary exhibit.
- (5) **Assumptions and Limiting Conditions.** Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
- (6) **Identification of the Property.** Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
- (7) **Statement of Ownership.** Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
- (8) **Secondary Market Area.** A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)
 - (A) The SMA will be defined by the Market Analyst with:
 - (i) size based on a base year population of no more than 250,000 people inclusive of the PMA; and
 - (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.
 - (B) The Market Analyst's definition of the SMA must include:
 - (i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;
 - (ii) a complete demographic report for the defined SMA; and
 - (iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order, ZIP codes or places with labels as well as the location of the subject Development and all comparable Developments.
- (9) **Primary Market Area.** All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)
 - (A) The PMA will be defined by the Market Analyst as:

- (i) size based on a base year population of no more than 100,000 people;
 - (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau; and
 - (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or ZIP code, and if the PMA is defined by census tract or ZIP code.
- (B) The Market Analyst's definition of the PMA must include:
- (i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;
 - (ii) a complete demographic report for the defined PMA; and
 - (iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order, ZIP codes or places with labels as well as the location of the subject Development and all comparable Developments.
- (C) **Comparable Units.** Identify Developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:
- (i) development name;
 - (ii) address;
 - (iii) year of construction and year of Rehabilitation, if applicable;
 - (iv) property condition;
 - (v) Target Population;
 - (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
 - (I) monthly rent and Utility Allowance; or
 - (II) sales price with terms, marketing period and date of sale;
 - (vii) description of concessions;
 - (viii) list of unit amenities;
 - (ix) utility structure;
 - (x) list of common amenities; and
 - (xi) for rental developments only, the occupancy and turnover.
- (10) **Market Information.**
- (A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:
- (i) total housing;
 - (ii) rental developments (all multi-family);
 - (iii) Affordable housing;
 - (iv) Comparable Units;
 - (v) Unstabilized Comparable Units; and
 - (vi) proposed Comparable Units.
- (B) **Occupancy.** The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines).

State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

- (i) number of Bedrooms;
 - (ii) quality of construction (class);
 - (iii) Target Population; and
 - (iv) Comparable Units.
- (C) **Absorption.** State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.
- (D) **Demographic Reports.**
- (i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
 - (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
 - (iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
 - (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts or ZIP codes on which the report is based.
- (E) **Demand.** Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.
- (i) **Demographics.** The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for a Qualified Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.
 - (I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
 - (II) Target. If applicable, adjust the household projections for the Qualified Elderly targeted by the proposed Development.
 - (III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
 - (IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:
 - (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for Qualified Elderly households; and
 - (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size

based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

- (V) **Tenure-Appropriate.** Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.
- (ii) **Gross Demand.** Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.
- (iii) **Potential Demand.** Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.
 - (I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
 - (II) For Developments targeting the general population:
 - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
 - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.
 - (III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:
 - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
 - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) Gross Demand includes both renter and owner households.
 - (IV) For Qualified Elderly Developments or Supportive Housing:
 - (-a-) minimum eligible income is based on a 50 percent rent to income ratio; and
 - (-b-) Gross Demand includes all household sizes and both renter and owner households.
- (iv) **Demand from Secondary Market Area:**
 - (I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
 - (II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
 - (III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.
- (v) **Demand from Other Sources:**
 - (I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

- (II) consideration of Demand from Other Sources is at the discretion of the Underwriter;
 - (III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
 - (IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
 - (-a-) documentation of the number of vouchers administered by the local Housing Authority; and
 - (-b-) a complete demographic report for the area in which the vouchers are distributed.
 - (F) **Employment.** Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area.
- (11) **Conclusions.** Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.
- (A) **Unit Mix.** Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.
 - (B) **Rents.** Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.
 - (i) The Department recommends use of HUD Form 92273.
 - (ii) A minimum of three developments must be represented on each attribute adjustment matrix.
 - (iii) Adjustments for concessions must be included, if applicable.
 - (iv) Total adjustments in excess of 15 percent must be supported with additional narrative.
 - (v) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.
 - (C) **Effective Gross Income.** Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.
 - (D) **Demand:**
 - (i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
 - (ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.
 - (E) **Relevant Supply.** The Relevant Supply of proposed and unstabilized Comparable Units includes:
 - (i) the proposed subject Units;

- (ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.
 - (iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
 - (iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.
- (F) **Gross Capture Rate.** The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit Type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §10.302(i) of this chapter for feasibility criteria.
- (G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.
- (H) **Absorption.** Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.
- (I) **Market Impact.** Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)
- (12) **Photographs.** Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.
- (13) **Appendices.** Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.
- (14) **Qualifications.** Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.
- (e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.
- (f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.
- (g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§10.304. Appraisal Rules and Guidelines.

- (a) **General Provision.** An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards

Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications.** The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents.** An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

- (1) **Title Page.** Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.
- (2) **Letter of Transmittal.** Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Disclosure of Competency.** Include appraiser's qualifications, detailing education and experience.
- (5) **Statement of Ownership of the Subject Property.** Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.
- (6) **Property Rights Appraised.** Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.
- (7) **Site/Improvement Description.** Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.
 - (A) **Physical Site Characteristics.** Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.
 - (B) **Floodplain.** Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.
 - (C) **Zoning.** Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or

not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

- (D) **Description of Improvements.** Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.
 - (E) **Environmental Hazards.** It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.
- (8) **Highest and Best Use.** Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.
- (A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.
 - (B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.
- (9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.
- (A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.
 - (i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.
 - (ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.
 - (iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable

sales price for subclauses (I) - (VII) of this clause should be made when applicable.

- (I) Property rights conveyed.
- (II) Financing terms.
- (III) Conditions of sale.
- (IV) Location.
- (V) Highest and best use.
- (VI) Physical characteristics (e.g., topography, size, shape, etc.).
- (VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) **Sales Comparison Approach.** This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) **Sale Price/Unit of Comparison.** The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) **Net Operating Income/Unit of Comparison.** The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) **Income Approach.** This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) **Market Rent Estimate/Comparable Rental Analysis.** This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand

the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

- (ii) **Comparison of Market Rent to Contract Rent.** Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.
 - (iii) **Vacancy/Collection Loss.** Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.
 - (iv) **Expense Analysis.** Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.
 - (v) **Capitalization.** The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.
 - (I) **Direct Capitalization.** The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.
 - (II) **Yield Capitalization (Discounted Cash Flow Analysis).** This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.
- (10) **Value Estimates.** Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.
- (A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.
 - (B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value" inclusive of the value associated with the rental assistance. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

- (C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the restricted rents should be contemplated when deriving the value based on the income approach.
 - (D) For all other existing Developments, the appraisal must include the "as-is" value.
 - (E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.
 - (F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.
- (11) **Marketing Time.** Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.
- (12) **Photographs.** Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.
- (e) **Additional Appraisal Concerns.** The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. Environmental Site Assessment Rules and Guidelines.

(a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

- (1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

- (2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
 - (3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
 - (4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
 - (5) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
 - (6) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements;
 - (7) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;
 - (8) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and
 - (9) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.
- (c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.
- (d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.
- (e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§10.306. Property Condition Assessment Guidelines.

(a) **General Provisions.** The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability

Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:

- (1) **Useful Life Estimates.** For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;
- (2) **Code Compliance.** The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;
- (3) **Program Rules.** The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;
- (4) **Reconciliation of Scope of Work and Costs.** The PCA report must include an analysis, detailed and shown on the Department's PCA Cost Schedule Supplement, that reconciles the scope of work and immediate costs identified in the PCA with the Applicant's scope of work and costs (Hard Costs) as presented on the Applicant's development cost schedule; and
- (5) **Cost Estimates for Repair and Replacement.** It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.
 - (A) **Immediately Necessary Repairs and Replacement.** Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.
 - (B) **Proposed Repair, Replacement, or New Construction.** If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph,

such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

- (C) **Expected Repair and Replacement Over Time.** The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs. The PCA report should also include a statement that the person or company preparing the PCA report will not

materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

§10.307. Direct Loan Requirements.

(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:

- (1) the interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter;
- (2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.
- (3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;
- (4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,
- (5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (C) of this paragraph:
 - (A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or
 - (B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(b) HOME Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with 24 CFR 92 and as included in the HOME Direct Loan documents:

- (1) Construction must begin no later than twelve (12) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within

twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;

- (2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;
- (3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and
- (4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

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BOARD ACTION REQUEST
COMPLIANCE DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC §10.601(b), concerning Compliance Monitoring Objectives and Applicability; §10.607, concerning Reporting Requirements; §10.609(5), concerning Notices to the Department; §10.612, concerning Tenant File Requirements; §10.613, concerning Lease Requirements; §10.614, concerning Utility Allowances; §10.618, concerning Onsite Monitoring; §10.620(b), concerning Monitoring for Non-Profit Participation or HUB Participation; and, §10.624, concerning Events of Noncompliance, and the proposed repeal of 10 TAC §10.610, concerning Tenant Selection Criteria; and, §10.617, concerning Affirmative Marketing Requirements, and the proposed new 10 TAC §10.610, concerning Tenant Selection Criteria; and, §10.617, concerning Affirmative Marketing Requirements, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Board approved new Compliance Monitoring rules which became effective November 28, 2013;

WHEREAS, the Compliance Division has received feedback from owners and managers regarding the need for clarification of certain sections and, in monitoring under the new rules, staff has noted the need for some clarification; and

WHEREAS, with the creation of the Department's Fair Housing Team, staff has identified a need for a more robust and detailed rule to address Tenant Selection Criteria and Affirmative Marketing

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 Chapter 10 §10.601(b), concerning Compliance Monitoring Objectives and Applicability; §10.607, concerning Reporting Requirements; §10.609(5), concerning Notices to the Department; §10.612, concerning Tenant File Requirements; §10.613, concerning Lease Requirements; §10.614, concerning Utility Allowances; §10.618, concerning Onsite Monitoring; §10.620(b), concerning Monitoring for Non-Profit Participation or HUB Participation; and, §10.624, concerning Events of Noncompliance, 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 and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the

Department, to propose the repeal of 10 TAC Chapter 10, §10.610, concerning Tenant Selection Criteria; and, §10.617, concerning Affirmative Marketing Requirements and to propose a new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.610, concerning Tenant Selection Criteria; and, §10.617, concerning Affirmative Marketing Requirements in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

In November of 2013 the Board adopted new Compliance Monitoring rules that reflected a significant re-write of previous rules. As with any re-write of this magnitude, staff, owners and managers have identified some needed tweaks and areas in need of clarification.

In addition, there are two sections of the compliance rule, one section dealing with Affirmative Marketing Requirements, the other section addressing tenant selection criteria that are proposed to be repealed and replaced with new sections. These proposed new sections are the result of the work of the Department's new Fair Housing team and address the Department's ongoing responsibility and commitment to promote Fair Housing and provide Owners on specific guidance on compliance.

Attachment 1. Preamble and amendment to 10 TAC §10.601(b), concerning Compliance Monitoring Objectives and Applicability; §10.607, concerning Reporting Requirements; §10.609(5), concerning Notices to the Department; §10.612, concerning Tenant File Requirements; §10.613, concerning Lease Requirements; §10.614, concerning Utility Allowances; §10.618, concerning Onsite Monitoring; §10.620(b), concerning Monitoring for Non-Profit Participation or HUB Participation; and, §10.624, concerning Events of Noncompliance

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, 10 TAC§10.601(b), concerning Compliance Monitoring Objectives, 0 TAC §10.607, concerning Reporting Requirements, 10 TAC §10.609(5), concerning Notices to the Department, 10 TAC §10.612, concerning Tenant File Requirements, 10 TAC §10.613, concerning Lease Requirements, 10 TAC §10.614, concerning Utility Allowances, 10 TAC §10.618, concerning Onsite Monitoring, 10 TAC §10.620(b), concerning Monitoring for Non-Profit Participation or HUB Participation, and 10 TAC §10.624, concerning Events of Noncompliance. The purpose for each amendment is described below.

10 TAC§10.601(b), concerning Compliance Monitoring Objectives. The purpose of this amendment is to add the Section 811 PRA Program to the eligibly monitoring activities. Please note, only section (b) is being amended, but the rule in its entirety is shown below for context.

10 TAC §10.607, concerning Reporting Requirements. The purpose of this amendment is to align the date by which Owners must sign up to access the Compliance Monitoring and Tracking System (CMTS) with other programmatic deadlines and to bifurcate the financial reporting requirements, handled by the Asset Management Division, from the program reporting requirements handled by the Compliance Division.

10 TAC §10.609(5), concerning Notices to the Department. The purpose of this amendment is to require owners to update the property name in CMTS when it changes and to use the name known to the public. Please note, only paragraph (5) is being amended, but the rule in its entirety is shown below for context.

10 TAC §10.612, concerning Tenant File Requirements. The purpose of this amendment is to clarify when the annual data collection required in paragraph (b)(1) is due and to remove the requirement to complete the Fair Housing Disclosure Notice prescribed for in paragraph (a)(4).

10 TAC §10.613, concerning Lease Requirements. The purpose of this amendment is to remove the amenity notice described subsection (k) and replace the requirement with a brochure that the Department will make available: *A Tenant Rights and Resources Guide for TDHCA Monitored Rental Properties*. This brochure will also include information previously found in the Fair Housing Disclosure Notice. The brochure will be electronic and available for download on the Department’s website and the Owner will be able to customize it with the required amenities and services.

10 TAC §10.614, concerning Utility Allowances. The purpose of this amendment is to provide clarity and guidance regarding common mistakes identified in the utility allowance review process.

10 TAC §10.618, concerning Onsite Monitoring. The purpose of this amendment is to clarify the monitoring schedule for HTC Developments that have completed the 15 year Federal Compliance Period.

10 TAC §10.620(b), concerning Monitoring for Non-Profit Participation or HUB Participation. The purpose of this amendment is to remove the requirement for an Owner to certify to compliance of the Non-Profit and/or HUB requirement in the Annual Owner's Compliance Report (AOCR). This information is no longer included in the AOCR as is often was addressed incorrectly. Furthermore, this provision is now being closely monitored at the time of an onsite review, which is a better tool for ensuring compliance. Please note, only subsection (b) is being amended, but the rule in its entirety is shown below for context.

10 TAC §10.624, concerning Events of Noncompliance. The purpose of this amendment is to add a finding of noncompliance that can be assessed if the Owner fails to maintain accurate and current information in CMTS. The Compliance Division and members of the public rely on this information and, without consequence, it is difficult to ensure owners maintain accurate records.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the amended sections will be improved compliance with federal and state requirements. There will not be any additional new economic cost to individuals required to comply.

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 September 19, 2014, through October 20, 2014 to receive input on the proposed amendment. 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) 475-2330. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

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.

§10.601.Compliance Monitoring Objectives and Applicability.

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

(A) The U. S. Department of Housing and Urban Development (HUD);

- (B) The U. S. Department of the Treasury (Treasury);
- (C) The Internal Revenue Service (the "IRS"); and
- (D) Applicable state laws and rules;
- (2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;
- (3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;
- (4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;
- (5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;
- (6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department's affordable rental programs; and
- (7) To provide a transparent system whereby all interested parties, including tenants, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.
- (b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) – ~~(8)~~ ~~(7)~~ of this subsection:
 - (1) The Housing Tax Credit Program (HTC);
 - (2) The HOME Investment Partnerships Program (HOME);
 - (3) The Tax Exempt Bond Program (Bond);
 - (4) The Housing Trust Fund Program (HTF);
 - (5) The Tax Credit Assistance Program (TCAP);
 - (6) The Tax Credit Exchange Program (Exchange); ~~and~~
 - (7) The Neighborhood Stabilization Program (NSP); ~~and~~
 - (8) Section 811 Project Rental Assistance (PRA) Program.
- (c) There are two key aspects of ongoing monitoring activity, the physical condition of the developments and whether they are being operated in documented compliance with program requirements.
- (d) The results of the Department's monitoring activities will be timely and properly documented.
- (e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws.

§10.607.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: late no later than September 1st of the year following the award. ~~The Department will provide general instruction regarding the electronic transfer of data.~~
 - (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)~~ ~~(d)~~ of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2011. The first report is due April 30, 2013, even if the Development has not yet commenced leasing activities.
- (c) The AOCR is comprised of ~~four~~ five parts:
- (1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. HTC Developments during their Compliance Period will also be required to provide the contact information of the syndicator in the Annual Owner's Compliance Report;
- (2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;
- (3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and,
- ~~(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide and certify the data requested in the Owner's Financial Certification; and~~
- (4) ~~(5)~~ Part ~~D~~ E "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.
- (d) 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) "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data requested in the Annual Owner's Financial Certification.
- (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 10th day of the month.
- (e) ~~(d)~~ Parts A, B, C, and ~~D~~ and ~~E~~ 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) (e) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th

should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

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

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

(i) ~~(h)~~ 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).

§10.609. Notices to the Department.

If any of the events described in paragraphs (1) - (5) of this section occur, written notice must be provided to the Department within the respective timeframes:

(1) Written notice must be provided at least thirty (30) days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership;

(2) Notification must be provided within thirty (30) days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10 percent of the Units are occupied and the date on which 50 percent of the Units are occupied, and notice must occur within ninety (90) days of such dates;

(4) Within thirty (30) days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure; and

(5) Within ten (10) days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, ~~and/or~~ phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's Compliance Monitoring and Tracking System must be updated.

§10.612. Tenant File Requirements.

(a) At the time of program designation as a low-income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural

Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents;

(3) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this chapter (relating to Lease Requirements); and

~~(4) The Department's Fair Housing Disclosure Notice form. This notice must be presented to the household at the time of application for occupancy and must be executed no more than one hundred twenty (120) days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a low income unit on a Development administered by the Department including households transferring within the same Development. If the household is not provided this notice prior to move in or transfer, the Department will consider the event corrected if the Fair Housing Disclosure Notice is provided to the household no more than one hundred twenty (120) days and no less than thirty (30) days prior to the date that the household is legally obligated to provide written notice of their intention to terminate or renew their current lease.~~

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form. Example 612(1): The household moved into the Project on May 15, 2013. The information must be collected within 120 days of May 15th every year thereafter.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the affordability period for all Bond developments and HOME Developments committed funds after August 23, 2013, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original student verification and. ~~This information~~ can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME Developments committed funds after August 23, 2013, an individual does not qualify as a low-income or very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of properties described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the fifteen (15) year Compliance Period;

(B) All Bond developments with less than 100 percent of the units set aside for households with an income less than 50 percent or 60 percent of area median income.

(C) HTF Developments with Market Rate units. However, HTF Developments with other Department administered programs will comply with the requirements of the other program. Example 612(2) (+): If a Development is mixed income HTF and 100 percent low-income HTC, all households must be certified at move in. Then, once a calendar year, the Owner must collect the data required by and in accordance with the paragraphs (1) and (2) of this subsection.

(D) HOME Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME Developments:

(1) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the years of the affordability determined in Example 612(3) (-):

(A) Year 1: May 15, 2001 - May 14, 2002;

(B) Year 2: May 15, 2002 - May 14, 2003;

(C) Year 3: May 15, 2003 - May 14, 2004;

(D) Year 4: May 15, 2004 - May 14, 2005;

(E) Year 5: May 15, 2005 - May 14, 2006;

(F) Year 6: May 15, 2006 - May 14, 2007;

(G) Year 7: May 15, 2007 - May 14, 2008;

(H) Year 8: May 15, 2008 - May 14, 2009;

(I) Year 9: May 15, 2009 - May 14, 2010;

(J) Year 10: May 15, 2010 - May 14, 2011;

(K) Year 11: May 15, 2011 - May 14, 2012; and

(L) Year 12: May 15, 2012 - May 14, 2013.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2006, to May 14, 2007, and between May 15, 2012, and May 14, 2013.

(3) In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds, Example 612(4) (-): a household moved into a HOME unit on June 10, 2010, the household's self certification must be completed by June 10, 2011, and the household must be recertified with source documentation effective June 10, 2012. The Development must use the Department's HOME Program Recertification ~~Income Certification~~ form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self certification that their annual income exceeds the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

§10.613. Lease Requirements.

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

(b) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting low-income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253.

(c) Evictions and terminations of tenancy for other than good cause are prohibited. If a challenge to an eviction or termination of tenancy is related to a reasonable accommodation as defined by 1.204 of this Title (regarding Reasonable Accommodations), a violation of the provision found in subsection (g) of this chapter, or for Developments financed by Direct Loans Title 104(d) of the Housing and Community Development Act of 1974 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Department upon the request of either party will provide an opinion if an Owner has good cause. Otherwise, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons. Challenges for evictions or terminations of tenancy for other reasons must be made by a court of competent jurisdiction or an agreement of the parties in arbitration, and the Department will rely on that determination.

~~(e) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.~~

(d) HTC and Bond Developments must use a lease or lease addendum that requires households to report changes in student status.

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

(f) For HOME and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that, all households at HOME and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355 and §570.487(c))

(g) All Owners shall comply with the lease requirements found in Section 601 of the Violence Against Women Reauthorization Act of 2013 ("VAWA 2013"). In general, owners may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or

repeated violation of a lease term by the victim or threatened victim or as good cause for terminating tenancy. However, in accordance with VAWA 2013, owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

(h) Leasing of HOME units by organizations that, in turn, rent those units to individuals is not permissible for HOME developments committed funding after August 23, 2013.

(i) Housing Tax Credit units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the unit remains vacant for over 60 ~~30~~ days. The unit will be found out of compliance under the finding "Violation of the Unit Vacancy Rule."

(j) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, unit amenities, and services.

(k) A Development Owner shall provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department A Tenant Rights and Resources Guide for TDHCA Monitored Rental Properties, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, unit amenities, and services; and,

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.

~~(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.~~

~~(1) The notice required under subsection (k) of this section must also contain the following:~~

~~(1) "The Texas Department of Housing and Community Affairs (the "Department") is responsible for monitoring this Development for compliance with any land use restriction agreement setting forth required common amenities, unit amenities, or services in connection with programs administered by the Department."; and~~

~~(2) The Department contact information including the mailing address, website and toll free phone number.~~

§10.614. Utility Allowances.

(a) The Department will monitor to determine if Developments comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP, and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company and the amount of the bill is based on an allocation method or "Ratio Utility Billing System" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP, and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, Owners may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than or equal to the allowable limit. For HOME, Bond, HTF, and NSP buildings,

Owners may account for utilities paid directly to the Owner or to a third party billing company in their utility allowance. Where residents are responsible for some or all of the utilities--other than telephone, cable, and internet--Development Owners must use a utility allowance that complies with both this section and the applicable program regulations.

(b) An Owner may not change utility allowance methods, ~~or~~ start or stop charging residents for a utility without prior written approval from the Department. Example 614(1): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. The Department will respond by approving or denying within ninety (90) days of the date on which the party making the request has completed the questionnaire and provided all required supporting documentation and responded to any Department requests for clarification or additional information.

(c) Rural Housing Services (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(d) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings.

(e) HOME units at HOME developments committed funds after August 23, 2013 must use the HUD Utility Schedule Model. The utility allowance will be calculated by the Department on an annual basis and provided to the Owner with a deadline for implementation.

(f) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in paragraphs (1) - (5) of this subsection:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(A) If the PHA publishes different schedules based on building type, the Owner is responsible for implementing the correct schedule based on the Development's building type(s). Example 614(2): The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consist of twenty buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each building type.

(B) In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five (5) years.

(C) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility.

(D) If the individual components of a utility allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total to the next whole dollar. Example 614(3): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The utility allowance in this example is \$54.00.

~~(E)~~ ~~(D)~~ If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

~~(F)~~ ~~(E)~~ In general, if the property is located in an area that does not have a municipal, county, or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the property is located in an area without a clear municipal or county housing authority the Department may permit the use of another housing authority's utility allowance schedule on a case by case basis, unless other conflicting guidance is received from the IRS or HUD. It is the sole responsibility of the Owner to provide the Department with specific rationale to support the request. Prior approval from the Department is required and the owner must obtain approval on an annual basis.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: <http://www.powertochoose.org/> to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(3) The HUD Utility Schedule Model. A utility estimate can be calculated by using the "HUD Utility Schedule Model" that can be found at <http://www.huduser.org/portal/resources/utilmodel.html> (or successor Uniform Resource Locator). Each item on the schedule must be displayed out to two decimal places. The total allowance must be rounded up to the next whole dollar amount. The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, ~~on a Compact Disc or flash drive~~, within the timeline described in subsection (h) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(4) An Energy Consumption Model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location. Use of the Energy Consumption Model is limited to the building's consumption data for the twelve (12) month period ending no earlier than sixty (60) days prior to the beginning of the ninety (90) day period and utility rates used must be no older than the rates in place sixty (60) days prior to the beginning of the ninety (90) day period. In the case of a newly constructed or renovated building with less than twelve (12) months of consumption data, the qualified professional may use consumption data for the twelve (12) month period from units of similar size and construction in the geographic area in which the building containing the units is located. The ninety (90) day period after which the new utility

allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate; and

(5) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(g) For a Development Owner to use the Actual Use Method they must:

(1) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. Example 614(4) ~~(3)~~: A Development has 20 three bedroom/one bath Units, and 80 three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(2) Scan the information in subparagraphs (A) - (E) of this paragraph ~~onto a CD~~ and submit it to the Department no later than the beginning of the ninety (90) day period after which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. Example 614(5) ~~(4)~~: The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009, through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010, for the information to be valid;

(A) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the actual kilowatt usage for each month of the twelve (12) month period for each Unit for which data was obtained, and the rates in place at the time of the submission;

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data;

(C) All documentation obtained from the utility provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(D) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(E) Documentation of the current utility allowance used by the Development.

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subparagraphs (A) - (E) of this paragraph;

(A) If data is obtained for more than 20 percent of all units or there are more than 5 of a Unit Type, all data will be used to calculate the allowance;

(B) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged;

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(D) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(E) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection;

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent; and

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(h) Effective dates. If the Owner uses the methodologies as described in subsection (c), (d), or (f)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least ninety (90) days after the change. For methodologies as described in subsection (f)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. If the Owner fails to post the notice to the residents and submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the utility allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(i) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due ninety (90) days after the change.

(3) HOME Developments committed funds after August 23, 2013. On an annual basis, the Department will calculate the utility allowance using the HUD Utility Schedule Model or other methods allowed in accordance with HUD guidance.

(4) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the update is submitted to the Department, the Owner must post the utility allowance estimate in a common area of the leasing office at the Development. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved utility allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may

require additional support and/or deny the request. If approved, changes to the allowance can be implemented ninety (90) days after the request was submitted to the Department and provided to the residents.

(5) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(j) Combining Methodologies. With the exception of HUD regulated buildings, HOME units at HOME Developments committed funds after August 23, 2013 and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(k) Increases in Utility Allowances for Developments with HOME or NSP funds. Unless otherwise instructed by HUD, the Department will permit owners to implement changes in utility allowance in the same manner as Housing Tax Credit (HTC) Developments.

(l) The Owner shall maintain and make available for inspection by the tenant, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(m) If Owners want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial utility allowance for the Development, no more than one hundred eighty (180) days and no less than ninety (90) days prior to the commencement of leasing activities, the Owner must submit utility allowance documentation for Department approval. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing in accordance with subsection (b) of this section.

(n) The Department reserves the right to outsource to a third party the review and approval of all or any utility allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(o) All requests described in this subsection must be uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field.

§10.618.Onsite Monitoring.

(a) The Department may perform an onsite monitoring review of any low-income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low-income Development. The Department will conduct:

(1) The first review of HTC, Exchange, and TCAP Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review of all Developments, other than those described in subsection (b)(1) of this section, as leasing commences;

(3) During the Federal Compliance Period subsequent ~~Subsequent~~ reviews will be conducted at least once every three (3) years;

(4) After the Federal Compliance Period, developments will be monitored in accordance with §10.623 of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period) ~~Affordability Period~~;

(5) ~~(4)~~ A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) ~~(5)~~ Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least forty-eight (48) hours notice will be provided); and

(7) ~~(6)~~ Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(e) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

§10.620. Monitoring for Non-Profit Participation or HUB Participation.

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm whether this requirement is being met throughout the development phase and ongoing operations of the Development. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB so participating is in good standing with the Texas Comptroller of Public Accounts, Texas Secretary of State and/or IRS as applicable and that it is actually materially participating in a manner that meets the requirements of the IRS. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If an Owner wishes to change the participating non-profit or HUB, prior written approval from the Department is necessary. ~~The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement.~~ In addition, the IRS will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(c) The Department does not enforce partnership agreements or other agreements between third parties or determine fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction or other agreed resolution among the parties.

§10.624.Events of Noncompliance.

Figure: 10 TAC §10.624 lists events for which a multifamily rental development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.624

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements described in §10.617 of this chapter	All Programs	No
Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division	All programs	No
Property has gone through a foreclosure	All programs	Yes
Property is never expected to comply due to failure to report or allow monitoring	All programs	yes

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non-profit issue, No if HUB issue
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC	Yes
Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No
Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc.
Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.405 of this chapter	All programs	No

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes
Casualty Loss	All programs	Yes
Failure to provide pre-onsite documentation	All programs	No
Failure to provide amenity as required by LURA	HTC	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, Exchange and HOME Developments committed funds after August 23, 2013	No
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No
Failure to provide fair housing disclosure notice	All programs	No
Noncompliance with tenant selection requirements described in §10.610 of this subchapter	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household	All programs	Yes
Program unit occupied by nonqualified full-time students	HTC during the Compliance Period, Bond and HOME developments committed funds after August 23, 2013	Yes
Low-Income units used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP and Exchange	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes
Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)	HTC, TCAP Exchange and Bond	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME	NA
Violation of the Integrated Housing Rule	All programs	No
Failure to resolve final construction deficiencies within corrective action period	All programs	No
Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973 and 10 TAC Chapter 1, Subchapter B	HOME, NSP and HTC properties awarded after 2001	No
<u>Noncompliance with the notice to the Department requirements described in §10.609 of this subchapter</u>	<u>All programs</u>	<u>No</u>

Attachment 2: Preamble and proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.610, concerning Tenant Selection Criteria and 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.617, concerning Affirmative Marketing Requirements

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.610, concerning Tenant Selection Criteria and 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.617, concerning Affirmative Marketing Requirements. This repeal is being proposed concurrently with the proposal of new §10.610, concerning Tenant Selection Criteria and §10.617, concerning Affirmative Marketing Requirements which will improve compliance with federal Fair Housing requirements.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, there will be no change in the public benefit anticipated as a result of the repeal. There will be no economic impact to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, through October 20, 2014 to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Laura DeBellas, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 936-7366. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.**

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

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

§10.610 Tenant Selection Criteria

§10.617 Affirmative Marketing Requirements

Attachment 3. Preamble and proposed new 10 TAC Chapter 10, §10.610, concerning Tenant Selection Criteria and 10 TAC §10.617, concerning Affirmative Marketing Requirements

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.610, concerning Tenant Selection Criteria and 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.617, concerning Affirmative Marketing Requirements. The purpose of these new sections is to clarify and improve compliance requirements with federal Fair Housing laws. The repeal of existing §10.610 and §10.617 is proposed concurrent with this proposal.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved compliance with affordable housing program administered by the Department. There will not be any increased economic cost to any individuals required to comply with the new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, through October 20, 2014 to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Laura DeBellis, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 936-7366. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

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

The proposed new sections affect no other code, article, or statute.

§10.610.Tenant Selection Criteria.

(a) Owners must maintain written tenant selection criteria that includes, at a minimum, the following information:

(1) Tenant eligibility requirements that determine an applicant’s basic eligibility for the property, including any lawful resident preferences, restrictions, and requirements;

(2) Procedures the Development uses in taking applications and opening, closing, and selecting applicants from the waitlist, including but not limited to how preferences are applied and procedures for prioritizing applicants needing accessible units in accordance with 24 CFR 8.27 and considering applicants covered by the Violence Against Women Reauthorization Act of 2013;

(3) Applicant screening criteria including what is screened, by whom, and what scores or findings would result in ineligibility;

(4) The manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any;

(5) Occupancy Standards; and

(6) Unit transfer policies.

(b) The criteria cannot:

(1) Include residency preferences unless preferences are due to exceptional circumstances approved by TDHCA prior to initial lease up or at application or the property receives Federal assistance and has received written approval from HUD or USDA for such preference;

(2) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), Section 811 PRA Program, or other federal, state, or local government rental assistance program;

(3) Use a financial or minimum income standard for a household participating in a voucher program that requires the household to have a monthly income of more than 2.5 times the household's share of the total monthly rent amount. However, if a family's share of the rent is \$50 or less, Owners may require a minimum annual income of \$2,500;

(4) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available or require a household to rent a unit that has already been made accessible;

(5) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation or special needs set aside programs;

(6) In accordance with the Violence Against Women Reauthorization Act of 2013, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking;

(7) Prioritize households not residing in the Development over those already residing at the Development in instances in which an existing tenant household is seeking a unit with a lower income restriction than the unit in which they currently reside. (Example: A household residing in a 60% AMI unit is income qualified for a 50% AMI unit and wishes to be placed on the waiting list for a 50% AMI unit. The household should be entered on the waitlist using the same process as households not currently residing in the Development.); and

(8) Require fewer than 2 persons per bedroom for each rental unit unless otherwise directed by local building code or safety regulations; and

(9) Be applied retroactively except under circumstances in which prior criteria violate federal or state law; tenants who already reside in the development at the time new or revised leasing criteria are applied and who are otherwise in good standing under the lease must not receive notices of non-renewal based solely on their failure to meet the new or revised criteria.

(c) The criteria must:

(1) Avoid the use of vague terms such as "elderly," "bad credit," "negative rental history," "poor housekeeping," or "criminal history" unless terms are clearly defined within the criteria made available to applicants;

(2) Provide that the Development will comply with state and federal fair housing and antidiscrimination laws, including but not limited to consideration of reasonable accommodations requested to complete the application process as identified in Chapter 1, Subchapter B of this title;

(3) Provide that reasonable accommodations in the form of waivers of tenant eligibility may be considered where convictions or prior tenancy references can be attributed to a disability or to domestic

violence perpetrated against the applicant; if additional mitigating factors will be considered, include how such decisions will be made and what must be provided for consideration;

(4) Provide that screening criteria will be applied uniformly and in a manner consistent with all applicable law, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules;

(5) Be reasonably related to program eligibility and the applicant's ability to perform obligations under the lease;

(6) For all elderly Developments, list specific age requirements and demonstrate a commitment to operate the Development as Housing for Older Persons as directed under the Housing for Older Persons Act of 1995 as amended;

(7) Provide that specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s); and

(8) Provide an effective date for the tenant selection criteria. Any amendments to the criteria require a new effective date.

(d) Owners of all multifamily developments must also:

(1) Maintain a written waiting list.

(A) The waitlist must be managed as described in the Tenant Selection Criteria;

(B) The waitlist must include a log of all applicants that completed the application process, including any household and demographic information that is typically collected, voucher status, and information pertaining to the specific reasons for which any applicant was denied. The log must be made available to the Department upon request;

(C) Have written waitlist policies and tenant selection criteria available in the leasing office or wherever applications are taken.

(2) Provide any rejected or ineligible applicant/household that completed the application process with a written notification of the grounds for rejection that includes the specific reason for the denial and references the specific leasing criteria upon which the denial is based within seven (7) days of the determination. Rejection letters must include contact information for any third parties that provided the information on which the rejection was based and information on the appeals process if one is used by the property;

(3) Provide in any non-renewal or termination notice as allowed under applicable program rules a specific reason for the termination or non-renewal. The notification must be delivered as required under applicable program rules, must provide that the owner may only enforce the termination of tenancy by judicial action and that the tenant has the right to present a defense in court if the tenant contests the termination or non-renewal, and that any person with a disability has the right to request a reasonable accommodation to better understand or contest the threat of termination or non-renewal. The notification must also include information on the appeals process if one is used by the property.

§10.617. Affirmative Marketing Requirements.

(a) Applicability. Compliance with this section is required for all Developments with five (5) or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. Owners of Developments with five (5) or more total units must affirmatively market their units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or "Affirmative Marketing Plan") to provide for marketing strategies and

documentation of outreach efforts to prospective applicants identified as “least likely to apply.” In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children. All Affirmative Marketing Plans must provide for affirmative marketing to persons with disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. Owners are encouraged to use HUD Form 935.2A, or its updated equivalent, and corresponding worksheets to meet Affirmative Marketing requirements. The Department may make additional forms or tools available for use.

(d) Determination of populations “least likely to apply.” Owners must determine the populations “least likely to apply” (also “identified populations”) using the methods identified in paragraphs (1) – (4) of this subsection. Owners may use the methods in paragraphs (1) and (2) of this subsection if the Development is not occupied, if the Development is in initial lease-up, if the Development is less than 40 total units, or the Owner determines that the demographic data on the tenant households and waiting list for the Development (“Tenant Pool”) is not sufficiently complete to yield an accurate profile of the populations the Development is serving. Except in the cases of populations that must be the subject of affirmative marketing pursuant to LURA requirements and persons with disabilities, any populations that represent less than 1% of the total population of the county or MSA, as applicable, are not required to be considered “least likely to apply.” To assist Owners in identifying least likely to apply populations, the Department shall make the tool described in paragraph (5) of this subsection available to Owners.

(1) New Developments located in Metropolitan Statistical Areas (“MSAs”). The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the entire MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and MSA. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population’s percentage representation in the MSA (i.e. a population is more than 20% underrepresented in the census tract as compared to the MSA as a whole).

(2) New Developments not located in MSAs. The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the county in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and county. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population’s percentage representation in the county (i.e., a population is more than 20% underrepresented in the census tract as compared to the county as a whole).

Example 617(1), County data shows 80% of the population in the County is Non-White Hispanic; the new development’s census tract shows that 40% of the new development’s census tract is Non-White Hispanic. The development must market to the Non-White Hispanic population because the 40% of Non-White Hispanics represented in the census tract shows an underrepresentation of more than 20% (e.g., it is lower than 64%, which is 20% of 80%) when compared with the County percentage (80% x 20% = 16%; 80%-16% = 64%). If the census tract showed evidence of 65% or more Non-White Hispanics in the area, the development would not market to the Non-White Hispanic population.

(3) Established Developments located in MSAs. The Owner must compare the demographic data of the Development’s Tenant Pool to the demographic data of the MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this

section using the percentage each group represents for the tenant pool and MSA. The Owner will identify any population in which the percentage representation in the Tenant Pool is more than 20% less than the same population's percentage representation in the MSA (i.e., a population is more than 20% underrepresented in the tenant pool as compared to the MSA as a whole).

Example 617(2), the Owner's tenant pool shows that 5% of the population in the development is African American and that 8% of the population in the MSA is African American. The development must market to African American populations because the 5% of African Americans represented in the development shows an underrepresentation of more than 20% ($8\% \times 20\% = 1.6\%$; $8\% - 1.6\% = 6.4\%$). If the development showed evidence of 6.4% or more African Americans in the tenant pool, the development would not market to the African American population. In a development with 150 units in this scenario, at least 6.4% or 10 residents must be African American to show that the population is adequately represented and should not be selected as a "least likely to apply" group requiring special outreach and marketing.

(4) Established Developments not located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the county in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and county. The Owner will identify any population in which the percentage representation in the tenant pool is more than 20% less than the same population's percentage representation in the county (i.e., a population is more than 20% underrepresented in the tenant pool as compared to the county as a whole).

(5) The Department will develop and maintain an online tool for performing the comparisons required by paragraphs (1) - (2) of this subsection, and an Owner may rely on analysis required under paragraphs (1) - (2) (but not an analysis made pursuant to subsection (e) of this section) made correctly using this tool. The Department may update the tool more frequently than an Owner is required to review and/or revise their Affirmative Market Plan pursuant to subsection (g) of this section. Provided an Owner is in compliance with subsection (g), an Owner is not required to update their plan as updates to the Department's tool are made available.

(e) Other determinations of "least likely to apply." If the owner identifies other ethnic and/or religious groups that may be underrepresented and chooses to incorporate such group(s) into the Affirmative Marketing Plan, the Owner must perform and document a reasonable process by which the groups were identified.

(f) Marketing and Outreach.

(1) The plan must include special methods of outreach to the "least likely to apply" populations, including identification of specific media and community contacts that actively engage with the identified populations, public gathering spaces in areas where such populations are well represented, and networking through community based organizations that work with members of the identified populations.

(2) Developments must utilize methods of outreach throughout the MSA (for Developments located in an MSA) or county (for Developments not located in an MSA). Efforts can be made beyond these areas at the discretion of the Owner. While these areas may be very large, in many instances outreach in areas located in another county or across town are necessary to effectively reach the identified populations.

(3) Developments must utilize methods of outreach that consider Limited English Proficiency in populations that are least likely to apply. Owners must translate advertisements and other marketing media for use with organizations identified in accordance with paragraph (2) of this subsection.

(4) Development Owners must both allow applicants to fill out applications at off-site locations and submit applications through means other than in-person submission at the Development site or leasing

office (i.e. via mail, email, website form, fax, etc.). Applications must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria. If the development chooses to use an electronic application, prior approval from the Department is required to mitigate fraud, waste and abuse.

(5) Advertisements and/or marketing materials used must include the Fair Housing logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. The contact information must be in English and Spanish, at a minimum.

(g) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations at least six months prior to the anticipated date the first building is to be available for occupancy. As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six (6) months prior to the anticipated date the first building is to be placed in service; and

(2) An Owner must update its Affirmative Market Plan and populations that are least likely to apply at least every two (2) years from the effective date of the current plan.

(h) Biennial Plan Review. The plan must include how, and by whom, data will be collected and evaluated, how often the plan will be re-evaluated, and how the re-evaluation will be completed. The Owner must review demographic data and household characteristics from the Tenant Pool relative to the county or MSA. If any identified population is or remains underrepresented by more than 20%, the Owner should determine whether the percentage of change is greater or less than when the Affirmative Marketing Plan was last evaluated. If, upon review of the Tenant Pool, the Owner determines that there has been no change (including negative change) or only a limited amount of success, the Owner must:

(1) Complete an evaluation of efforts to date (including a review of current advertising, outreach, and networking strategies and what, if any of the strategies used, has been successful) and gather a list of existing and new community resources available for use in revising the current Affirmative Fair Housing Marketing Plan; and

(2) Revise the Affirmative Fair Housing Marketing Plan to include a wider distribution area and/or new strategies for outreach and/or more frequent outreach efforts.

(i) Record keeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(j) Exception to Affirmative Marketing. If the Development has closed its waiting list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under paragraph (g)(1) of this section.

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BOARD ACTION REQUEST
SECTION 811 PRA PROGRAM
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action authorizing staff for the Section 811 PRA Program, to execute all necessary agreements and contracts with Owners of Multifamily Properties, execute agreements with HUD for future funding awards, and make program design adjustments.

RECOMMENDED ACTION

WHEREAS, the Department was awarded \$12 million from the U.S. Department of Housing and Urban Development (HUD) for the Section 811 Project Rental Assistance Demonstration Program on February 12, 2013;

WHEREAS, the Department anticipates executing a Cooperative Agreement which will formalize the administration of those funds between the U.S. Department of Housing and Urban Development (HUD) and the Department for the Section 811 Project Rental Assistance Demonstration Program;

WHEREAS, the Department applied for 2013 Section 811 Project Rental Assistance from HUD;

WHEREAS, the Board on December 12, 2013 gave staff authority to release a Notice of Funding Availability for multifamily properties to apply for Section 811 PRA funds;

WHEREAS, staff anticipates awarding Section 811 PRA funds to eligible multifamily properties through a Notice of Funding Availability, multifamily competitive processes, or other means;

WHEREAS, it is unknown whether the existing program design will result in sufficient respondents to promote program success; and

WHEREAS, staff requests Board authorization to move forward with specific next steps relating to the Section 811 Project Rental Assistance Demonstration Program, including: 1) Executing Section 811 PRA Property Agreements and any other agreements between owners and the Department with regard to participating properties; 2) Executing Section 811 PRA HUD Required Contracts and Documents with those properties; 3) Executing a Cooperative Agreement with HUD if awarded 2013 funds; 4) Executing such related contracts for any newly received 811 funds from HUD; and 5) making any program design changes that may be necessary to maximize likelihood of program success including, but not limited to changes in geographic service areas, populations to be assisted, etc.

NOW, therefore, it is hereby

RESOLVED, the Department is authorized to proceed with executing the Section 811 PRA Property Agreements and other HUD required Section 811 PRA contracts and documents for any and all properties eligible for the Section 811 Project Rental Assistance Demonstration Program conditioned on the Executive Director's approval; and

FURTHER RESOLVED, the Department is authorized to make program design changes to the extent necessary to promote program success;

FURTHER RESOLVED, the Department is authorized to move forward with entering into a Cooperative Agreement with HUD for the 2013 Section 811 Project Rental Assistance Demonstration Program if awarded; and

FURTHER RESOLVED, staff will report quarterly to the Board on agreements executed and program design changes.

BACKGROUND

On February 12, 2013, the U.S. Department of Housing and Urban Development (HUD) announced that TDHCA was one of 13 states selected to participate in the first ever Section 811 Housing for Persons with Disabilities Project Rental Assistance (PRA) Demonstration Program. This new Section 811 PRA Demonstration is designed to assist state housing agencies to expand integrated supportive housing opportunities for people with the most significant and long term disabilities.

The Department anticipates executing a Cooperative Agreement with HUD soon which will serve as the guiding regulations for the program, since HUD has not promulgated rules yet. On December 12, 2013, the Board gave permission for staff to move forward with several aspects of the program, including among other things, releasing a Notice of Funding Availability (NOFA) to solicit interested TDHCA financed multifamily properties to participate in the Section 811 PRA program. Today, staff is asking for permission to enter into any necessary Department and HUD required documents with any and all eligible multifamily properties either selected through the NOFA, multifamily competitive process, or other means, for the Section 811 PRA program. Staff would report to the Board on a quarterly basis those multifamily properties that have executed the required Section 811 PRA program documents.

Section 811 PRA Program Background

TDHCA is a partner with the State's Medicaid agency, the Health and Human Services Commission (HHSC), and four of its other agencies, in the Section 811 PRA Demonstration Program. In this partnership, TDHCA contributes the housing voucher administration and expertise, while the health and human service agencies contribute the provision and coordination of services.

The Section 811 PRA funds provide for approximately five years of rental assistance per property. The Department anticipates this will serve between 300 and 400 households, depending on household size, rents, etc.

Program Concept

Once a property agrees to participate in the Section 811 PRA program, the Multifamily Property will enter into a Property Agreement with the Department committing to, among other things, a set number of units that they will be willing to set aside for use by the target populations. In addition, to participate in the program, the property will be required to execute with the Department documents required by HUD, including a Use Agreement and Rental Assistance Contract. The Health and Human Service agencies have local providers who will identify income-eligible clients (households earning at or below 30% Area Median Family Income) within the target populations that are in a position to transition into a stable housing unit. Those HHSC agencies will educate the client during this process and then refer the client to TDHCA for placement in a unit at a participating property of their choice. If there are no units available, clients will have the option of being placed on a waiting list for one or more of the properties. Upon being reached on a specific waiting list (or at first lease-up if applicable), the client will be notified. Assuming they satisfy any property level screening requirements, the client will then sign a lease, move into their unit at that property, and a portion of monthly payments for the unit will begin being made to the property owner on that client's behalf. Services will be provided by the HHSC agencies for the clients.

Program Areas

Due to the large size of the State of Texas and the primary locations of concentrations of the three chosen populations, TDHCA will focus the agency's resources on seven geographic areas, all of which are Metropolitan Statistical Areas (MSAs) and are geographically dispersed statewide:

1. Austin-Round Rock-San Marcos
2. Brownsville-Harlingen
3. Dallas-Fort Worth-Arlington
4. El Paso
5. Houston-Sugar Land-Baytown
6. McAllen-Edinburg-Mission
7. San Antonio-New Braunfels

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BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on publishing the draft 2015-2019 State of Texas Consolidated Plan

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) requires the submission of a five year Consolidated Plan in accordance with 24 CFR §91.520; and

WHEREAS, the draft 2015–2019 State of Texas Consolidated Plan (Plan) covers four HUD-funded programs: the Community Development Block Grant Program (“CDBG”), the HOME Investment Partnerships Program (“HOME”), the Emergency Solutions Grants Program (“ESG”), and the Housing Opportunities for Persons with AIDS Program (“HOPWA”). The Texas Department of Housing and Community Affairs (“TDHCA” or “the Department”), the Texas Department of Agriculture (“TDA”), and the Texas Department of State Health Services (“DSHS”) have collaborated to complete the draft Plan,

NOW, therefore, it is hereby

RESOLVED, that the draft 2015-2019 State of Texas Consolidated Plan, in the form presented to this meeting, is hereby approved for release for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees are each hereby authorized, empowered, and directed, for and on behalf of the Department, to cause notice of the draft 2015-2019 State of Texas Consolidated Plan to be published in the *Texas Register* and, in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable.

BACKGROUND

The draft 2015–2019 State of Texas Consolidated Plan (“Plan”) covers four programs funded by the U.S. Housing and Urban Development (“HUD”): TDHCA administers the HOME Program and the ESG

Program; TDA administers CDBG; and DSHS administers the HOPWA Program. All three state agencies collaborated to complete the Plan, along with extensive input from other state agencies, stakeholders, advocates, and community members. TDHCA is lead agency for the Plan's development.

If 2014 HUD funding levels remain consistent for 2015-2019, the amount governed by the Plan will be approximately \$97,000,000 yearly. These programs primarily serve extremely low-, low- and moderate-income households. This Plan determines which of HUD's eligible activities will best serve the needs of Texas.

HUD allows a broad range of activities for these programs. The **CDBG** Program provides resources for community development, which can include acquisition of real property; relocation and demolition; rehabilitation of residential and non-residential structures; construction of public facilities and improvements; public services; activities relating to energy conservation and renewable energy resources; and provision of assistance to profit-motivated businesses to carry out economic development and job creation/retention activities. The **HOME** Program is used for single-family and multifamily housing activities, which can include providing home purchase or rehabilitation financing assistance to eligible homeowners and new homebuyers; building or rehabilitating housing for rent or ownership; and tenant-based rental assistance to subsidize rent for low-income persons. The **ESG** Program funds activities that include providing supportive services to homeless individuals and households, emergency shelter/transitional housing, homelessness prevention assistance, and permanent housing to the homeless population. The **HOPWA** Program is dedicated to the housing and supportive services needs of people living with HIV/AIDS and their families, which can include the acquisition, rehabilitation, or new construction of housing units; facility operations; rental assistance; short-term payments to prevent homelessness; case management; substance abuse treatment; mental health treatment; nutritional services; job training and placement assistance; and assistance with daily living.

The Plan consists of five main chapters. The first main chapter is the **Process Chapter**, which describes the public input process. The second main chapter is the **Needs Assessment**, which outlines levels of relative need in the areas of affordable housing, homelessness, special needs, and community development. This information was gathered through consultation with local agencies, public outreach, and demographic and economic datasets. The third main chapter, **Market Analysis**, focuses on economic forces within Texas, as well as the current condition and availability of housing and community development resources in Texas. The Needs Assessment and Market Analysis are research-heavy chapters which form the basis of the fourth main chapter: the **Strategic Plan**. The Strategic Plan details how the State will address its priority needs over a five-year period. The strategies must reflect the current condition of the market, expected availability of funds, and local capacity to administer the Plan. Finally, the Strategic Plan is used as a basis for the fifth main chapter: the **One Year Action Plan** which will be updated once yearly for the next four years until the next Consolidated Plan is required.

The State makes an effort to collaborate with a diverse cross-section of the public in order to meet the various affordable housing needs of Texans. The State also collaborates with government bodies, non-profits, and community and faith-based groups.

Prior to the release of the Plan, many consultations were completed statewide, between April 2014 and September 2014, by TDHCA, DSHS, and TDA. The State conducted consultations in person at workshops, roundtables, planning meetings, and a public hearing. The State also conducted consultations electronically, using an online discussion forum, an online survey, listserv announcements, and emails.

During the consultation process, the State undertook consultations with a wide variety of public, private, and non-profit agencies that provide services including assisted housing, health services, and social and fair housing services, including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, homeless persons, and colonia residents.

The Plan to be approved by the Board for release for public comment can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>. Following the release of the draft 2015-2019 State of Texas Consolidated Plan, a 32-day public comment period will be open from September 12, 2014, through October 13, 2014. During this time, four public hearings will be held around the state in San Antonio, Harlingen, Austin, and Fort Worth. More information on these hearings and their results will be included in the final version of the Plan. The final version of the Plan will be presented to the Board for approval in November and is due to HUD by December 15, 2014.

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BOARD ACTION REQUEST

LEGAL SERVICES

SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Pineywoods Home Team Affordable Housing a/k/a Pineywoods Home Team Affordable Housing, Inc. (HOME 539113 / HTF 859003)

RECOMMENDED ACTION

WHEREAS, Pineywoods Home Team Affordable Housing (HOME 539113 / HTF 859003) ("Property"), owned by Pineywoods Home Team Affordable Housing a/k/a Pineywoods Home Team Affordable Housing, Inc., ("Owner"), has a history of uncorrected compliance findings of the applicable land use restriction agreements and the associated statutory and rule requirements;

WHEREAS, on July 22, 2014, a representative for Owner met with the Administrative Penalty Committee and agreed, subject to Board approval, to enter into an Agreed Final Order calling for a forgivable penalty of \$250.00, to be fully forgiven if all violations are resolved on or before December 31, 2014;

WHEREAS, remaining compliance violations include failure to submit the 2013 Annual Owner's Compliance Report, failure to properly calculate the utility allowance, and gross rent violations that occurred for three units as a result of the utility allowance violation; and

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

NOW, therefore, it is hereby

RESOLVED, that the Agreed Final Order assessing a fully forgivable \$250.00 administrative penalty as outlined above for noncompliance at the Property, 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

Pineywoods Home Team Affordable Housing a/k/a Pineywoods Home Team Affordable Housing, Inc., is the current owner of Pineywoods Home Team Affordable Housing, a low income rental property comprised of 20 scattered-site single-family homes located in Nacogdoches and Angelina County. The Property is subject to two Land Use Restriction Agreements:

1. The HOME Land Use Restriction Agreement ("HOME LURA") signed in 2000 in consideration for an allocation of HOME funds in the amount of \$970,504.
2. The Housing Trust Fund Land Use Restriction Agreement ("HTF LURA") signed in 2000 in consideration for an allocation of Housing Trust Funds in the amount of \$800,000.

Owner defaulted on the HOME and HTF loans and TDHCA initiated nonjudicial foreclosure proceedings during 2012. They declared bankruptcy the day before the scheduled foreclosure sale and members of the TDHCA Asset Review Committee agreed to negotiate with Owner. The loans and LURAs were modified and the Owner's board was completely replaced during bankruptcy. The organization exited bankruptcy in August of 2013 and although loan payments are now current, the new board did not update their contact information in the Department's Compliance Monitoring and Tracking System, nor did they update their information with the Texas Secretary of State. This has caused communication problems and the following compliance violations were referred for an administrative penalty:

1. Failure to submit Annual Owner's Compliance Report for 2013;
2. Failure to properly calculate the utility allowance; and
3. Collecting gross rents that exceed the maximum for units 215, 908, and 1306 as a result of the utility allowance violation.

Representative of the owner met with the Administrative Penalty Committee on July 22, 2014, and agreed to the following terms, some of which are not included in the Agreed Final Order because the requirements have already been fulfilled:

1. A \$250.00 penalty, to be fully forgiven if all compliance violations listed above are resolved on or before December 31, 2014;
2. Ray Morris and one additional employee and/or board member for Owner were required to attend TDHCA Income Eligibility Training in Beaumont on August 13, 2014. Both attended as required.
3. Ray Morris was required to bring utility allowance schedules and tenant files for units 215, 908, and 1306 to the training course so that TDHCA staff could assist with determination of gross rent amounts to be refunded. He brought the required documentation and TDHCA staff was able to provide technical support and calculate gross rent amounts.

Consistent with direction from the Department's Administrative Penalty Committee, a fully forgivable penalty in the amount of \$250.00 is recommended for the Owner.

ENFORCEMENT ACTION AGAINST
PINEYWOODS HOME TEAM
AFFORDABLE HOUSING AKA
PINEYWOODS HOME TEAM
AFFORDABLE HOUSING, INC.
(HOME 539113 / HTF 859003)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 4th day of September, 2014, 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 **PINEYWOODS HOME TEAM AFFORDABLE HOUSING A/K/A PINEYWOODS HOME TEAM AFFORDABLE HOUSING, INC.**, a Texas nonprofit corporation ("Pineywoods" 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 60.

2. On June 30, 2000, TDHCA awarded HOME and Housing Trust Fund ("HTF") program funds to Respondent in the amounts of \$970,504.00 and \$800,000.00, respectively, to build and operate Pineywoods Home Team Affordable Housing ("Property") (HOME 539113 / HTF 859003 / CMTS No. 2653 / LDLD No. 491).

3. Respondent signed a land use restriction agreement for each program (collectively, "LURAs") regarding the Property:
 - a. The HOME Land Use Restriction Agreement ("HOME LURA") was effective June 30, 2000, and filed of record at Volume 1284, Page 65 of the Official Public Records of Real Property of Angelina County, Texas ("Angelina Records") and Volume 01495, Page 0001 of the Official Public Records of Real Property of Nacogdoches County, Texas ("Nacogdoches Records"); as corrected by that Correction of LURA executed on November 8, 2002, and recorded at Volume 1679, Page 209 in the Angelina Records only; as replaced by that Amended and Restated LURA executed on January 21, 2014, and recorded at Document Number 2014-00314164 in the Angelina Records, and Document Number 2014-1169 in the Nacogdoches Records.
 - b. The HTF Land Use Restriction Agreement ("HTF LURA") was effective June 30, 2000, and filed of record at Volume 1284, Page 91 in the Angelina Records, and Volume 01495, Page 00024 in the Nacogdoches Records; as corrected by that Correction of LURA executed on November 8, 2002, and recorded at Volume 1679, Page 205 in the Angelina Records only; as replaced by that Amended and Restated LURA executed on January 29, 2014, and recorded at Document Number 2014-00314163 in the Angelina Records, and Document Number 2014-1168 in the Nacogdoches Records.
4. Respondent is a Texas nonprofit corporation that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

1. On May 13, 2014 and June 20, 2014, TDHCA sent notice that Respondent had failed to timely submit their 2013 Annual Owner's Compliance Report, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report on or before April 30 of each year. All parts remain outstanding.

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.

2. An on-site monitoring review was conducted on May 22, 2013, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a January 6, 2014, corrective action deadline was set, however, no response was received and the following violations remain unresolved:
 - a. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TEX. ADMIN. CODE §10.614 (Utility Allowances), which requires all developments to establish a utility allowance.
 - b. Respondent collected gross rents for units 215, 908, and 1306 that exceeded TDHCA limits as a result of Respondent's failure to properly calculate the utility allowance. TDHCA publishes maximum rent limits annually for each program 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. Exceeding the maximum rent is a violation of 10 TEX. ADMIN. CODE §10.618 (Special Rules Regarding Rents and Rent Limit Violations).
3. The following violations remain outstanding at the time of this order:
 - a. 2013 Annual Owner's Compliance Report violation described in FOF # 1;
 - b. Utility allowance violation described in FOF #2a;
 - c. Gross rent violations for units 215, 908, and 1306, described in FOF #2b;

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. Respondent violated 10 TEX. ADMIN. CODE §10.607 in 2014, by failing to submit Annual Owner's Compliance Report for the years 2013;
4. Respondent violated 10 TEX. ADMIN. CODE §10.618 in 2014, by collecting gross rents that exceeded the applicable limits for units 215, 908, and 1306.
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 TAC §§60.307 and 60.308.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$250.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before December 31, 2014.

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2014.

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 _____, 2014, 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 _____, 2014, 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

Tenant File Instructions

The following must be submitted on or before 12/31/2014:

1. **2013 Annual Owner's Compliance Report ("AOCR") violation:** Submit Parts A, B, C, and D of the 2013 AOCR via the Compliance Monitoring and Tracking System ("CMTS") at <https://pox.tdhca.state.tx.us/aims2/pox>. Training materials regarding this system are available at <http://www.tdhca.state.tx.us/pmcomp/reports.htm>.
2. **Utility Allowance:** Acceptable utility allowance schedules have been submitted and this violation will be considered corrected upon resolution of the gross rent findings, as indicated below.
3. **Gross rent violation for units 215, 908, and 1306:**
 - a. **Unit 215:** Rent was overcharged in the amount of \$478.00 and may be applied to the balance that the household owes the property. The household vacated the unit in October of 2013. To correct the violation, update the move-out disposition form (or form the property is using) to show a reduction in the balance owed to the property by \$478 and submit for review.
 - b. **Unit 908:** Rent was overcharged in the amount of \$179.00 and must be submitted to the applicable Housing Authority since the household was receiving Section 8 rental assistance. To correct, submit a copy of the cancelled check to the Housing Authority or a copy of a money order and submit for review.
 - c. **Unit 1306:** Rent was overcharged in the amount of \$687.00 and may be applied to the balance that the household owes the property. The household vacated the unit in April of 2014. To correct the violation, update the move-out disposition form (or form the property is using) to show a reduction in the balance owed to the property by \$687 and submit for review.

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Application Amendment for Park Manor in Sherman (#05612)

RECOMMENDED ACTION

WHEREAS, Park Manor received a 2005 Determination Notice awarding \$492,922 in 4% Housing Tax Credits to newly construct 196 multifamily units for the elderly in Sherman;

WHEREAS, the Development Owner is requesting approval for a reduction in the number of residential buildings from 29 proposed in its 4% tax credit application to 26 as constructed, with a total of 196 units, as originally committed;

WHEREAS, the Development Owner is requesting approval for the omission and replacement of two common amenities and one unit amenity committed in its 4% tax credit application for purposes of meeting Threshold requirements;

WHEREAS, the changes to the site plan and amenities require Board approval under 10 TAC §10.405(a)(4); and,

WHEREAS, the requested application amendments do not negatively affect the Development or impact the viability of the transaction or affect the amount of tax credits awarded;

NOW, therefore, it is hereby

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

BACKGROUND

Park Manor is a 196-unit elderly apartment property located in Sherman financed with multifamily revenue bonds and 4% housing tax credits. The buildings were placed in service in December 2006. The original general partner was controlled by Outreach Housing Corporation and the original developer was an affiliate of Richard Shaw.

On August 11, 2014, the Development Owner requested approval for a reduction in the number of residential buildings constructed at Park Manor. In its 4% tax credit application the owner proposed to build 29 residential buildings; however, as constructed all 196 units were contained in a total of 26 residential buildings. The number of units, square footage and bedroom mix remains the same as proposed in the original application.

At the same time this amendment was received, the property’s final cost certification was also being reviewed and it was revealed that two of the common amenities committed to in the application for purposes of meeting threshold requirements were not certified by the architect. Likewise, one of the required unit amenities was also not certified. Therefore, while not addressed in the Development Owner’s amendment request letter, the development also requires approval for the omission and replacement of the amenities in question. The 2005 QAP, §49.9(f)(4)(A) required a minimum number of points for the common amenity threshold. For developments with units between 150 and 199, a minimum of 15 points was required and the application committed to the following:

Full perimeter fencing w/controlled gate access	3 points
Community gardens	1 point
Barbecue grills and picnic tables- at least one for every 50 units	1 point
Swimming pool	3 points
Furnished fitness center	2 points
Equipped Business Center or Equipped Computer Learning Center	2 points
Furnished Community room	1 point
Senior Activity Room	2 points
Health Screening Room	1 point
Community Dining Room w/full or warming kitchen	3 points

As reflected above the owner committed to a total of 19 points worth of common amenities. The amenities highlighted were not certified by the architect in the cost certification as having been built. Even with the omission of these two amenities the development would have met the minimum requirement; however, since all amenities reflected above were committed the Development Owner was expected to deliver all amenities. The owner has not proposed substitutes for the amenities omitted.

In addition, the 2005 QAP, §49.9(f)(4)(B) required the development to provide specific unit amenities. All required unit amenities were certified by the architect at cost certification except “All New Construction Units must be built with three networks: One network installed for phone using CAT5e or better wiring; a second network for data installed using CAT5e or better wiring; and a third network for TV services using COAX cable.” The owner has not proposed a substitute for the unit amenity that was not provided.

To date IRS Forms 8609 have not been issued to the development and a Tax Credit Land Use Restriction Agreement (LURA) has not yet been filed to restrict the property. The original tax

credit application stated that 100% of the units would be restricted to tenants with incomes not greater than 60% of Area Median Income for the Sherman-Denison MSA, with rents applicable to that income level. The owner's amendment letter includes a request for the Department to approve a technical change to this requirement. The owner is asking the Department to allow all of the units to continue to have the promised restrictions, but only 20 residential buildings will be reflected as part of the Low Income Housing Tax Credit Program governed by all of the rules and regulations because the other six buildings never met the program requirements as stipulated in a LURA with both the State of Texas and Federal government. The reason for this request is because the development was not able to meet the minimum set aside requirements for purposes of the Low Income Housing Tax Credit Program at initial occupancy and lease up with all buildings. The owner believes, however, that the minimum set aside requirement was met with only 20 of the total 26 buildings. The remaining six buildings will no longer be part of the Low Income Housing Tax Credit Program from the federal perspective but will continue to be subject to the LURA with the State of Texas. This agreement will require that apartments in these six buildings (identified as Building Numbers 10, 12, 14, 17, 18 and 26) to have the same rent and income restrictions as the Housing Tax Credit buildings but violations at these buildings will not be reportable to the IRS for Housing Tax Credit purposes.

Although a Tax Credit LURA has not yet been filed and recorded to date for this property, it normally would have been but for the issues identified in this request. For this reason, the Department has required that the Development Owner follow the same process as would be required for an amendment to the LURA pursuant to 10.405(b) of the 2014 Uniform Multifamily Rules, specifically, to provide public notice and hold a public hearing regarding the proposed changes. The owner held a public hearing on August 18, 2014 and five people attended. No public comment was received at the public hearing.

Staff recommends approval of the amendment request.



600 Congress Avenue, Suite 2200
Austin, Texas 78701-3055
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

August 11, 2014

VIA E.MAIL

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

Re: Request to Amend Tax Credit Application
Park Manor in Sherman, Texas (the "Development")
TDHCA No. 05612

Ladies and Gentlemen:

We represent the investor limited partner in OHC/Park Manor, Ltd. ("Owner") and have been asked to submit this request on Owner's behalf. Owner seeks a change in its original tax credit application, as described below. An amendment fee of \$2500 will be forwarded by our client shortly.

Background Information

The Development is a 196-unit elderly apartment properly developed in 2005-2006. It was financed with multifamily revenue bonds and 4% tax credits. The original general partner was controlled by Outreach Housing Corporation; the investor limited partner is an affiliate of WNC & Associates. The developer was an affiliate of Richard Shaw.

In its 4% tax credit application, Owner suggested the Development would have 29 total residential buildings and that 100% of the 196 units would be reserved for residents at 60% AMFI incomes with corresponding rents. As constructed, it has 26 total residential buildings, with the same square footage and the same unit, bedroom, and bathroom mix. The Development was placed in service in December 2006. TDHCA's determination notice provided for \$492,922 in total tax credits.

When leasing commenced, Provident Management, another affiliate of Richard Shaw, was unable to lease the property up with income-qualified tenants. They proceeded to lease units to over-income tenants. Consequently, six buildings in the Development were unable to qualify for tax credits (the "Non Tax Credit Buildings"); 20 buildings in the Development can qualify for tax credits, and sufficient eligible basis exists in those 20 buildings to support an annual tax credit award of \$322,208. (the "Tax Credit Buildings") Because of these lease up issues and other issues related to Outreach Housing Corporation and Richard Shaw with respect to other properties,

TDHCA was not able to issue Forms 8609 to Owner. Consequently, a tax credit LURA has not been filed to restrict the property. A bond regulatory agreement is in place, restricting 100% of the units to 60% AMFI rents; only 40% of the units are restricted for residents with 60% AMFI incomes.

In 2010, WNC removed Outreach Housing Corporation as general partner and removed Richard Shaw from all aspects of the Development, including termination Provident Management as the management company. Commonwealth Multifamily Housing Corporation, which is a non-profit organization, was admitted as replacement general partner. Since that time, WNC has been attempting to resolve the multitude of operating, compliance and financial issues facing the Development and to employ a workout strategy. To date, WNC has funded \$3,778,628 in equity to Owner in anticipation of receipt of tax credits, and has made approximately \$565,000 of investor loans to Owner, above and beyond its equity obligation.

It is critical for Owner to restructure its debt, as the Development is over-leveraged. After extended unsuccessful negotiation with the bondholder, Owner was placed in Chapter 11 bankruptcy on October 31, 2013. Through the bankruptcy proceedings, the bondholder and WNC have reached an agreement for restructuring that would allow Owner to exit bankruptcy and maintain the affordability of the Development. Under this plan, the bonds will be sold to Dominion. As holder of the bonds, Dominion will modify the payment terms so that payment of the bonds will be limited to Net Cash Flow from the Development, after payment of expenses and maintenance of reserves. Ultimately, Dominion is expected to refund the bonds to effect a refinancing that would be subject to review and approval by TDHCA. Dominion will stipulate that the debt service coverage on the new financing would be a minimum of 1.2 to 1. However, the restructuring plan is contingent upon Owner receiving Forms 8609 in the annual amount of \$322,208, an annual reduction of \$170,714 from the amount originally committed in TDHCA's determination notice. Without this element, foreclosure and elimination of the affordability restrictions is likely. Specifically, if Dominion does not acquire the bonds by October 27, 2014, the bankruptcy court has decreed that the bondholder may proceed with posting foreclosure notices for a November 2014 foreclosure.

Current Development Status

Today, the Development is essentially full. The average annual income of the residents in the Tax Credit Buildings is approximately \$18,450. Ten of the existing tenants have annual incomes less than \$10,000 and additional 62 tenants have annual incomes less than \$20,000. Forty-four of the 52 units located in the Non Tax Credit Buildings are currently occupied by income-qualified tenants with annual average income of \$19,062, with six tenants having incomes less than \$10,000 and an additional 23 tenants with incomes less than \$20,000. The Development has a few over-income tenants in the Non Tax Credit Buildings, but they are all residing on month-to-month leases and have been notified that they may need to vacate. In June 2014, with full occupancy, the Development produced Net Cash Flow of (\$17,257).

Requests

These conditions have led to the following requests:

Request 1: Approve a change in the Development's site plan, acknowledging the change in the total number of residential buildings from 29, promised in the original tax credit application, to 26, as constructed.

Request 2: Maintain the requirement that 100% of the residential units be restricted for residents at 60% AMFI incomes with corresponding rents on all 26

buildings in the Development. However, only the 20 Tax Credit Buildings that were able to initially qualify for the tax credits would be subject to tax credit monitoring.

Request 3: Issue Forms 8609 for the 20 Tax Credit Buildings, with a total annual award of \$322,208, as soon as possible.

Discussion of Request 1

The reduction of the number of buildings on site from 29, as originally promised in the tax credit application, to 26, as constructed, is a non-material amendment because Owner delivered the same number of units, the same square footage, and the same unit and bedroom/bathroom mix as promised. The change in number of buildings did not impact the construction budget in a way that would reduce the total tax credits for which the Development is eligible. The Development was not competitively selected, so there are no changes in points associated with the tax credit application, and all threshold criteria are met. According to Section 10.405(a)(4) of the Rules, material amendments include things like changes in the unit or bedroom/bathroom mix; a reduction of 3% or more in the square footage; a significant modification in architectural design; a change in density of at least 5%; or a change in site acreage of greater than 10%. Without any of these factors present, it would be illogical to say that the change was otherwise a "significant modification."

As a non-material amendment, we request that TDHCA staff approve this change administratively.

Discussion of Request 2

Despite the fact that the 6 Non Tax Credit Buildings failed to qualify for tax credits upon initial lease up, Owner remains committed to retaining their affordability and adhering to the commitment in its tax credit application that 100% of the units would be restricted for people at 60% AMFI with corresponding rents. This request will have virtually no impact on present or future residents (other than those few over-income residents who have already been advised that they may need to vacate). The request will have no impact on the revenue that can be generated by the Development, as Owner already committed to leasing 100% of the units at 60% AMFI rents in the bond regulatory agreement. The request does not impact the amount of tax credits available to other developers. In short, no one benefits significantly from this request, and no one is harmed. However, it does preserve the affordability of these elderly residential units, which are otherwise in jeopardy for foreclosure through the bankruptcy proceeding.

The request to have 20 Tax Credit Buildings, subject to all tax credit compliance and monitoring, and 6 Non Tax Credit Buildings, subject to the same rent and income restrictions as the Tax Credit Buildings, also monitored by TDHCA, can be accomplished in one of two ways:

- TDHCA and Owner could enter into a standard tax credit LURA for the 20 Tax Credit Buildings and a contractual LURA for the 6 Non Tax Credit Buildings; or
- Since TDHCA is also the bond issuer, the bond regulatory agreement so that 100% of the units are restricted for 60% AMFI rents and 60% AMFI incomes, and then TDHCA and Owner could enter into a standard tax credit LURA for the 20 Tax Credit Buildings.

Owner acknowledges that it will be required to pay compliance monitoring fees for all 26 buildings, and TDHCA staff has indicated they should be able to monitor for compliance in this bifurcated manner.

In essence, Owner is not changing anything promised in its tax credit application. Owner promised 196 elderly units at 60% AMFI rents and incomes. They will be delivered. With no changes in the fundamental promises set forth in Owner's tax credit application, we ask you to deem this a non-material amendment, capable of approval at the staff level. However, if you deem Board approval is required, we ask to be heard at the September 4 meeting, for the reasons set forth below.

Discussion of Request 3

As noted above, Owner strives to exit bankruptcy with a restructuring plan that will make the Development financially feasible and the residential units affordable for the long-term. A restructuring plan has been agreed upon by the relevant parties. Resolving the issue created by the lease-up problem and issuing the Forms 8609 is necessary for the planned restructure to move forward. The bankruptcy court requires a \$150,000 deposit for the purchase of the bonds by August 26, 2014, which is expected to be posted by Dominion. If it is not reasonably likely that the requests contained herein can be achieved, Dominion may not proceed with posting the deposit, in which event the court will allow the bondholder to proceed to foreclosure in November, as noted above.

Conclusion

Owner acknowledges that this workout has been exceedingly time-consuming and difficult and sincerely appreciates TDHCA's commitment of time in meetings, inspections, and review. We hope you will respond favorably to the requests submitted. If additional information is required, please feel free to contact me.

Sincerely,



Cynthia L. Bast

cc: David Shafer (*via e.mail*)
Bill Lee (*via e.mail*)

1p

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Amendment for Campanile at Jones Creek in Richmond (#13223)

RECOMMENDED ACTION

WHEREAS, Campanile at Jones Creek received an award of 9% Housing Tax Credits in 2013 to construct 78 new multifamily units in Richmond;

WHEREAS, the Development Owner is requesting approval for changes to the site plan, parking, common areas, number of units and unit plans due to City of Richmond building code requirements resulting in significant modifications of the site plan and reduced square footage of the units and common area;

WHEREAS, the required changes to the site plan and square footage of units and common areas requires Board approval under 10 TAC §10.405(a)(4); and

WHEREAS, the requested changes do not negatively affect the Development or impact the viability of the transaction or affect the amount of tax credits awarded;

NOW, therefore, it is hereby

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

BACKGROUND

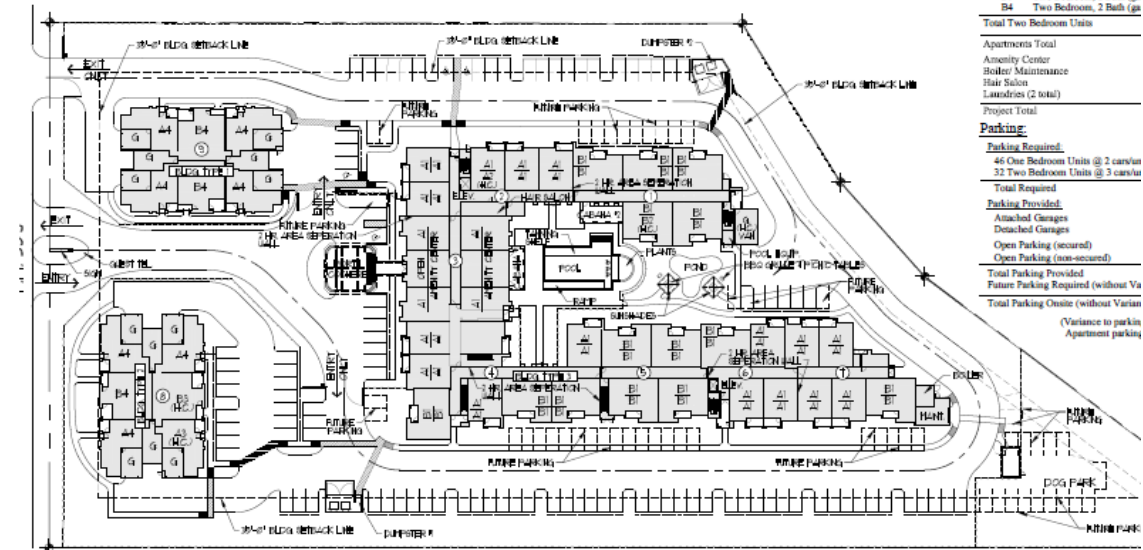
The Development Owner is requesting an amendment to revise the site plan to conform to building codes after discovering that the actual site acreage, upon survey, was 5.531 acres instead of the 5.58 acres presented in application. In addition, due to the decreased acreage and local density requirements of the City of Richmond, one, one-bedroom, market rate unit is being eliminated from the total unit count. Building and unit plans had to be modified to comply with current building codes resulting in a reduction to the net rentable area, an increase to the common area square footage, and the removal of twelve attached garages.

Site Plan

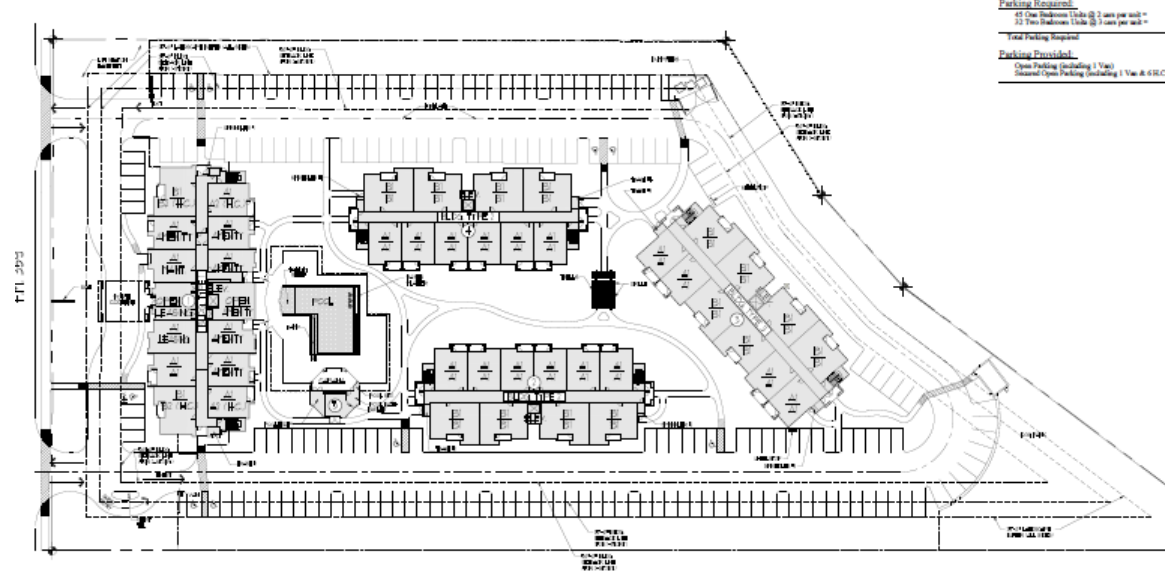
The City of Richmond ("City") required the applicant to change the site plan to conform to their building codes. Variances in the current codes were not allowed to accommodate senior housing.

The original site plan included 2 one-story buildings, 7 two-story buildings (separated by firewalls) with 2 elevators, and 116 parking spaces. The revised site plan that has been preliminarily approved by the City includes 4 two-story buildings (each with one elevator) and 186 parking spaces. Original site plan included 12 attached garages, which have been removed with the revised plan.

Original Site Plan



Proposed Site Plan



Site Acreage and Unit Reduction

The original survey had the site at 5.58 acres. The City density limit for apartments is 14 units/acre, so the original application included 78 total units (46 one-bedroom and 32 two-bedroom) with 6 units designated as market rate units (two one-bedroom and 4 two-bedroom). When the field notes were completed for the preliminary plat, it was discovered that the total

acreage was actually 5.531 acres. Using the 14 unit/acre density limit, the allowable unit count was reduced to 77 units. One market rate, one-bedroom unit was removed. The updated site plan includes 77 units (45 one-bedroom and 32 two-bedroom) with 5 of the units designated as market rate (1 one-bedroom and 4 two-bedroom). There is no change to the original number of tax credit units (72).

Building and Unit Plans

The building plans and unit plans have also been modified to accommodate the new site area. The net rentable area is reduced slightly from 63,237 square feet to 61,103 square feet. This is a decrease of 2,134 square feet or a 3.37% reduction. The common area amenity center is increased from 5,368 square feet to 7,762 square feet. This is an increase of 2,394 square feet or a 44.6% increase. The original building plans included twelve attached garages. The garages have been removed to accommodate the required changes to the building plans and the required number of total parking spaces. Garages are not a scoring item in the 2013 QAP.

Real Estate Analysis has evaluated the changes and the impact to the development costs and has concluded that no negative impact would have resulted to the underwriting of this transaction. The 10% test package has been received by the Department and is currently under review.

Staff recommends approval of the amendment request.



April 9, 2014

Lucy Trevino
Senior Asset Manager
Texas Department of Housing and Community Affairs
221 East 11th
Austin, Texas 78701

Re: Amendment request for TDHCA File # 13223, Campanile at Jones Creek
Richmond, Texas

Ms. Trevino,

Please accept this letter, along with a \$2,500 check, as a formal request for amendment to Campanile at Jones Creek, TDHCA # 13223. The items we are requesting to be amended are the following:

SITE PLAN:

After numerous discussions with the City of Richmond, we have had to change our site plan to conform to their very strict building codes. They do not allow for any differences in building codes for a seniors-only apartment development...nor are they supporting any variances to the current codes to accommodate senior housing. Our original site plan (attached) shows 2 one-story buildings, 7 two-story buildings (separated by firewalls) with 2 elevators and 116 parking spaces. The site plan that has been preliminarily approved by the City of Richmond (attached) shows 4 two-story buildings (each with an elevator) and 186 parking spaces.

UNITS:

The original survey used in the application (attached) shows the site to be 5.58 acres. The City of Richmond density limit for apartments is 14 units/acres. So, our original application showed a total of 78 units (46 one-bedroom and 32 two-bedroom) with 6 units designated as market rate units (2 one-bedroom and 4 two-bedroom). When the field notes were completed (attached) for the preliminary plat, it was discovered the actual acreage of the site was 5.531. Using the 14 unit/acre density limit, the allowable unit count was reduced to 77 units. So, we have removed 1 market rate, one-bedroom unit. The updated site plan shows a total of 77 units (45 one-bedroom and 32 two-bedroom) with 5 of the units designated as market rate (1 one-bedroom and 4 two-bedroom). There has been no change to the 72 tax credit units.

If you have any questions or need more information, please email or give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Les Kilday", is written over a horizontal line.

Les Kilday
Member, General Partner

PROJECT COST SCHEDULE

This Project Cost Schedule must be consistent with the Summary Sources and Uses of Funds Statement. All applications must complete the total

DEVELOPMENT NAME:

Campanile on Briar Forest

TOTAL PROJECT SUMMARY			Expected Payee Taxpayer Identification Number (TIN) ⁴ (and % of cost if item involves multiple payees)
Total	Eligible Basis (If Applicable)		
Development Cost	Acquisition	New/Rehab.	

ACQUISITION

Site acquisition cost	1,579,923		
Existing building acquisition cost			
Closing costs & acq. legal fees			
Other ² : (specify)			
Subtotal Acquisition Cost	1,579,923	0	0

OFF-SITES³

Off-site concrete			
Storm drains & devices			
Water & fire hydrants			
Off-site utilities			
Sewer lateral(s)			
Off-site paving			
Off-site electrical			
Other ² : (specify)			
Subtotal Off-Sites Cost	0	0	0

SITE WORK⁴

Demolition	0		
Rough grading	312,468		296,845
Fine grading	27,066		25,713
On-site concrete	0		0
On-site electrical	55,068		52,315
On-site paving	225,966		214,668
On-site utilities	217,620		206,739
Decorative masonry	0		0
Bumper stops, striping & signs	2,184		2,184
Landscaping	173,000		173,000
Pool and decking	102,000		102,000
Athletic court(s), playground(s)	65,000		65,000
Fencing	45,708		45,708
Other ² : (specify)			
Subtotal Site Work Cost	1,226,080	0	1,184,171

15,923

DIRECT CONSTRUCTION COSTS*:

HARD COSTS

Concrete	385,750		385,750
woods and plastics	679,550		679,550
Masonry/Lath&plaster	297,000		297,000
Metals	85,810		85,810
Carpentry	393,900		393,900
Waterproofing	88,000		88,000
Insulation	45,000		45,000
Roofing	165,000		165,000
Equipment	121,000		121,000
Electrical	648,000		648,000

TOTAL PROJECT SUMMARY			Expected Payee Taxpayer Identification Number (TIN) ¹ (and % of cost if item involves multiple payees)
Total	Eligible Basis (If Applicable)		
Development Cost	Acquisition	New/Rehab.	

DIRECT CONSTRUCTION COSTS (Continued):

Plumbing	295,000		295,000
HVAC	210,000		210,000
Doors	222,000		222,000
Drywall	350,000		350,000
Furnishings	100,000		100,000
Finishes	282,000		282,000
Specialties	128,000		128,000
Elevator	79,800		79,800
Builders Risk	23,556		23,556
Fire Sprinkler	72,000		72,000
General Liability Insurance	15,000		0
Subtotal Hard Costs	4,686,366	0	4,671,366

OTHER CONSTRUCTION COSTS

General requirements (<6%)	354,747		351,332
Field supervision (within GR limit)			0
Contractor overhead (<2%)	118,249		117,111
G & A Field (within overhead limit)			0
Contractor profit (<6%)	354,747		351,332
Contingency	295,622		219,583
Other ² : (specify)			0
Subtotal Direct Const. Costs	1,123,365	0	1,039,358

INDIRECT CONSTRUCTION COSTS⁴

Architectural - Design fees	78,000		78,000
Architectural - Supervision fees	15,000		15,000
Engineering fees	69,108		69,108
Housing consultant fees ⁵	0		0
Real estate attorney/other legal fees	50,000		37,500
Accounting fees	10,500		10,500
Impact Fees	120,000		120,000
Building permits & related costs	24,500		24,500
Appraisal	4,500		4,500
Market analysis	7,500		7,500
Environmental assessment	2,250		2,250
Soils report	6,500		6,500
Survey	1,500		1,500
Marketing	50,000		0

TOTAL PROJECT SUMMARY			Expected Payee Taxpayer Identification Number (TIN) ¹ (and % of cost if item involves multiple payees)
Total	Eligible Basis (If Applicable)		
Development Cost	Acquisition	New/Rehab.	

INDIRECT CONSTRUCTION COSTS (Continued)

Hazard & liability insurance	32,000		0	Perm Ins
Real property taxes	47,775		47,775	
Personal property taxes	0		0	
Tenant relocation expenses	0		0	
Soft Cost Contingency	37,000		37,000	
Subtotal Indirect Const. Cost	556,133	0	461,833	

DEVELOPER FEES⁴

General & administrative	456,651		456,651	
Profit or fee	684,977		684,977	
Subtotal Developer's Fees	1,141,628	0	1,141,628	

FINANCING:

CONSTRUCTION LOAN(S)⁴

Interest	219,375		131,625	
Loan origination fees	39,000		11,700	
Title & recording fees	70,000		59,500	
Closing costs & legal fees	60,000		39,000	
Inspection fees	12,500		12,500	
Credit Report	0		0	
Discount Points			0	
Other ² : (specify)	0		0	

PERMANENT LOAN(S)

Loan origination fees	24,000			
Title & recording fees	5,000			
Closing costs & legal	0			
Bond premium	0			
Credit report				
Discount points				
Credit enhancement fees				
Prepaid MIP				
Conversion Fee	10,000			

BRIDGE LOAN(S)

Interest	0		0	
Loan origination fees	0		0	
Title & recording fees	0		0	
Closing costs & legal fees	0		0	
Other ² : (specify)	0		0	

OTHER FINANCING COSTS⁴

Tax credit fees	38,660			
Tax and/or bond counsel	0			
Payment bonds	0			
Performance bonds			0	
Credit enhancement fees			0	
Mortgage insurance premiums				
Cost of underwriting & issuance				
Syndication organizational cost				
Tax opinion	0			
Other ² : (specify)			0	
Subtotal Financing Cost	478,535	0	254,325	

TOTAL PROJECT SUMMARY		
Total	Eligible Basis (If Applicable)	
Development Cost	Acquisition	New/Rehab.

Expected Payee Taxpayer
 Identification Number (TIN)⁴
 (and % of cost if item involves multiple payees)

RESERVES

Rent-up	100,000		
Operating	250,000		
Replacement	19,250		
Escrows			
Subtotal Reserves	369,250	0	0

TOTAL DEVELOPMENT COSTS⁶

	11,161,279	0	8,752,481
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- Commercial Space Costs⁷

TOTAL RESIDENTIAL COSTS

	11,161,279		
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For Low Income Housing Tax Credits Only

Deduct From Basis:

Fed. grant proceeds used to finance costs in eligible basis
 Fed. B.M.R. loans used to finance costs in eligible basis
 Non-qualified non-recourse financing
 Non-qualified portion of higher quality units (42.(d)(5))
 Historic Credits (residential portion only)

Total Eligible Basis	0	8,752,481
High Cost Area Adjustment (100% or 130%)		130%
Total Adjusted Basis	0	11,378,225
Applicable Fraction ⁸		93.51%
Total Qualified Basis	10,639,379	10,639,379
Applicable Percentage ⁹		9.00%
Owner's Requested Credits	890,000	957,544

SUMMARY SOURCES AND USES OF FUNDS

SOURCE OF FUNDS

SOURCE #		PRIORITY OF LIEN	CONSTRUCTION OR REHAB STAGE	PERMANENT LOAN STAGE	FINANCING PARTICIPANTS
1	Conventional Loan	1	\$ 7,800,000	\$ 2,400,000	
2	Conventional Loan/FHA				
3	Conventional Loan/Letter of Credit				
4	TCAP		\$ -	\$ -	
5	Housing Trust Fund				
6	CDBG				
7	Mortgage		\$ -	\$ -	
8	LIHTC Syndication Proceeds		\$ 2,135,787	\$ 8,543,146	\$0.96
9	Historic Tax Credit Syndication Proceeds				
10	USDA/ TXRD Loan(s)				
11	Other Federal Loan or Grant				
12	Other State Loan or Grant				
13	Local Government Loan or Grant		\$ 290,000	\$ -	Fort Bend HFC
14	Private Loan or Grant		\$ -	\$ -	
15	Cash Equity		\$ -	\$ -	
16	In-Kind Equity/Deferred Developer Fee		\$ 935,492	\$ 218,133	19.11%
TOTAL SOURCES OF FUNDS			\$ 11,161,279	\$ 11,161,279	

USES OF FUNDS

	DESCRIPTION	CONSTRUCTION OR REHAB STAGE	PERMANENT LOAN STAGE	EXCLUSIVE USE FINANCING PARTICIPANT ¹
1	Land Acquisition	\$ 1,579,923	\$ 1,579,923	site
2	Existing Building Acquisition		\$ -	
3	Off-Site Construction Cost		\$ -	
4	Sitework Construction Cost	\$ 1,226,080	\$ 1,226,080	\$ 91,374.17
5	Hard Construction or Rehabilitation Cost	\$ 4,686,366	\$ 4,686,366	76.70
6	Contractor's General Requirements	\$ 354,747	\$ 354,747	115.15
7	Contractor's Overhead	\$ 118,249	\$ 118,249	
8	Contractor's Profit	\$ 354,747	\$ 354,747	
9	Construction Contingency	\$ 295,622	\$ 295,622	
10	Indirect Construction Costs	\$ 556,133	\$ 556,133	
11	Developer's Fees	\$ 1,141,628	\$ 1,141,628	
12	Interim Financing Cost	\$ 400,875	\$ 400,875	
13	Permanent Financing Cost	\$ 39,000	\$ 39,000	
14	Other Financing Costs	\$ 38,660	\$ 38,660	
15	Reserves	\$ 369,250	\$ 369,250	
16	Other (describe):		\$ -	
TOTAL USES OF FUNDS		\$ 11,161,279	\$ 11,161,279	

RENT SCHEDULE (Required for All Rental Development Projects)

The rent and utility limits available at the time the application is submitted should be used to complete this form. Gross Rent cannot exceed the HUD maximum rent limits. The unit mix and net rentable square footages should be consistent with the "Populations Served" section of the application, site plan and architectural drawings. Unit types should be entered from smallest to largest based on "# of Bedrooms", then within the same "# of Bedrooms" from lowest to highest "Tenant Paid Rent/Unit".

"Type of Unit" designation should be one or more of the following based on the unit's rent restrictions: Tax Credit (TC50%) or (TC60%), HOME High (HH) or Low (LH), Housing Trust Fund (HTF), 501 (c) (3) Mortgage Revenue Bond (MRB), Community Development Block Grant (CDBG), Other (OT) (describe any "Other" restrictions on an attached sheet). For units funded under more than one program, the "Income Level Served" should be the most restrictive, for example a LH and

Type of Unit	Income Level Served	# of Units (A)	# of Bed rooms	# of Baths	Unit Size (Net Rentable Sq. Ft.) (B)	Total Net Rentable Sq. Ft. (A) x (B)	Gross Rent (C)	Tenant Paid Utility Allow. (D)	Tenant Paid Rent/ Unit (C) - (D) = (E)	Total Monthly Rent (A) x (E)
	TC30%	6	1.0	1.0	705	4,230	372	56	316	1,896
	TC50%	19	1.0	1.0	705	13,395	621	56	565	10,735
	TC50%	1	1.0	1.0	705	705	621	56	565	565
	TC60%	12	1.0	1.0	705	8,460	745	56	689	8,268
	TC60%	6	1.0	1.0	705	4,230	745	56	689	4,134
	TC60%	0	1.0	1.0	705	0	745	56	689	-
	TC30%	2	2.0	2.0	918	1,836	447	74	373	746
	TC50%	9	2.0	2.0	918	8,262	745	74	671	6,039
	TC60%	17	2.0	2.0	918	15,606	894	74	820	13,940
	TC60%	0	2.0	2.0	918	0	894	74	820	-
										-
										-
										-
Rent Restricted Total		72				56,724				46,323
Market Rate		1	1	1	705	705			800	800
Market Rate		0	1	1	705	0			800	-
Market Rate		4	2	2	918	3,672			950	3,800
Market Rate										-
Market Rate										-
Market Rate						0				-
Market Rate Total		5				4,377				4,600
Employee/Owner Occupied¹						0				-
Total Units		77				61,101				50,923
+ Non Rental Income Source #1			10	per unit/month for: Application Fees						770
+ Non Rental Income Source #2			0	per unit/month for: Cable TV						-
+ Non Rental Income Source #3			0	per unit/month for: Det Garages / Storage Lockers						-
= POTENTIAL GROSS MONTHLY INCOME										51,693
- Provision for Vacancy & Collection Loss							% of Potential Gross Income:	7.50%		3,877
- Rental Concessions										
= EFFECTIVE GROSS MONTHLY INCOME										47,816
x 12 = EFFECTIVE GROSS ANNUAL INCOME										573,792

ANNUAL OPERATING EXPENSES			
General & Administrative Expenses			
Accounting	\$	8,000.00	
Advertising	\$	3,800.00	
Legal fees	\$	1,500.00	
Leased equipment	\$	2,900.00	
Postage & office supplies	\$	2,500.00	
Telephone	\$	7,000.00	
Other office expenses	\$		
Supportive service contract fees	\$	9,000.00	
Compliance fees	\$	3,120.00	
Security	\$	2,000.00	
Miscellaneous Describe: _____	\$	-	
Total General & Administrative Expenses:			\$ 39,820.00
Management Fees: _____	Percent of Effective Gross Income:	5 %	\$ 28,689.62
Payroll, Payroll Tax & Employee Benefits			
Management	\$	64,000.00	
Maintenance	\$	31,600.00	
Other Describe: _____ Payroll Burden	\$	8,604.00	
Total Payroll, Payroll Tax & Employee Benefits:			\$ 104,204.00
Repairs & Maintenance			
Elevator	\$	9,000.00	
Exterminating	\$	1,500.00	
Grounds	\$	13,500.00	
Make-ready	\$	8,250.00	
Repairs	\$	9,000.00	
Pool	\$	3,000.00	
Miscellaneous Describe: _____	\$	-	
Other Describe: _____ maint and janitorial supplies	\$	2,500.00	
Total Repairs & Maintenance:			\$ 46,750.00
Utilities (Enter project owner expense)			
Electric	\$	15,900.00	
Natural gas	\$	6,700.00	
Garbage/trash	\$	6,500.00	
Water & sewer	\$	17,850.00	
Cable TV	\$		
Other, Describe: _____	\$		
Total Utilities:			\$ 46,950.00
Annual Property Insurance: _____	Rate per net rentable square foot: \$	0.4	\$ 24,440.40
Property Taxes:			
Assessed Value:	\$	1,925,000	
Tax Rate per \$100 of Assessment:	\$	2.45	
Annual Property Taxes:	\$	47,162.50	
Payments in Lieu of Taxes:	\$		
Other Taxes: Describe: _____	\$	-	
Total Property Taxes:			\$ 47,162.50
Reserve for Replacements: _____	Reserves per unit per month: \$	20.8333	\$ 19,250.00
Other Expenses: Describe: _____			\$ -
TOTAL ANNUAL EXPENSES	Expense per unit: \$ \$	4,639.82	\$ 357,266.52
NET OPERATING INCOME (before debt service)			\$ 216,526
ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.2275	\$ 176,391
NET CASH FLOW			\$ 40,134.72

RENTAL HOUSING OPERATING PROFORMA

For rental projects, a proforma matching the term of the low income restriction the project will be subject to is required. The proforma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of rental income and expenses) and include principal and interest debt service after net operating income is determined. The proforma can be shown in five year increments after the first five years. The Department currently considers annual growth rate to be 2% for income and 3% for expenses to be a reasonably conservative estimate for future growth rates. Written explanation for any deviations from this growth rate or for assumptions other than straight-line growth made during the proforma period should be attached to the proforma.

30 YEAR OPERATING PROFORMA

INCOME	RENT-UP PER. # OF MOs. ___	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30
		POTENTIAL GROSS ANNUAL RENTAL INCOME		\$611,076	\$623,298	\$635,763	\$648,479	\$661,448	\$730,292	\$806,302	\$890,222
Secondary Income		9,240	9,425	9,613	9,806	10,002	\$11,043	12,192	13,461	14,862	16,409
POTENTIAL GROSS ANNUAL INCOME		\$620,316	\$632,722	\$645,377	\$658,284	\$671,450	\$741,335	\$818,494	\$903,683	\$997,739	\$1,101,585
Provision for Vacancy & Collection Loss (7.5%)		(46,524)	(47,454)	(48,403)	(49,371)	(50,359)	(55,600)	(61,387)	(67,776)	(74,830)	(82,619)
Rental Concessions											
EFFECTIVE GROSS ANNUAL INCOME		\$573,792	\$585,268	\$596,974	\$608,913	\$621,091	\$685,735	\$757,107	\$835,907	\$922,909	\$1,018,966
EXPENSES											
General & Administrative Expenses		\$ 39,820	\$41,015	\$42,245	\$43,512	\$44,818	\$51,956	\$60,231	\$69,825	\$80,946	\$93,838
Management Fee		\$ 28,690	29,550	30,437	31,350	32,290	37,433	43,396	50,307	58,320	67,609
Payroll, Payroll Tax & Employee Benefits		\$ 104,204	107,330	110,550	113,867	117,283	135,963	157,618	182,722	211,825	245,564
Repairs & Maintenance		\$ 46,750	48,153	49,597	51,085	52,618	60,998	70,714	81,976	95,033	110,169
Electric & Gas Utilities		\$ 22,600	23,278	23,976	24,696	25,436	29,488	34,185	39,629	45,941	53,258
Water, Sewer & Trash Utilities		\$ 24,350	25,081	25,833	26,608	27,406	31,771	36,832	42,698	49,499	57,382
Annual Property Insurance Premiums		\$ 24,440	25,174	25,929	26,707	27,508	31,889	36,968	42,856	49,682	57,595
Property Tax		\$ 47,163	48,577	50,035	51,536	53,082	61,536	71,338	82,700	95,872	111,142
Reserve for Replacements		\$ 19,250	19,828	20,422	21,035	21,666	25,117	29,117	33,755	39,131	45,364
Other Expenses:		\$ -									
TOTAL ANNUAL EXPENSES		\$357,267	\$367,985	\$379,024	\$390,395	\$402,107	\$466,152	\$540,398	\$626,469	\$726,249	\$841,922
NET OPERATING INCOME		\$216,526	\$217,284	\$217,949	\$218,518	\$218,985	\$219,583	\$216,709	\$209,438	\$196,660	\$177,044
DEBT SERVICING											
First Deed of Trust Annual Loan Payment		\$176,391	\$176,391	\$176,391	\$176,391	\$176,391	\$176,391	\$176,391	\$176,391	\$176,391	\$176,391
Second Deed of Trust Annual Loan Payment											
Third Deed of Trust Annual Loan Payment											
Other Annual Required Payment:											
NET CASH FLOW		\$40,135	\$40,893	\$41,558	\$42,127	\$42,594	\$43,192	\$40,318	\$33,047	\$20,269	\$653
Debt Coverage Ratio		1.23	1.23	1.24	1.24	1.24	1.24	1.23	1.19	1.11	1.00

Original Site Plan

PROJECT SUMMARY:

Apartments:

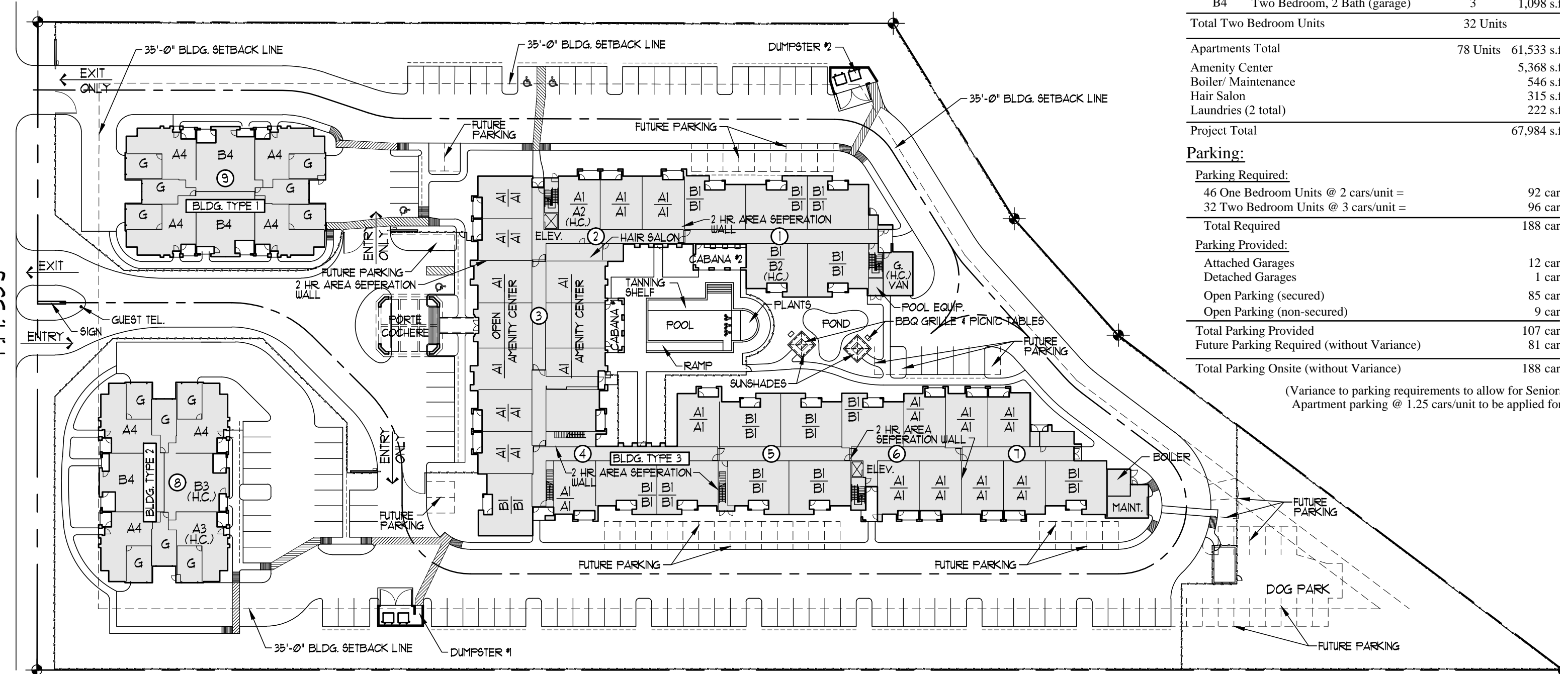
Type	Description	Qty.	Area
A1	One Bedroom, 1 Bath	37	705 s.f.
A2	One Bedroom, 1 Bath (H.C.)	1	706 s.f.
A3	One Bedroom, 1 Bath (garage, H.C.)	1	813 s.f.
A4	One Bedroom, 1 Bath (garage)	7	791 s.f.
Total One Bedroom Units		46 Units	
B1	Two Bedroom, 2 Bath	27	918 s.f.
B2	Two Bedroom, 2 Bath (H.C.)	1	918 s.f.
B3	Two Bedroom, 2 Bath (garage, H.C.)	1	1,098 s.f.
B4	Two Bedroom, 2 Bath (garage)	3	1,098 s.f.
Total Two Bedroom Units		32 Units	

Apartments Total	78 Units	61,533 s.f.
Amenity Center		5,368 s.f.
Boiler/ Maintenance		546 s.f.
Hair Salon		315 s.f.
Laundries (2 total)		222 s.f.
Project Total		67,984 s.f.

Parking:

Parking Required:		
46 One Bedroom Units @ 2 cars/unit =		92 car
32 Two Bedroom Units @ 3 cars/unit =		96 car
Total Required		188 car
Parking Provided:		
Attached Garages		12 car
Detached Garages		1 car
Open Parking (secured)		85 car
Open Parking (non-secured)		9 car
Total Parking Provided		107 car
Future Parking Required (without Variance)		81 car
Total Parking Onsite (without Variance)		188 car

(Variance to parking requirements to allow for Senior Apartment parking @ 1.25 cars/unit to be applied for)



SITE PLAN

Campanile At Jones Creek
Mucasey & Associates, Architects



PROJECT SUMMARY:

Apartments:

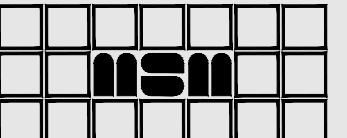
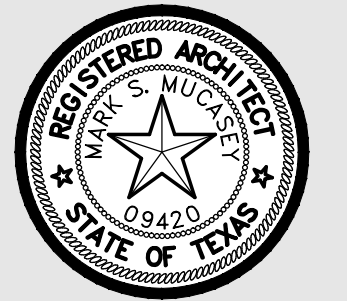
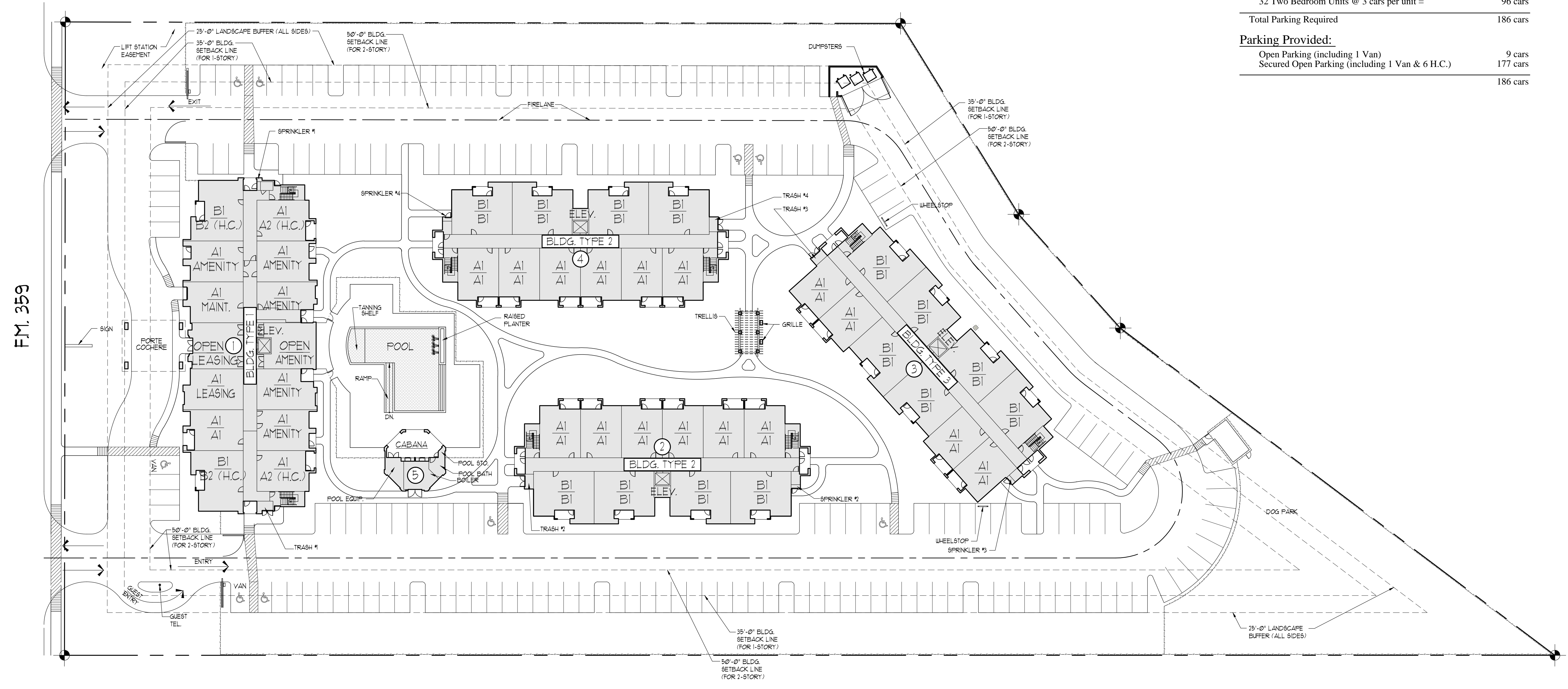
Type	Description	Qty.	Area
A1	One Bedroom, 1 Bath	43	705 s.f.
A2	One Bedroom, 1 Bath (H.C.)	2	706 s.f.
B1	Two Bedroom, 2 Bath	30	918 s.f.
B2	Two Bedroom, 2 Bath (H.C.)	2	918 s.f.
Apartments Total		77 Units	61,103 s.f.
Amenity Center			7,762 s.f.
Project Total			68,865 s.f.

Parking Required:

45 One Bedroom Units @ 2 cars per unit =	90 cars
32 Two Bedroom Units @ 3 cars per unit =	96 cars
Total Parking Required	186 cars

Parking Provided:

Open Parking (including 1 Van)	9 cars
Secured Open Parking (including 1 Van & 6 H.C.)	177 cars
	186 cars

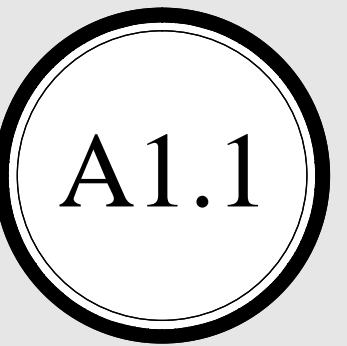


MUCASEY & Associates

Architects
 4808 Gibson, Suite 200
 Houston, Texas 77007
 Tel. (713) 521-1233
 Fax (713) 520-1904
 Email:
 office@mucaseyarchitects.com

CAMPANILE AT JONES CREEK
 A Seniors Community
 Rosenberg, TX.
 Job No. 1311

ISSUED TO CIVIL	Date:
DESIGN REVIEW	Date: 01-27-14
ENTRY REVISION	Date: 02-07-14
CIVIL SITE UPDATE	Date: 03-11-14
	Date: 04-08-14
	Date:
	Date:
	Date:
	Date:



Revised Site - Field
Notes

County: Fort Bend
Project: Campanile @ Jones Creek
M.S.G. No: 141087
Job Number: 2760-DS

FIELD NOTES FOR A 5.531 ACRE TRACT

Being a tract of land containing 5.531 acres (240,917 square feet) located in the Randall Jones League, A-42, in Fort Bend County, Texas; said 5.531 acre tract being out of a called 10.0 acre tract recorded in the name of Warren E. Miller under Volume 969, Page 267, in the Fort Bend County Deed Records (F.B.C.D.R.); said 5.531 acre tract being more particularly described by metes and bounds as follows (all bearings are based on the Texas Coordinate System of 1983, South Central Zone, per GPS observations):

BEGINNING at a 3/4-inch iron rod with cap found on the easterly line of said 10.0 acre tract, also being the west right-of-way of F.M. 359 (100-foot wide), for the easterly northeast corner of a called 4.42 acre temporary construction easement recorded under Fort Bend County Clerk's File (F.B.C.C.F.) Number (No.) 2012038353, and the southeast corner of the herein described tract;

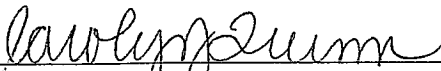
THENCE, through and across said 10.0 acre tract and with the northerly and easterly lines of said 4.42 acre temporary construction easement, the following four (4) courses:

1. South 87 degrees 34 minutes 37 seconds West, a distance of 489.17 feet to a 5/8-inch iron rod with Miller Survey Group cap set for the southwesterly corner of the herein described tract from which a 5/8-inch rod found bears South 32 degrees 21 minutes East, a distance of 0.9 feet;
2. North 34 degrees 17 minutes 27 seconds West, a distance of 131.53 feet to a 5/8-inch iron rod found for an angle point;
3. North 44 degrees 17 minutes 25 seconds West, a distance of 89.34 feet to a 5/8-inch iron rod found for an angle point;
4. North 55 degrees 32 minutes 32 seconds West, a distance of 318.68 feet to a 5/8-inch iron rod with cap found on the north line of said 10.0 acre tract and the south line of a called 11.384 acre tract recorded in the name of Pecan Grove Baptist Church under F.B.C.C.F. No. 9403717, being the northerly northeast corner of said 4.42 acre temporary construction easement, for the northwest corner of the herein described tract;

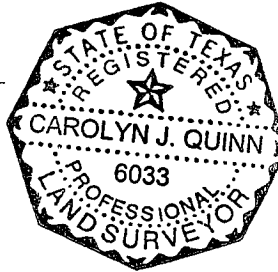
THENCE, with the lines common to said 10.0 and 11.384 acre tracts, North 87 degrees 28 minutes 40 seconds East, a distance of 873.00 feet to a 5/8-inch iron rod with Miller Survey Group cap set at the northeast corner of said 10.0 acre tract, at the southeast corner of said 11.384 acre tract, being on the west right-of-way line of said F.M. 359, for the northeast corner of the herein described tract;

THENCE, with the east line of said 10.0 acre tract and the west right-of-way line of said F.M. 359, South 02 degrees 26 minutes 50 seconds East, a distance of 371.00 feet to the **POINT OF BEGINNING** and containing 5.531 acre (240,917 square feet) of land.

A Topographic Survey Plat of the herein described tract has been prepared by Miller Survey Group and accompanies this description.



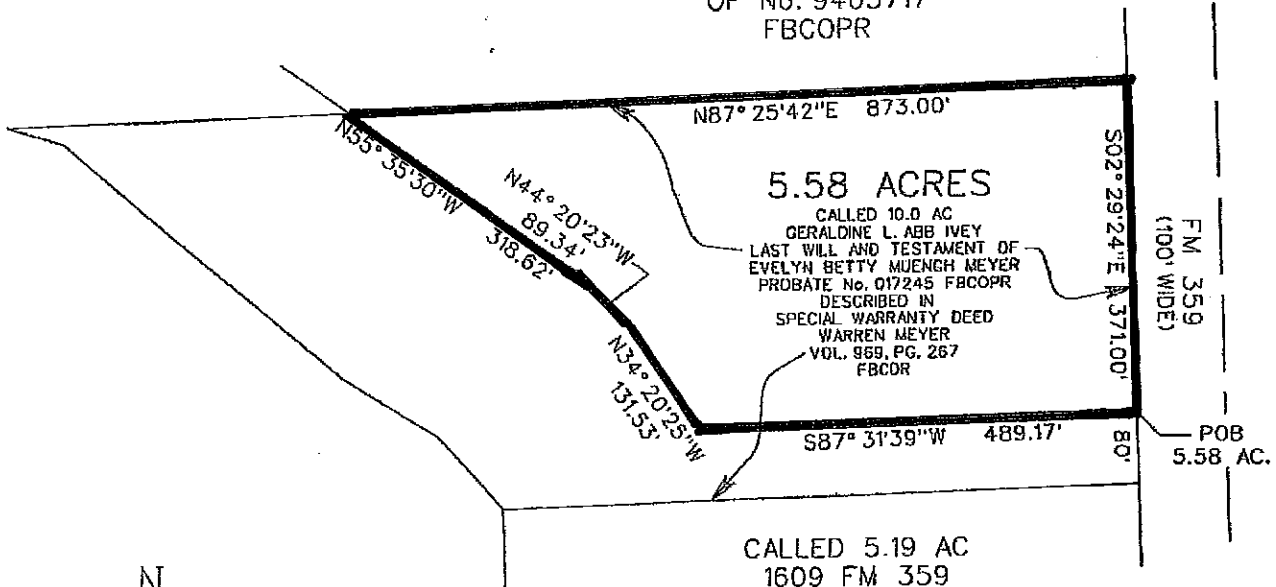
Carolyn J. Quinn
Registered Professional Land Surveyor
Texas Registration No. 6033



MILLER SURVEY GROUP
www.millersurvey.com
Texas Firm Registration No. 10047100
PH: (713) 413-1900
JOB: 2760-DS
March 20, 2014

Original Survey

CALLED 11.384 AC
 PECAN GROVE BAPTIST CHURCH
 DEED OF TRUST AND SECURITY
 AGREEMENT
 OF No. 9403717
 FBCOPR



CALLLED 5.19 AC
 1609 FM 359
 INVESTMENTS, LTD.
 DEED
 CF No. 2001092341
 FBCOPRRP



SANDER ENGINEERING CORPORATION
 1250 W. SAM HOUSTON PARKWAY SOUTH
 SUITE 400
 HOUSTON TEXAS, 77042
 (713) 784-4830
 TEXAS BOARD OF PROFESSIONAL ENGINEERS FIRM NO. F-517

**EXHIBIT OF 5.58 ACRE
 OF LAND OUT
 OF RANDALL JONES
 LEAGUE, AB-42**

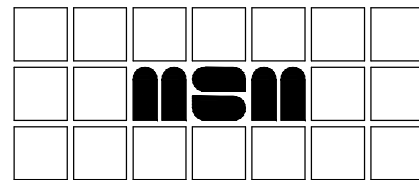
REVISIONS

NO.	DATE	DESCRIPTION

DATE: DECEMBER, 2012 JOB NO. 12-054
 SCALE: SEE BAR SCALE SHEET NO. 2 OF 2

CAMPANILE AT JONES CREEK

A Seniors Community



MUCASEY
&
Associates

Architects

4808 Gibson, Suite 200
Houston, Texas 77007
Tel. (713) 521-1233
Fax (713) 520-1904
Job No. 1311

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Campanile at Jones Creek

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Amenity Center Floor Plan

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Unit "A2" Floor Plan

Unit "B1" Floor Plan

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Building Type 2 Floor Plans

Building Type 3 Floor Plans

Building Type 1 Exterior Elevations

Building Type 2 Exterior Elevations

Building Type 3 Exterior Elevations

PROJECT SUMMARY:

Apartments:

Type	Description	Qty.	Area
A1	One Bedroom, 1 Bath	43	705 s.f.
A2	One Bedroom, 1 Bath (H.C.)	2	706 s.f.
B1	Two Bedroom, 2 Bath	30	918 s.f.
B2	Two Bedroom, 2 Bath (H.C.)	2	918 s.f.
Apartments Total		77 Units	61,103 s.f.
Amenity Center			7,762 s.f.
Project Total			68,865 s.f.

Parking Required:

45 One Bedroom Units @ 2 cars per unit =	90 cars
32 Two Bedroom Units @ 3 cars per unit =	96 cars
Total Parking Required	186 cars

Parking Provided:

Open Parking (including 1 Van)	9 cars
Secured Open Parking (including 1 Van & 1 H.C.)	177 cars
	186 cars

BUILDING MATRIX:

Bldg. Type 1 (Bldg. #1)	Bldg. Type 2 (Bldgs. #2 and #4)	Bldg. Type 3 (Bldg. #3)
11 A1 units	12 A1 units per Bldg.	8 A1 units
2 A2 units	8 B1 units per Bldg.	12 B1 units
2 B1 units	20 total units per Bldg.	20 total units
2 B2 units		
17 total units		
Amenity Center		

PROJECT SUMMARY

Campanile At Jones Creek
 Mucasey & Associates, Architects

BUILDING MATRIX:

Bldg. Type 1 (Bldg. #1)	Bldg. Type 2 (Bldgs. #2 and #4)	Bldg. Type 3 (Bldg. #3)
11 A1 units	12 A1 units per Bldg.	8 A1 units
2 A2 units	8 B1 units per Bldg.	12 B1 units
2 B1 units	20 total units per Bldg.	20 total units
2 B2 units		
17 total units		
Amenity Center		

PROJECT SUMMARY:

Apartments:

Type	Description	Qty.	Area
A1	One Bedroom, 1 Bath	43	1,05 s.f.
A2	One Bedroom, 1 Bath (H.C.)	2	1,06 s.f.
B1	Two Bedroom, 2 Bath	30	918 s.f.
B2	Two Bedroom, 2 Bath (H.C.)	2	918 s.f.

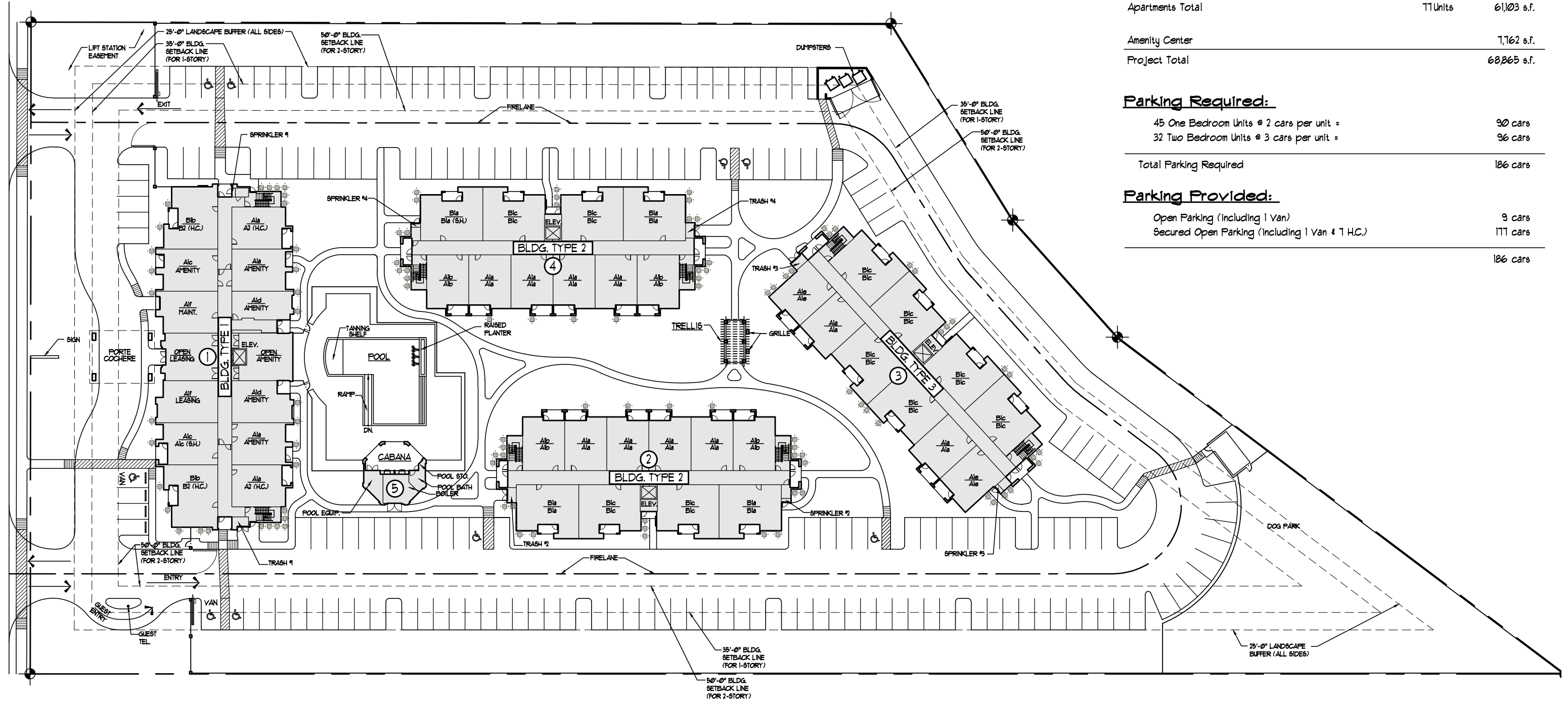
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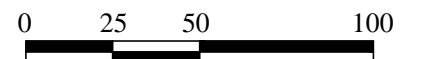
SITE PLAN

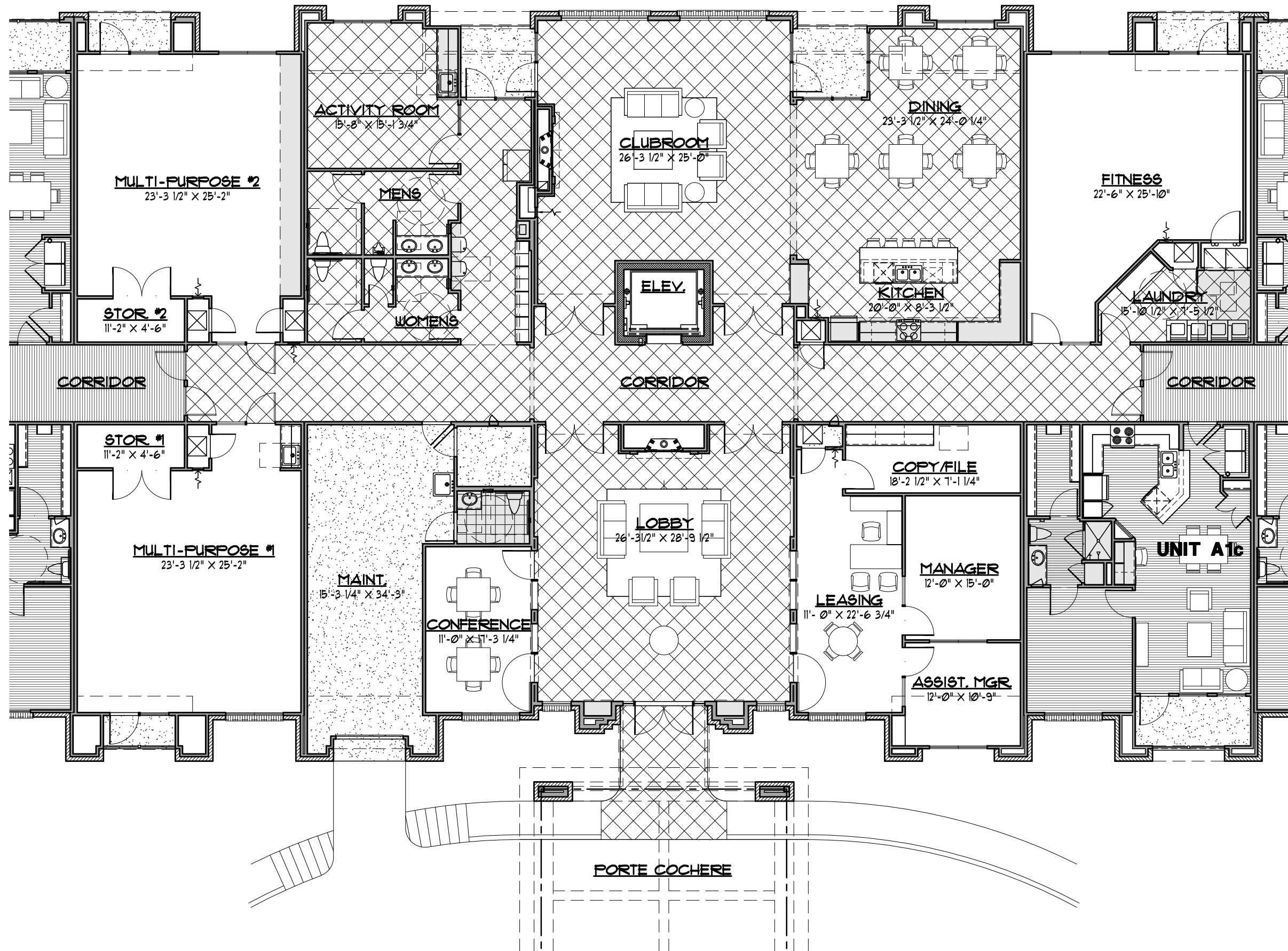
Campanile At Jones Creek
Mucasey & Associates, Architects

SITE ACREAGE: 5.58 ACRES

NOTE: NO ONSITE DETENTION WILL BE REQUIRED

NOTE: ALTHOUGH MOST RECENT FEMA MAPS SHOW THIS SITE NOT TO OCCUR WITHIN FLOOD PLAIN, CURRENT COUNTY MAPS INDICATE THAT THIS SITE IS IN THE 100 YEAR FLOODPLAIN

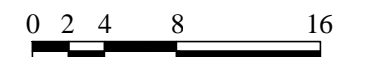


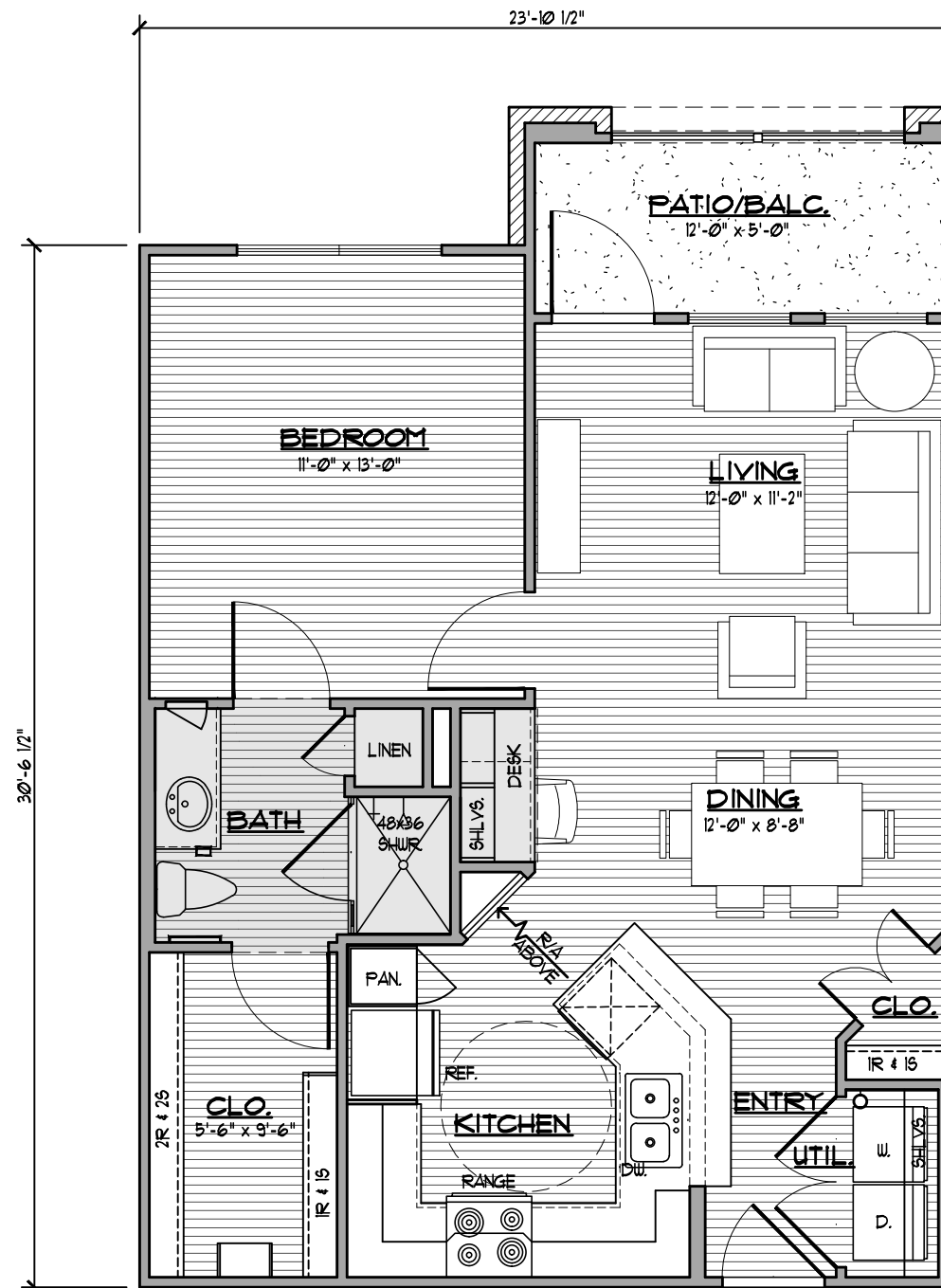


AMENITY CENTER - Floor Plan

Campanile At Jones Creek
 Mucasey & Associates, Architects

7,762 s.f.

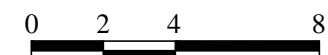


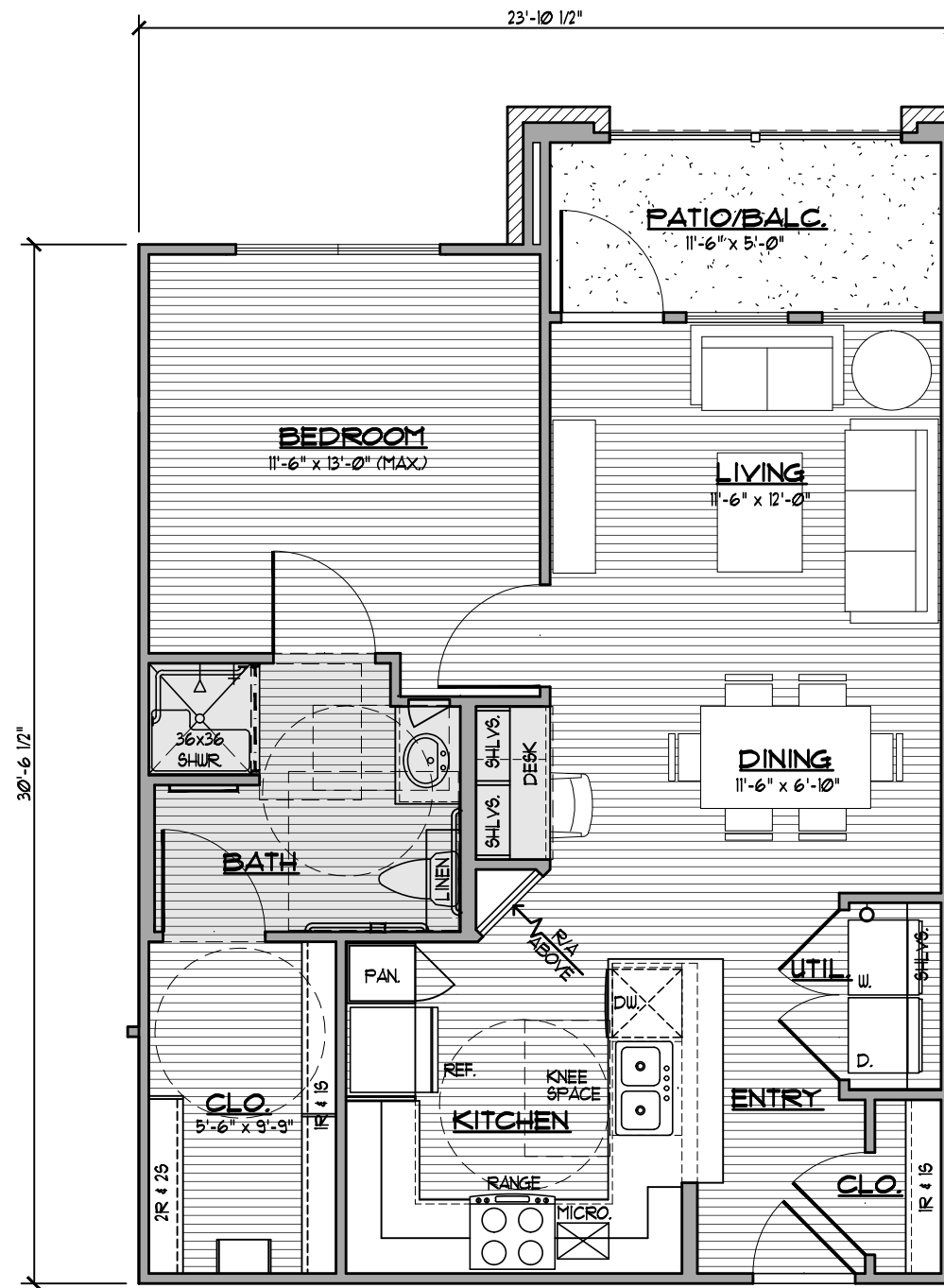


UNIT 'A1' - One Bedroom, 1 Bath

Campanile At Jones Creek
Mucasey & Associates, Architects

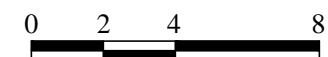
705 s.f.

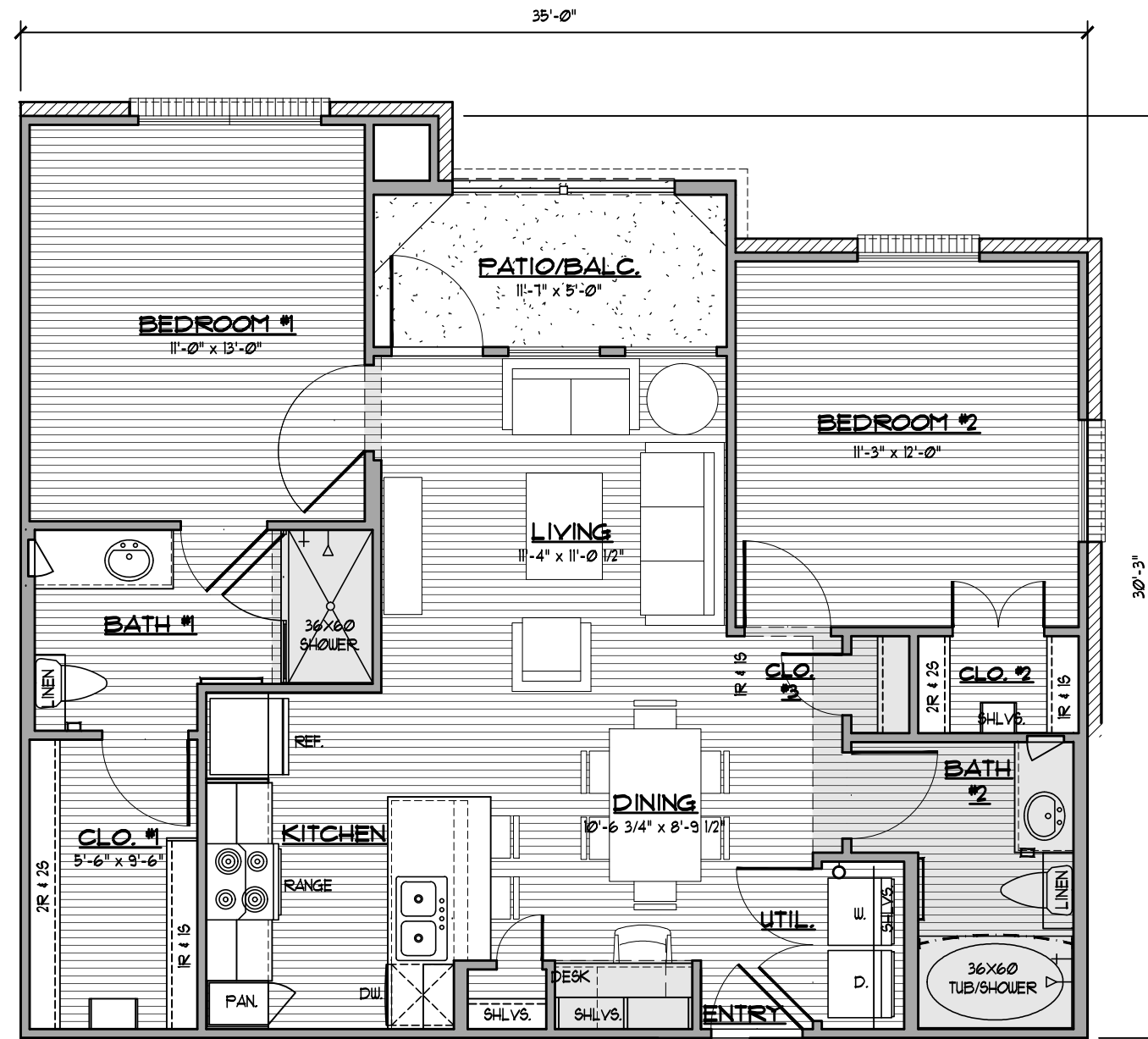




UNIT 'A2' - One Bedroom, 1 Bath

Campanile At Jones Creek 706 s.f.
 Mucasey & Associates, Architects ANSI/UFAS ACCESSIBLE

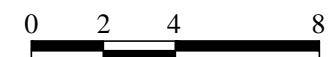


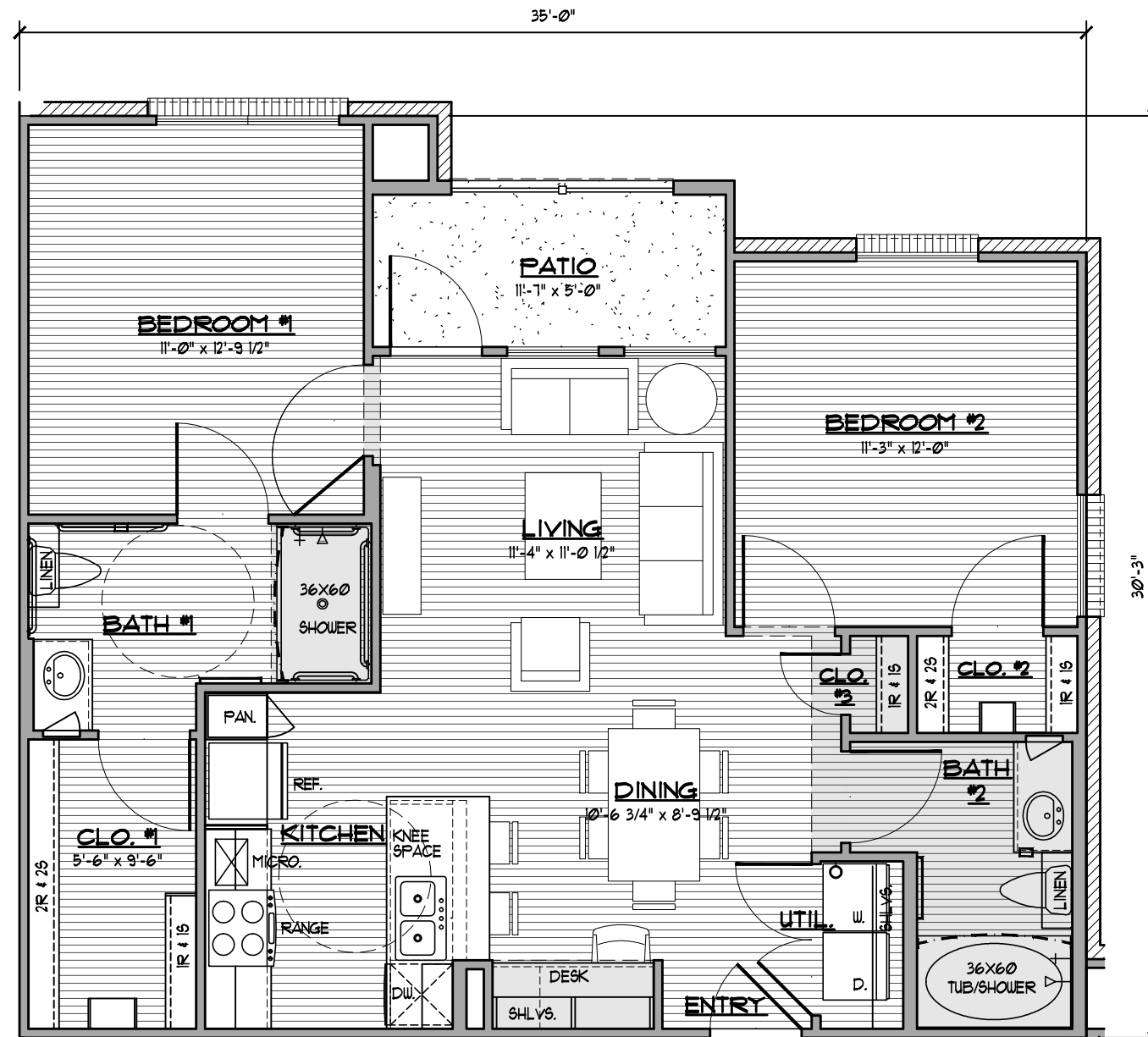


UNIT 'B1' - Two Bedroom, 2 Bath

Campanile At Jones Creek
 Mucasey & Associates, Architects

918 s.f.

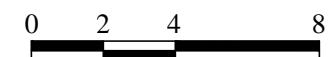


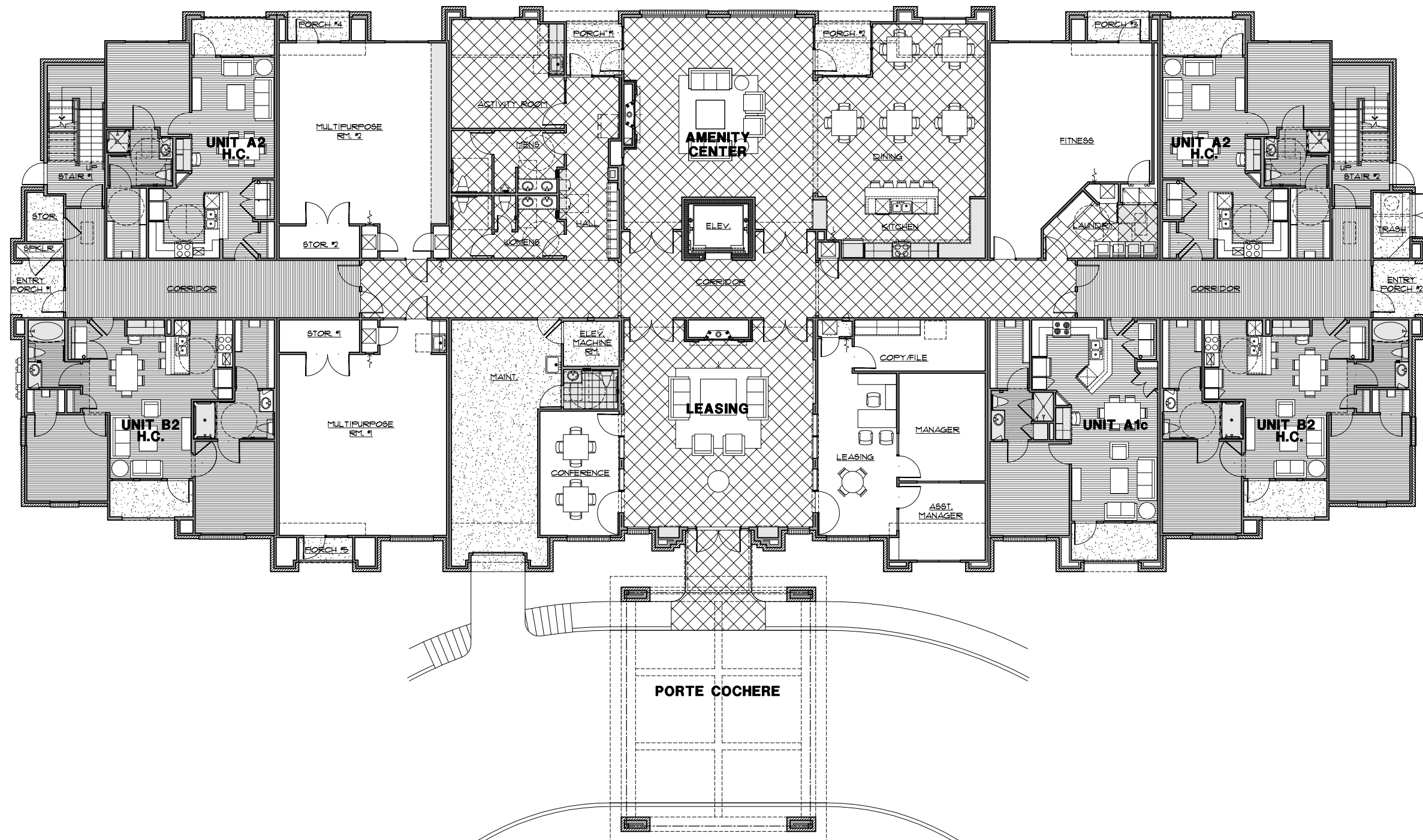


UNIT 'B2' - Two Bedroom, 2 Bath

Campanile At Jones Creek
Mucasey & Associates, Architects

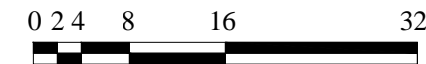
918 s.f.
ANSI/UFAS ACCESSIBLE

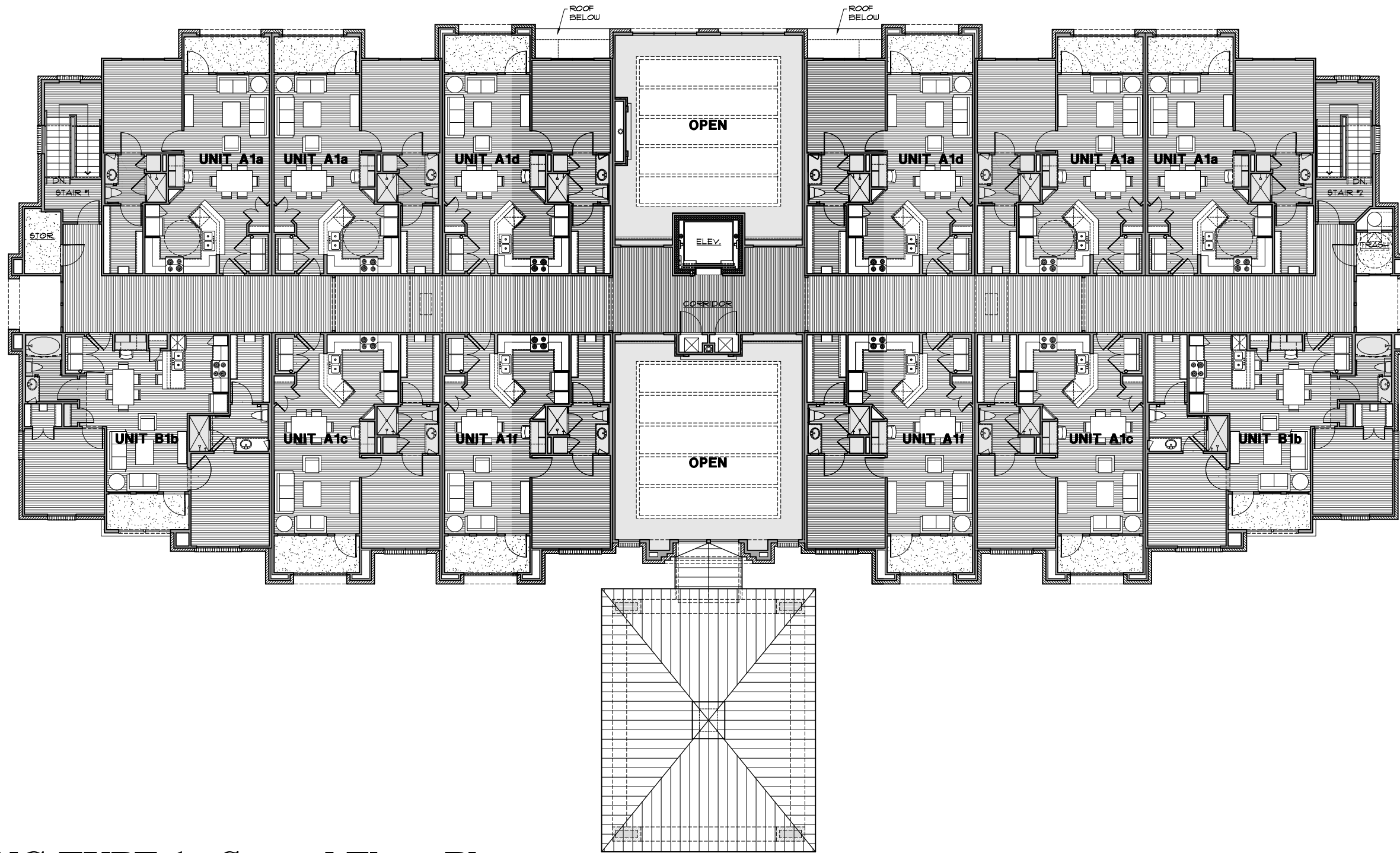




BUILDING TYPE 1 - First Floor Plan

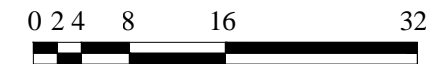
Campanile At Jones Creek
 Mucasey & Associates, Architects

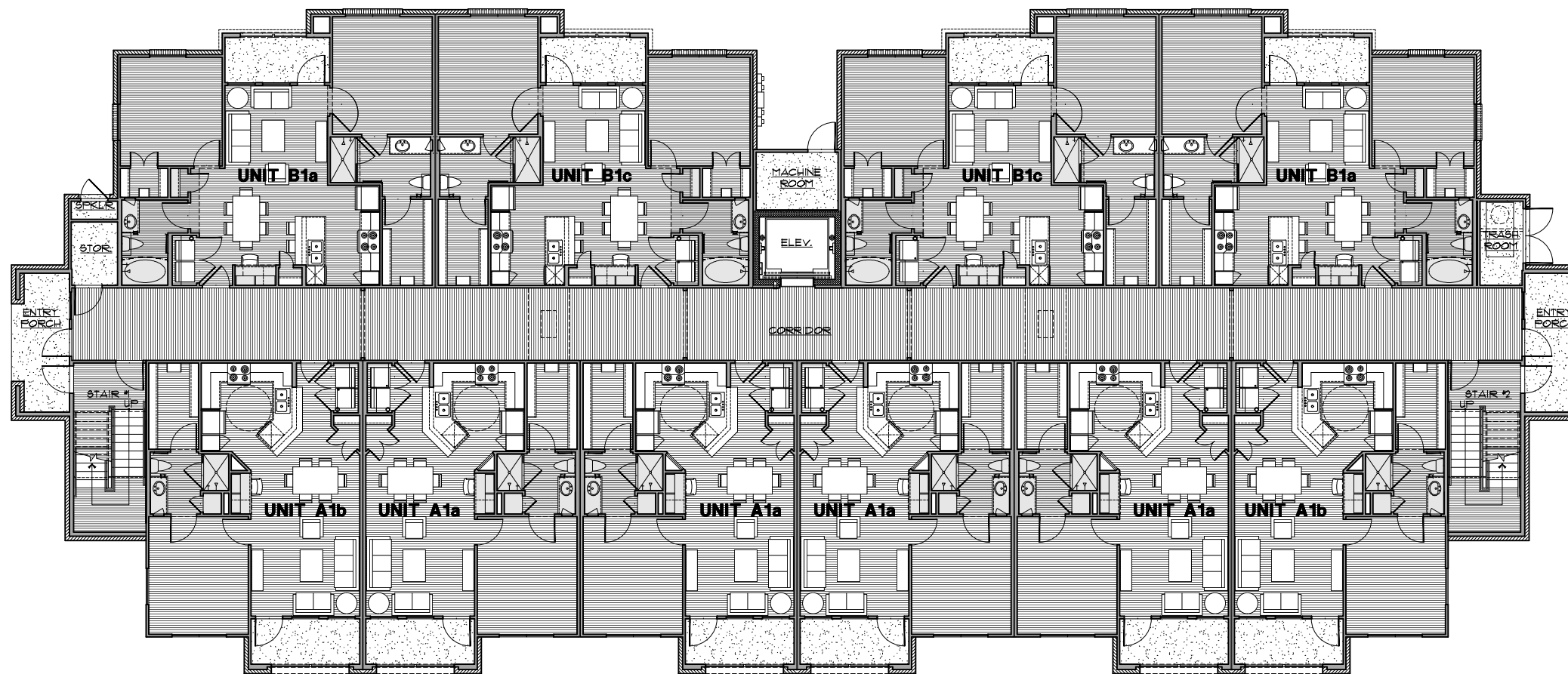




BUILDING TYPE 1 - Second Floor Plan

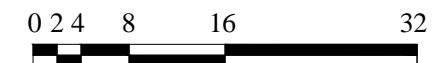
Campanile At Jones Creek
 Mucasey & Associates, Architects

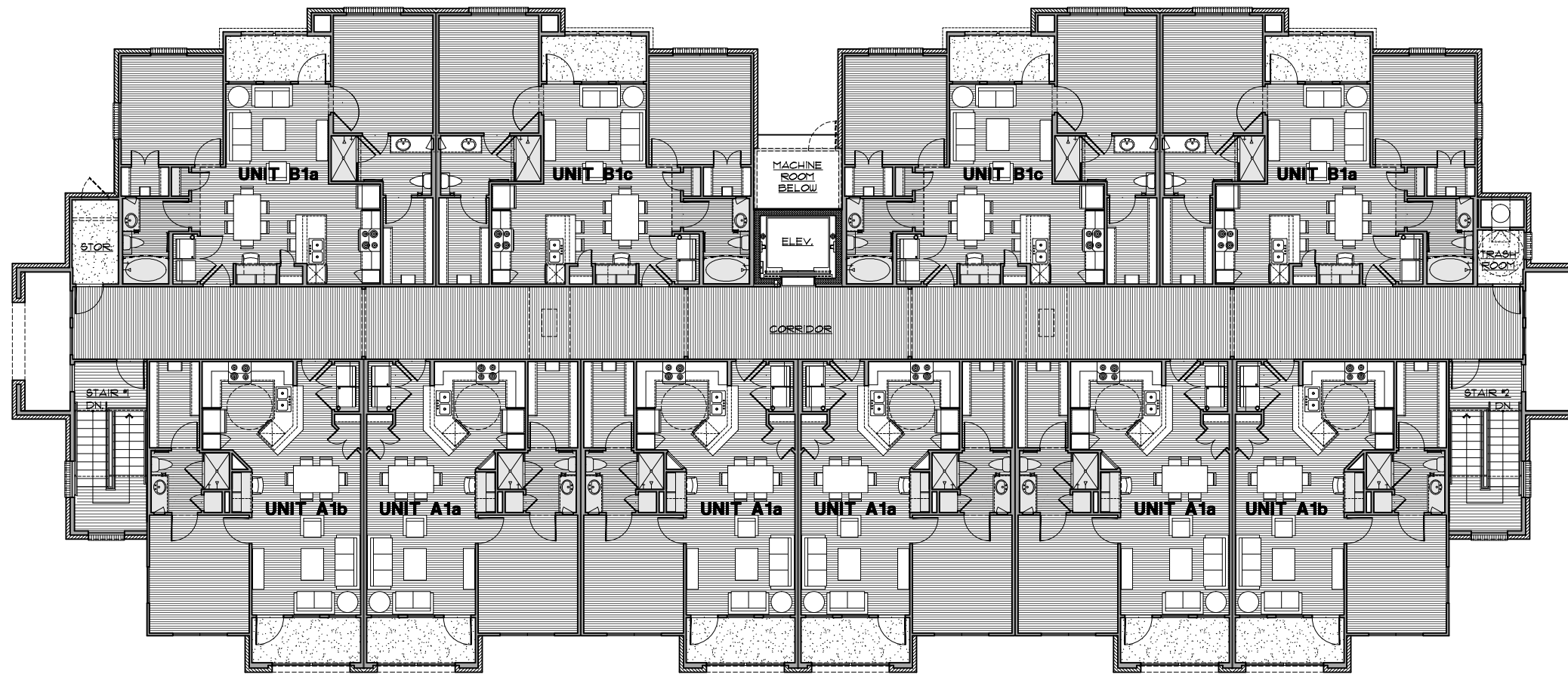




BUILDING TYPE 2 - First Floor Plan

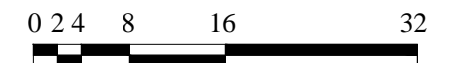
Campanile At Jones Creek
 Mucasey & Associates, Architects

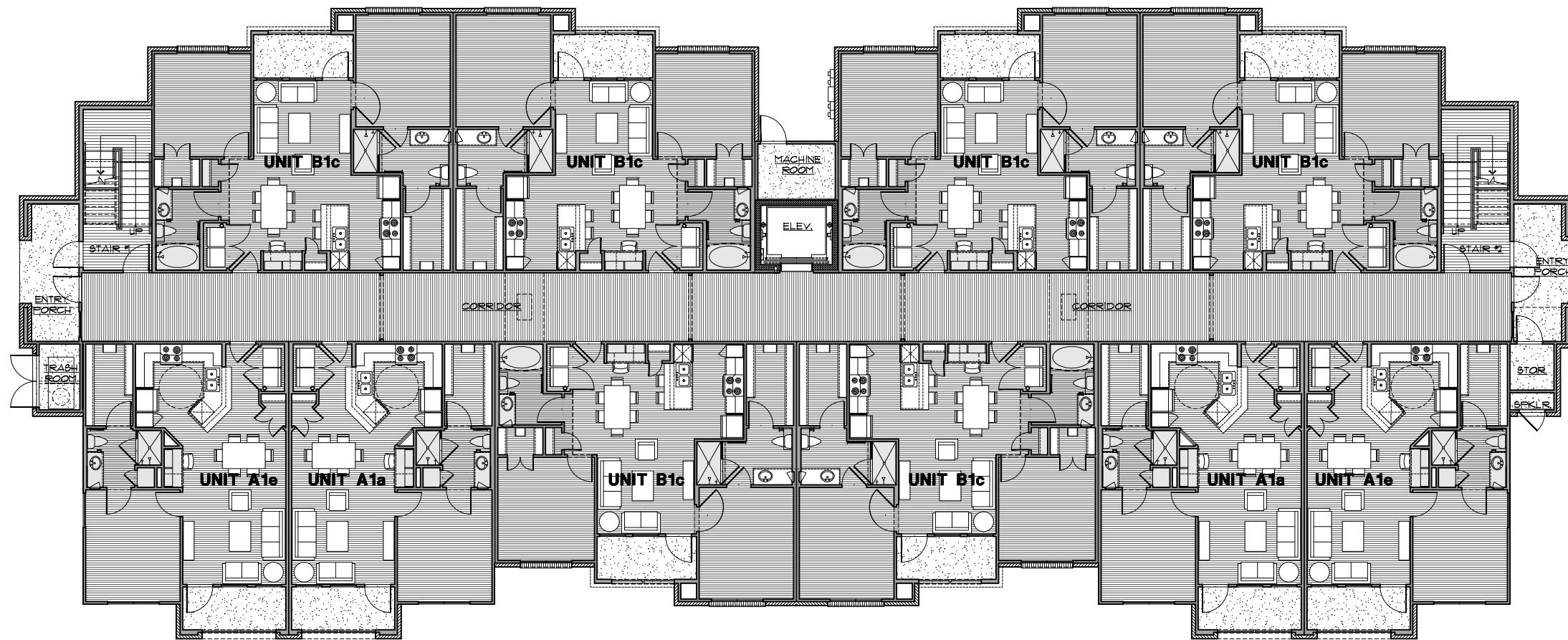




BUILDING TYPE 2 - Second Floor Plan

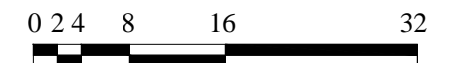
Campanile At Jones Creek
 Mucasey & Associates, Architects

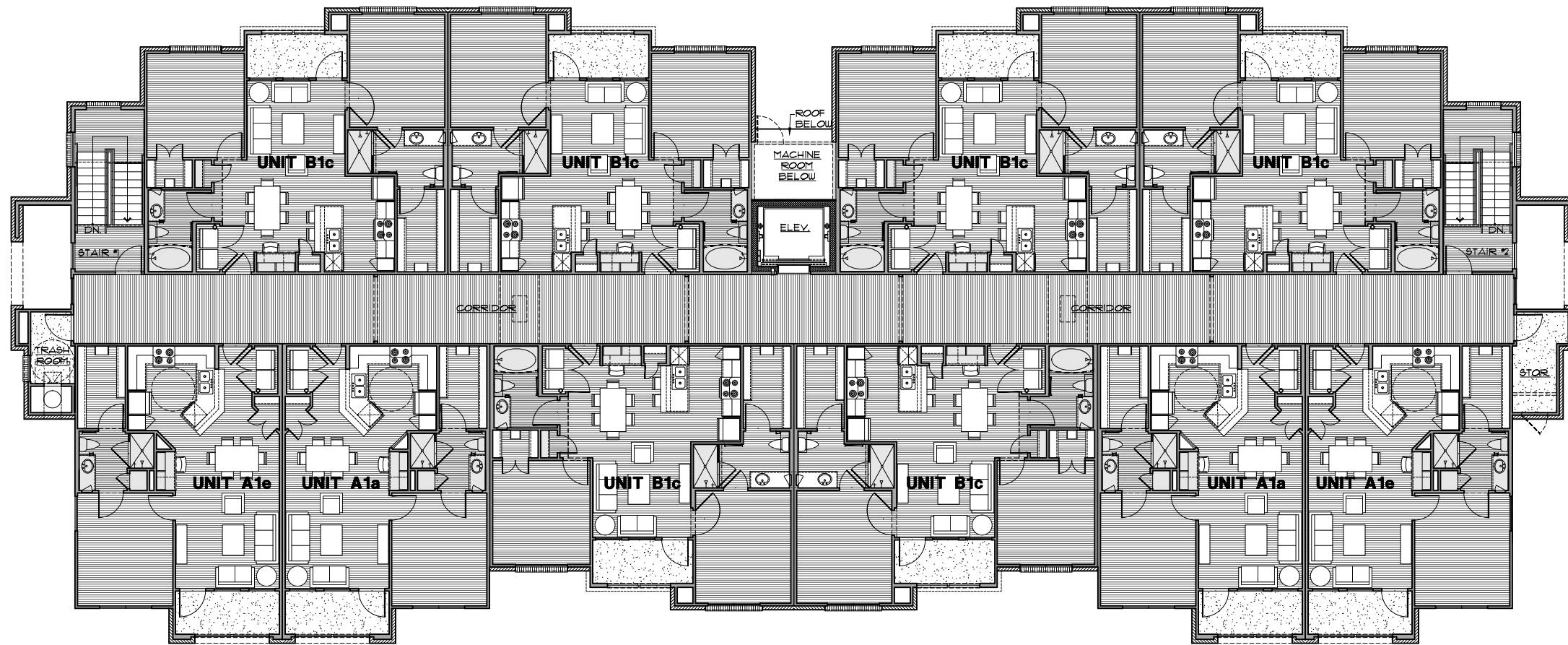




BUILDING TYPE 3 - First Floor Plan

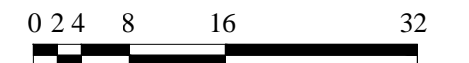
Campanile At Jones Creek
Mucasey & Associates, Architects

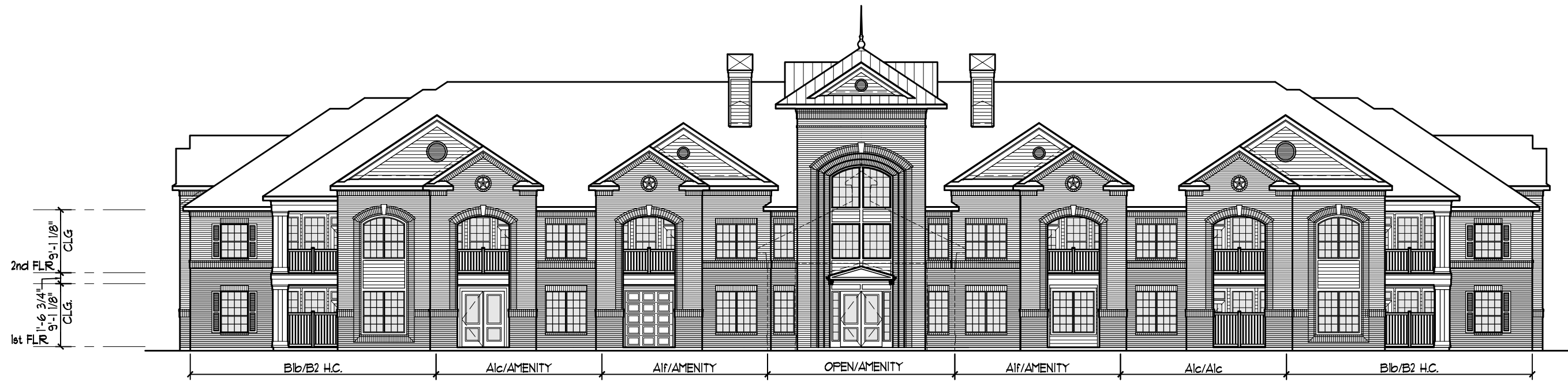




BUILDING TYPE 3 - Second Floor Plan

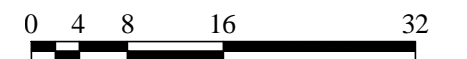
Campanile At Jones Creek
Mucasey & Associates, Architects



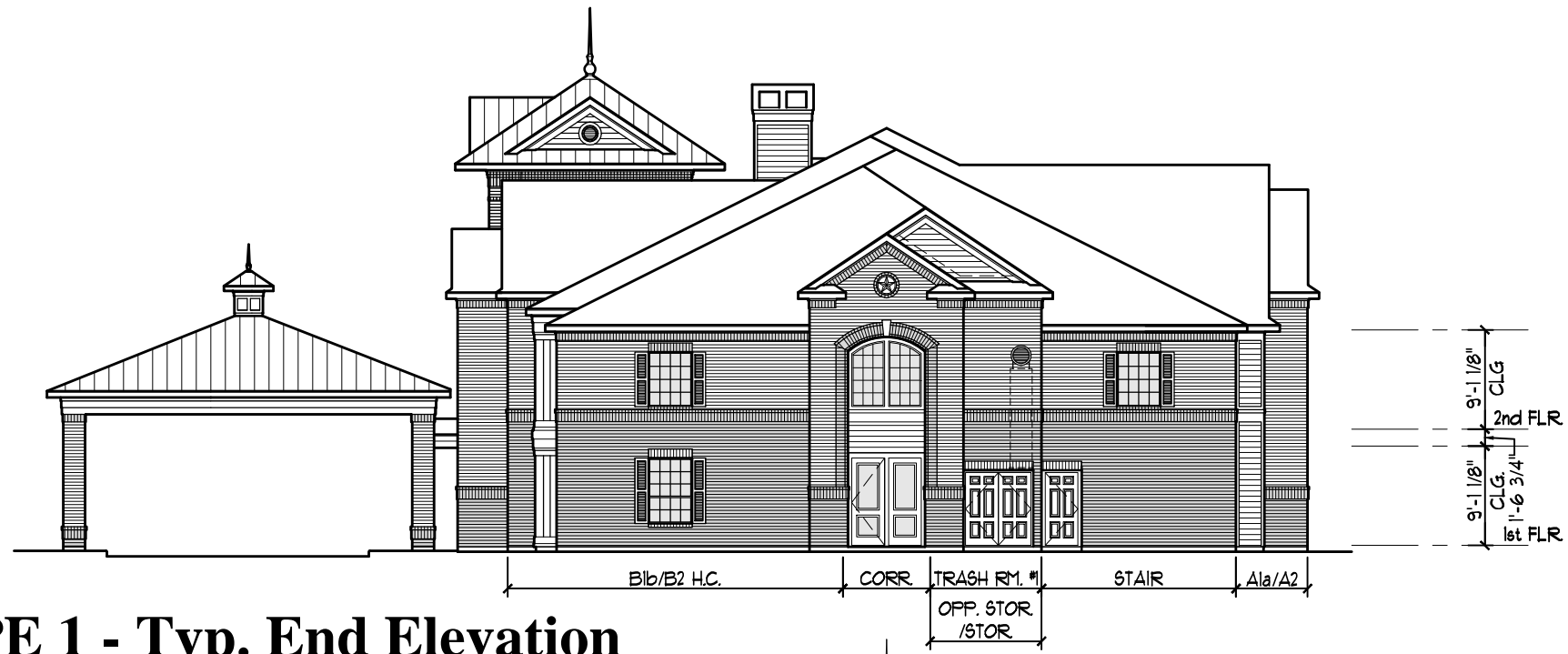


BUILDING TYPE 1 - Front Elevation

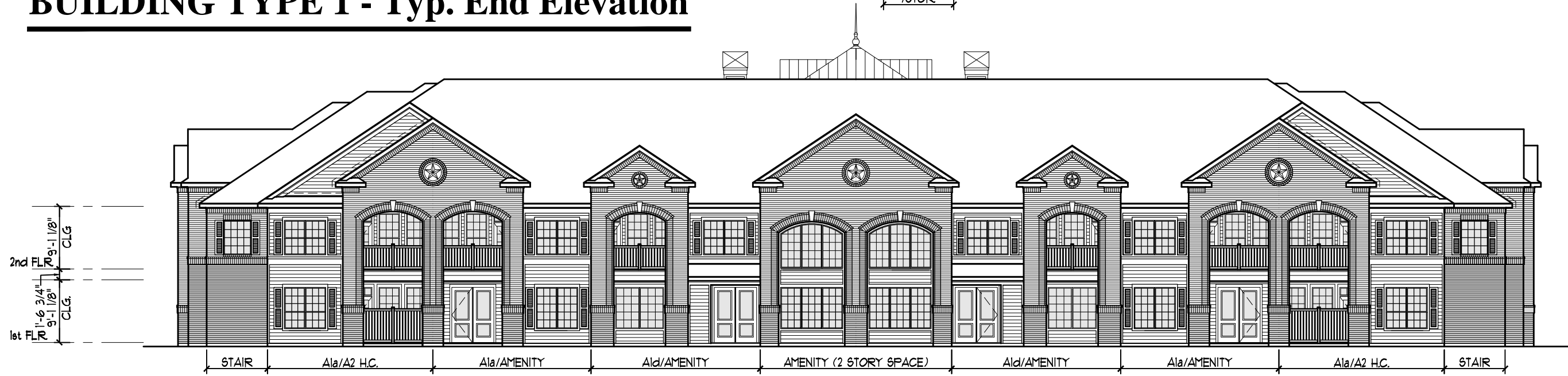
Campanile At Jones Creek
 Mucasey & Associates, Architects



VENEER:
 40% FIBER CEMENT SIDING
 60% BRICK MASONRY

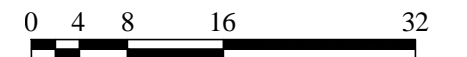


BUILDING TYPE 1 - Typ. End Elevation

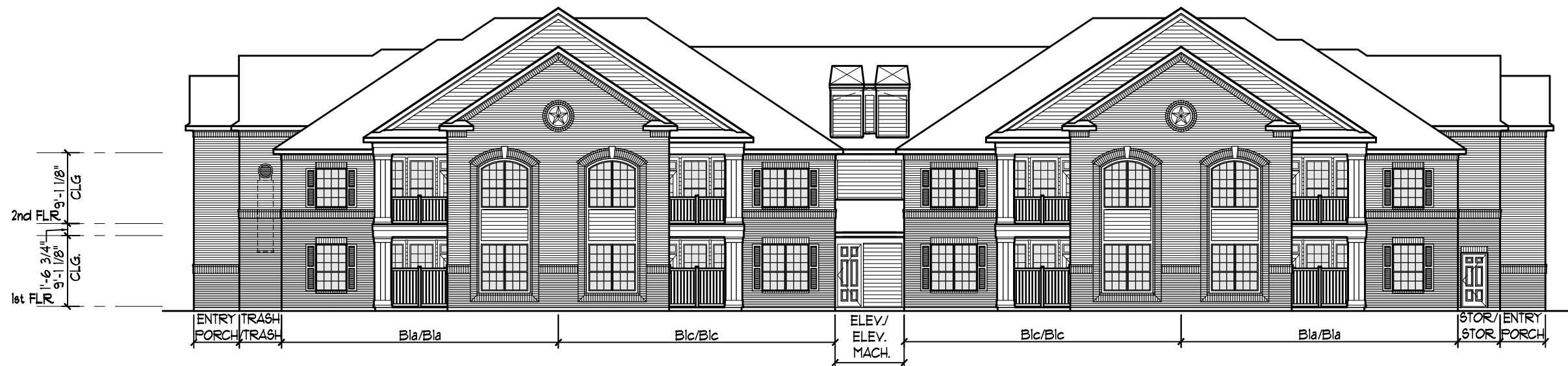


BUILDING TYPE 1 - Back Elevation

Campanile At Jones Creek
 Mucasey & Associates, Architects

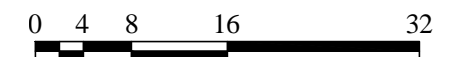


VENEER:
 40% FIBER CEMENT SIDING
 60% BRICK MASONRY

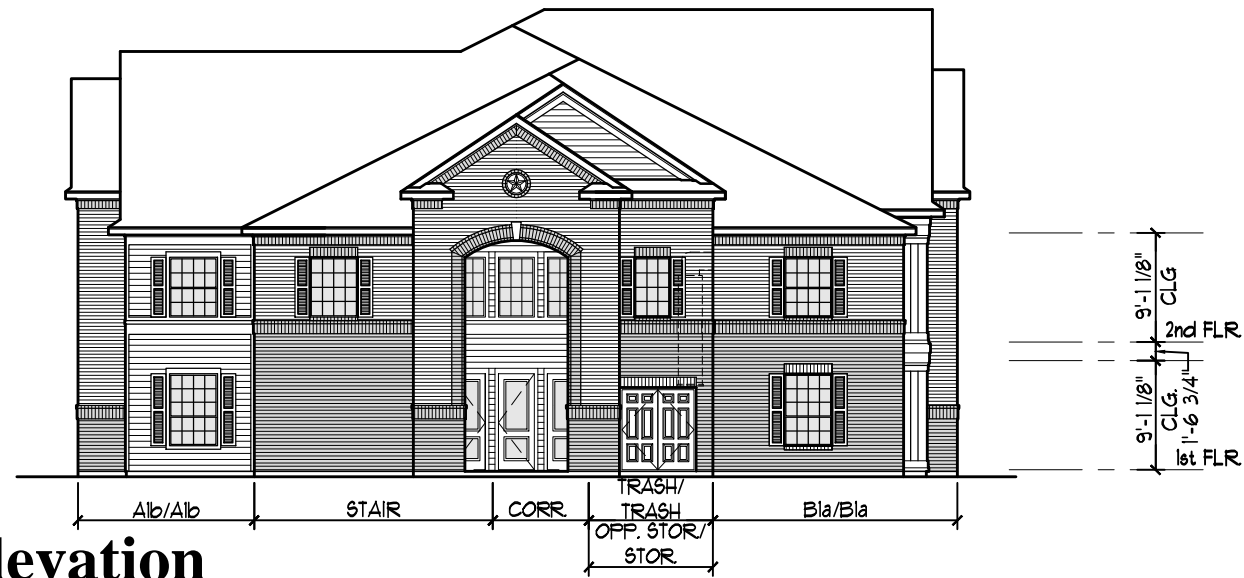


BUILDING TYPE 2 - Front Elevation

Campanile At Jones Creek
 Mucasey & Associates, Architects



VENEER:
 40% FIBER CEMENT SIDING
 60% BRICK MASONRY

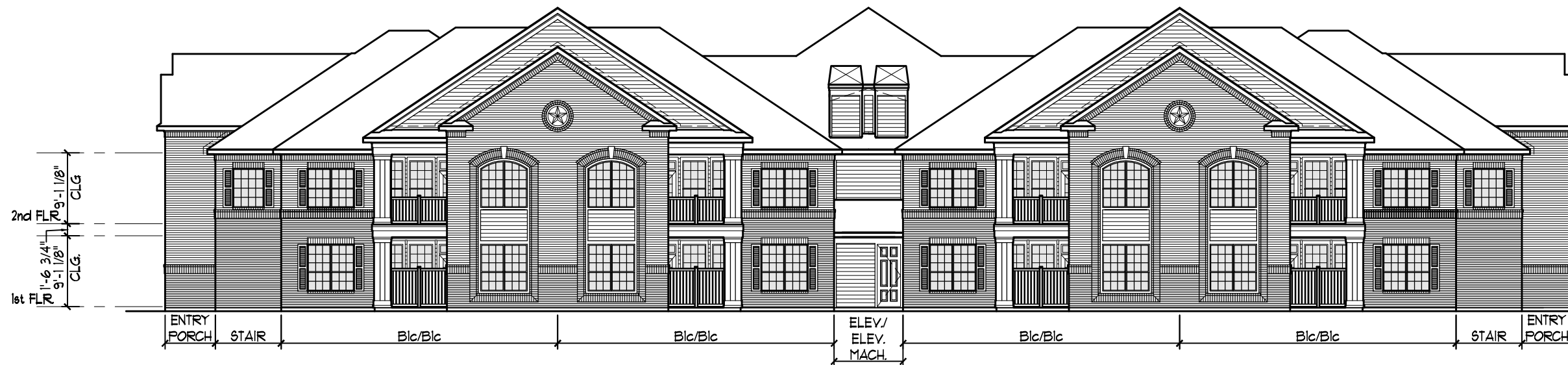


BUILDING TYPE 2 - Typ. End Elevation



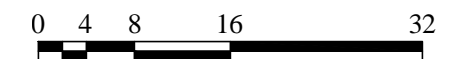
BUILDING TYPE 2 - Back Elevation

Campanile At Jones Creek
 Mucasey & Associates, Architects



BUILDING TYPE 3 - Front Elevation

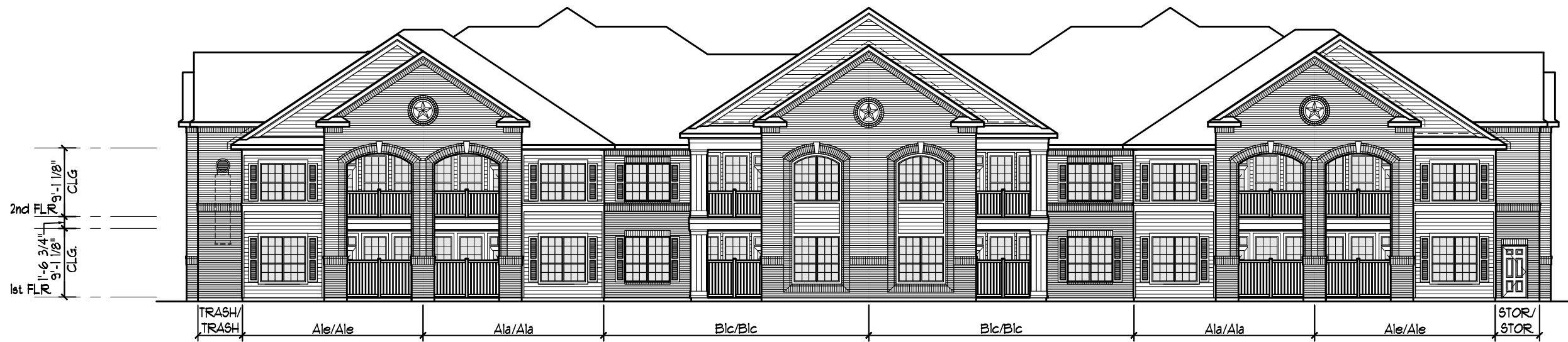
Campanile At Jones Creek
 Mucasey & Associates, Architects



VENEER:
 40% FIBER CEMENT SIDING
 60% BRICK MASONRY

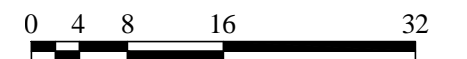


BUILDING TYPE 3 - Typ. End Elevation



BUILDING TYPE 3 - Back Elevation

Campanile At Jones Creek
 Mucasey & Associates, Architects



VENEER:
 40% FIBER CEMENT SIDING
 60% BRICK MASONRY



Addendum to Underwriting Report

TDHCA Application #: 13223 Program(s): HTC 9%

Campanile at Jones Creek

Address/Location: 1717 FM 359

City: Richmond County: Fort Bend Zip: 77406

Analysis Purpose: Amendment/Pre-Construction

APPLICATION HISTORY	
Report Date	PURPOSE
08/11/14	Amendment/Pre-Construction
11/01/13	Original Underwriting Report

ALLOCATION

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
LIHTC (Annual)	\$890,000				\$890,000				

CONDITIONS STATUS

- 1 Receipt and acceptance by 10% test:
 - a: Variance to parking requirements to allow for 1.25 cars/unit; or revised site plan that conforms to local code.
Status: ACCEPTED. Applicant provided revised site plan with this amendment that includes 186 total parking spaces, or >2.4 spaces/unit as required by City code.
- 2 At Cost Certification:
 - If the site is determined to be in the 100-year floodplain:
 - a. the Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or
 - b. The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and
 - c. The Development must be designed to comply with the QAP, as proposed.
- 3 Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

ANALYSIS

Applicant is requesting an amendment to revise the site plan to conform to building codes, to reduce the site acreage from 5.58 acres to 5.531 acres, and to eliminate 1 market rate, one-bedroom unit.

SITE PLAN

The City of Richmond ("City") required the applicant to change the site plan to conform to building codes. Variances from the current codes were not allowed to accommodate senior housing. The original site plan included 2 one-story buildings, 7 two-story buildings (separated by firewalls) with 2 elevators, and 116 parking spaces. The revised site plan that has been preliminarily approved by the City includes 4 two-story buildings (each with one elevator) and 186 parking spaces. Original site plan included 12 attached garages, which have been removed with the revised plan.

SITE ACREAGE & UNIT REDUCTION

The original survey had the site at 5.58 acres. The City density limit for apartments is 14 units/acre, so the original application included 78 total units (46 one-bedroom and 32 two-bedroom) with 6 units designated as market rate units (two one-bedroom and 4 two-bedroom). When the field notes were completed for the preliminary plat, it was discovered that the total acreage was actually 5.531 acres. Using the 14 unit/acre density limit, the allowable unit count was reduced to 77 units. One market rate, one-bedroom unit was removed. The updated site plan includes 77 units (45 one-bedroom and 32 two-bedroom) with 5 of the units designated as market rate (1 one-bedroom and 4 two-bedroom). There is no change to the original number of tax credit units (72).

BUILDING & UNIT PLANS

The building plans and unit plans have also been modified. The net rentable area is reduced from 63,237 square feet to 61,103 square feet. This is a decrease of 2,134 square feet or a 3.37% reduction. The common area amenity center is increased from 5,368 square feet to 7,762 square feet. This is an increase of 2,394 square feet or a 44.6% increase. The original building plans included twelve attached garages. The garages have been removed to accommodate the required changes to the building plans and the required number of total parking spaces.

Operating Pro Forma

The rent schedule has been updated to reflect the reduction of income from eliminating 1 market-rate one-bedroom unit. This results in a \$8,880 reduction in Applicant's and Department's estimate of Effective Gross Income from \$582,783 to \$573,903. Applicant's estimate of operating expenses decreased \$2,166, while Department's estimate of annual expenses decreased \$3,514.

Applicant NOI (\$216,637) is 3% lower than at application (\$223,350). Applicant DCR is at 1.23, which is lower than the 1.26 at original application.

Development Cost

Applicant direct building costs increased \$2,716 (0.02%) from \$11,158,564 to \$11,161,279.

Applicant's previous building costs estimate was \$214,161 (1.92%) lower than the Department estimate. Applicant's revised costs are \$198,713 (1.78%) higher than the Department estimate, but still within the 5% variance allowed.

Sources of Funds

The debt and equity sources of the development remain unchanged. Deferred Developer Fees increased \$2,715 from \$215,418 to \$218,133, an increase of 1.26%.

Conclusion

Recommend that the amendment request to modify the site plan, the site acreage and the unit mix be approved as requested. No change is recommended to the previously awarded tax credit allocation of \$890,000. The financing structure of the development will be re-evaluated at Cost Certification and any necessary adjustments to the allocation will be made at that time.

Underwriter:	<u>Lucy Trevino</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

UNIT MIX/RENT SCHEDULE
Campanile at Jones Creek, Richmond, 9% LIHTC #13223

LOCATION DATA	
CITY:	Richmond
COUNTY:	Fort Bend
PROGRAM REGION:	6
PIS Date:	On or After 1/18/2013
IREM REGION:	Houston

UNIT DISTRIBUTION					
# Beds	# Units	% Total	Income	# Units	% Total
Eff			30%	8	10.4%
1	45	58.4%	40%		
2	32	41.6%	50%	29	37.7%
3			60%	35	45.5%
4			MR	5	6.5%
TOTAL	77	100.0%	TOTAL	77	100.0%

Applicable Programs
9% Housing Tax Credits

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjustment	130%
Applicable Fraction	92.84%
APP % Acquisition	
APP % Construction	9.00%
Average Unit Size	794 sf

UNIT MIX / MONTHLY RENT SCHEDULE																			
HTC		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC30%	\$372	6	1	1	705	\$372	\$56	\$316	\$0	\$0.45	\$316	\$1,896	\$1,896	\$316	\$0.45	\$0	\$800	1.13	\$484
TC50%	\$621	19	1	1	705	\$621	\$56	\$565	\$0	\$0.80	\$565	\$10,735	\$10,735	\$565	\$0.80	\$0	\$800	1.13	\$235
TC60%	\$745	12	1	1	705	\$745	\$56	\$689	\$0	\$0.98	\$689	\$8,268	\$8,268	\$689	\$0.98	\$0	\$800	1.13	\$111
TC50%	\$621	1	1	1	706	\$621	\$56	\$565	\$0	\$0.80	\$565	\$565	\$565	\$565	\$0.80	\$0	\$800	1.13	\$235
TC60%	\$745	6	1	1	705	\$745	\$56	\$689	\$0	\$0.98	\$689	\$4,134	\$4,134	\$689	\$0.98	\$0	\$800	1.13	\$111
MR		1	1	1	706	\$0	\$56		NA	\$1.13	\$800	\$800	\$800	\$800	\$1.13	NA	\$800	1.13	\$0
MR		4	2	2	918	\$0	\$74		NA	\$1.03	\$950	\$3,800	\$3,800	\$950	\$1.03	NA	\$950	1.03	\$0
TC30%	\$447	2	2	2	918	\$447	\$74	\$373	\$0	\$0.41	\$373	\$746	\$746	\$373	\$0.41	\$0	\$950	1.03	\$577
TC50%	\$745	9	2	2	918	\$745	\$74	\$671	\$0	\$0.73	\$671	\$6,039	\$6,039	\$671	\$0.73	\$0	\$950	1.03	\$279
TC60%	\$894	17	2	2	918	\$894	\$74	\$820	\$0	\$0.89	\$820	\$13,940	\$13,940	\$820	\$0.89	\$0	\$950	1.03	\$130
TC 00%		0	0	0	0	\$0	\$0	\$0		#DIV/0!	\$0	\$0	\$0	\$0				#DIV/0!	
TOTALS/AVERAGES:		77			61,103				\$0	\$0.83	\$661	\$50,923	\$50,923	\$661	\$0.83	\$0	\$862	\$1.09	\$201

ANNUAL POTENTIAL GROSS RENT:	\$611,076	\$611,076
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STABILIZED PRO FORMA

Campanile at Jones Creek, Richmond, 9% LIHTC #13223

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				PRIOR REPORT		TDHCA				VARIANCE		
	Database	Fort Bend County	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$	
POTENTIAL GROSS RENT				\$0.83	\$661	\$611,076	\$620,676	\$620,676	\$611,076	\$661	\$0.83		0.0%	\$0	
App fees, laundry, late fees					\$10.00	\$9,360	9,360						0.0%	(9,360)	
Underwriter's Total Secondary Income								9,360	\$9,362	\$10.13			100.0%	9,362	
POTENTIAL GROSS INCOME		\$ -				\$620,436	\$630,036	\$630,036	\$620,438				0.0%	\$2	
Vacancy & Collection Loss					7.5% PGI	(46,533)	(47,253)	(47,253)	(46,533)	7.5% PGI			0.0%	(0)	
Non-Rental Units/Concessions						-							0.0%	-	
EFFECTIVE GROSS INCOME		\$ -				\$573,903	\$582,783	\$582,783	\$573,905				0.0%	\$2	
General & Administrative	\$27,886	\$362/Unit	49,413	4.48%	\$0.42	\$334	\$25,700	\$25,700	\$28,540	\$27,886	\$362	\$0.46	4.86%	-7.8%	(2,186)
Management	\$25,092	4.8% EGI	33,169	5.00%	\$0.47	\$373	\$28,690	\$29,139	\$29,139	\$28,695	\$373	\$0.47	5.00%	0.0%	(6)
Payroll & Payroll Tax	\$83,036	\$1,078/Unit	116,831	18.16%	\$1.71	\$1,353	\$104,204	\$104,204	\$96,204	\$96,204	\$1,249	\$1.57	16.76%	8.3%	8,000
Repairs & Maintenance	\$42,001	\$545/Unit	46,844	8.15%	\$0.77	\$607	\$46,750	\$46,750	\$46,750	\$46,750	\$607	\$0.77	8.15%	0.0%	-
Electric/Gas	\$17,583	\$228/Unit	20,273	3.94%	\$0.37	\$294	\$22,600	\$22,600	\$22,600	\$22,600	\$294	\$0.37	3.94%	0.0%	-
Water, Sewer, & Trash	\$37,589	\$488/Unit	29,360	4.24%	\$0.40	\$316	\$24,350	\$24,350	\$32,856	\$32,098	\$417	\$0.53	5.59%	-24.1%	(7,748)
Property Insurance	\$26,132	\$0.43 /sf	35,313	4.26%	\$0.40	\$317	\$24,440	\$25,295	\$25,295	\$24,440	\$317	\$0.40	4.26%	0.0%	-
Property Tax 1.8898	\$43,182	\$561/Unit	35,491	8.22%	\$0.77	\$613	\$47,163	\$47,775	\$43,144	\$42,591	\$553	\$0.70	7.42%	10.7%	4,572
Reserve for Replacements	\$12,927	\$168/Unit	-	3.35%	\$0.32	\$250	\$19,250	\$19,500	\$19,500	\$19,250	\$250	\$0.32	3.35%	0.0%	-
Cable TV			-	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Supportive service contract fees			-	1.57%	\$0.15	\$117	\$9,000	\$9,000	\$9,000	\$9,000	\$117	\$0.15	1.57%	0.0%	-
TDHCA Compliance fees			-	0.54%	\$0.05	\$41	\$3,120	\$3,120	\$2,880	\$2,880	\$37	\$0.05	0.50%	8.3%	240
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)			-	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Security			-	0.35%	\$0.03	\$26	\$2,000	\$2,000	\$2,000	\$2,000	\$26	\$0.03	0.35%	0.0%	-
TOTAL EXPENSES		\$ 366,695		62.25%	\$5.85	\$4,640	\$ 357,267	\$359,433	\$357,909	\$ 354,395	\$4,603	\$5.80	61.75%	0.8%	\$ 2,872
NET OPERATING INCOME ("NOI")				37.75%	\$3.55	\$2,813	\$216,637	\$223,350	\$224,875	\$219,511	\$2,851	\$3.59	38.25%	-1.3%	(\$2,874)

CONTROLLABLE EXPENSES	\$2,703/Unit	\$3,412/Unit		\$2,904/Unit		\$223,604/Unit	\$226,951/Unit		\$2,929/Unit
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LONG TERM OPERATING PRO FORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
EFFECTIVE GROSS INCOME	\$573,903	\$585,381	\$597,089	\$609,031	\$621,211	\$685,868	\$757,253	\$836,069	\$923,087	\$1,019,163	\$1,125,238	\$1,242,354
LESS: TOTAL EXPENSES	357,267	367,698	378,436	389,491	400,871	463,005	534,857	617,957	714,075	825,261	953,892	1,102,718
NET OPERATING INCOME	\$216,637	\$217,684	\$218,653	\$219,540	\$220,341	\$222,862	\$222,396	\$218,112	\$209,013	\$193,902	\$171,346	\$139,637
LESS: DEBT SERVICE	176,391	176,391	176,391	176,391	176,391	176,391	176,391	176,391	176,391	176,391	176,391	176,391
NET CASH FLOW	\$40,246	\$41,293	\$42,262	\$43,149	\$43,950	\$46,471	\$46,005	\$41,721	\$32,622	\$17,511	(\$5,045)	(\$36,755)
CUMULATIVE NET CASH FLOW	\$40,246	\$81,538	\$123,800	\$166,950	\$210,899	\$439,261	\$671,568	\$890,453	\$1,073,909	\$1,194,357	\$1,217,542	\$1,101,233
DEFERRED DEVELOPER FEE BALANCE	\$177,888	\$136,595	\$94,333	\$51,184	\$7,234	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.23	1.23	1.24	1.24	1.25	1.26	1.26	1.24	1.18	1.10	0.97	0.79
EXPENSE/EGI RATIO	62.25%	62.81%	63.38%	63.95%	64.53%	67.51%	70.63%	73.91%	77.36%	80.97%	84.77%	88.76%

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Campanile at Jones Creek, Richmond, 9% LIHTC #13223

DEBT / GRANT SOURCES																	
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									Prior Underwriting		AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Applicant	TDHCA	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App													DCR	LTC
Bank of America		1.24	1.23	\$176,391	6.20%	30	18	\$2,400,000	\$2,400,000	\$2,400,000	\$2,400,000	18	30	6.20%	176,391	1.23	21.5%
TOTAL DEBT / GRANT SOURCES				\$176,391				\$2,400,000			\$2,400,000				\$176,391		21.5%
NET CASH FLOW		\$43,119	\$40,246							NET OPERATING INCOME		\$216,637	\$40,246	NET CASH FLOW			

EQUITY SOURCES													
APPLICANT'S PROPOSED EQUITY STRUCTURE						Prior Underwriting		AS UNDERWRITTEN EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Applicant	TDHCA	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	
Bank of America	LIHTC Equity	76.5%	\$890,000	0.96	\$8,543,146	\$8,543,146	\$8,543,146	\$8,543,146	\$0.9599	\$890,000	76.5%	\$110,950	
Kilday Ptrs, Nantucket Hsg, EBH	Deferred Developer Fees	2.0%	(19% Deferred)		\$218,133	\$215,418	\$215,418	\$218,133	(19% Deferred)		2.0%	Total Developer Fee:	\$1,141,628
Additional (Excess) Funds Req'd		0.0%			\$0	\$0	\$0	\$0			0.0%	15-Year Cash Flow:	\$671,568
TOTAL EQUITY SOURCES		78.5%			\$8,761,279	\$8,758,564	\$8,758,564	\$8,761,279			78.5%	Cash Flow after Deferred Fee:	\$453,435
TOTAL CAPITALIZATION					\$11,161,279	\$11,158,564	\$11,158,564	\$11,161,279					

DEVELOPMENT COST / ITEMIZED BASIS														
APPLICANT COST / BASIS ITEMS					Prior Underwriting		TDHCA COST / BASIS ITEMS				COST VARIANCE			
Eligible Basis		Total Costs	Applicant	TDHCA	Total Costs	Eligible Basis		%	\$					
Acquisition	New Const. Rehab					New Const. Rehab	Acquisition							
Land Acquisition		\$20,518 / Unit	\$1,579,923	\$1,579,923	\$1,579,923	\$20,518 / Unit		0.0%	\$0					
Building Acquisition	\$0	\$ / Unit	\$0	\$0	\$0	\$ / Unit	\$0	0.0%	\$0					
Off-Sites		\$ / Unit	\$0	\$0	\$0	\$ / Unit		0.0%	\$0					
Sitework	\$798,463	\$10,914 / Unit	\$840,372	\$840,372	\$840,372	\$10,914 / Unit	\$798,463	0.0%	\$0					
Site Amenities	\$385,708	\$5,009 / Unit	\$385,708	\$385,708	\$385,708	\$5,009 / Unit	\$385,708	0.0%	\$0					
Building Costs	\$4,671,366	\$76.70 /sf	\$60,862/Unit	\$4,686,366	\$4,647,810	\$4,995,113	\$4,622,422	\$60,031/Unit	\$75.65 /sf	\$4,622,422	1.4%	\$63,944		
Contingency	\$219,583	3.75%	5.00%	\$295,622	\$332,622	\$332,622	\$295,622	5.05%	3.78%	\$219,583	0.0%	\$0		
Contractor's Fees	\$819,775	13.49%	13.33%	\$827,742	\$827,742	\$827,742	\$827,742	13.47%	13.60%	\$819,775	0.0%	\$0		
Indirect Construction	0	\$461,633	\$7,223 / Unit	\$556,133	\$557,689	\$557,689	\$556,133	\$7,223 / Unit	\$461,633	\$0	0.0%	\$0		
Developer's Fees	\$0	\$1,141,628	15.00%	14.74%	\$1,141,628	\$1,138,632	\$1,138,632	\$1,141,628	14.87%	15.00%	\$1,134,286	\$0	0.0%	\$0
Financing	0	\$254,325	\$6,215 / Unit	\$478,535	\$478,565	\$478,565	\$478,535	\$6,215 / Unit	\$254,325	\$0	0.0%	\$0		
Reserves		\$4,795 / Unit	\$369,250	\$369,500	\$236,358	\$234,480	\$3,045 / Unit				57.5%	\$134,770		
UNADJUSTED BASIS / COST		\$0	\$8,752,481	\$144,952 / Unit	\$11,161,279	\$11,158,564	\$11,372,725	\$10,962,566	\$142,371 / Unit	\$8,696,196	\$0	1.8%	\$198,713	
Acquisition Cost for Identity of Interest Seller				\$0										
Contingency				\$0										
Contractor's Fee				\$0										
Interim Interest				\$0										
Developer's Fee	\$0			(\$0)	\$0									
ADJUSTED BASIS / COST		\$0	\$8,752,481	\$144,952/unit	\$11,161,279			\$10,962,566	\$142,371/unit	\$8,696,196	\$0	1.8%	\$198,713	
TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):									\$11,161,279					

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Campanile at Jones Creek, Richmond, 9% LIHTC #13223

CREDIT CALCULATION ON QUALIFIED BASIS			
Applicant		TDHCA	
Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$0	\$8,752,481	\$8,696,196
Deduction of Federal Grants	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$8,752,481	\$8,696,196
High Cost Area Adjustment		130%	130%
TOTAL ADJUSTED BASIS	\$0	\$11,378,225	\$11,305,054
Applicable Fraction	92.84%	92.84%	92.84%
TOTAL QUALIFIED BASIS	\$0	\$10,562,981	\$10,495,053
Applicable Percentage	0.00%	9.00%	9.00%
ANNUAL CREDIT ON BASIS	\$0	\$950,668	\$944,555
CREDITS ON QUALIFIED BASIS	\$950,668	\$944,555	

ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		
Method	Annual Credits	Proceeds
Eligible Basis	\$950,668	\$9,125,503
Gap	\$912,725	\$8,761,279
Original Request	\$890,000	\$8,543,146
Current Request	\$890,000	\$8,543,146

FINAL ANNUAL LIHTC ALLOCATION		
Method	Current Request	Variance to Request
Credits	\$890,000	\$0
Total Equity Proceeds	\$8,543,146	\$0

Building Cost/SF			
Development Category	Elevator-Served	Category Building Cost/SF (Mean)	\$68.91 /sf
NRA	61,103	Calculated Building Cost/SF ⁽³⁾	\$76.70 /sf
Elevator Served Enclosed Corridors ⁽¹⁾	0	Building Cost Variance (\$)	-\$7.78 /sf
Common Area ⁽²⁾	0	Variance to Mean (%)	11.3%
Total SF for QAP Calculation	61,103	Building Cost/SF reported in Application ⁽³⁾	\$61.89 /sf
		Variance to Mean based on Application	10.2%

- (1) Supportive Housing, Qualified Elderly or 4-Story Development
- (2) Up to \$50 SF/Unit common area for Supportive Housing
- (3) Excludes Structured Parking

DIRECT CONSTRUCTION COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Garden (Up to 3-story)	61,103 SF	\$63.29	3,867,154
Adjustments				
Exterior Wall Finish	4.80%		3.04	\$185,623
Elderly	3.00%		1.90	116,015
9 ft. ceilings	3.60%		2.28	139,218
Roofing			1.55	94,855
Subfloor			(0.78)	(47,355)
Floor Cover			2.68	163,756
Breezeways	\$0.00	0	0.00	0
Balconies	\$24.59	5,455	2.19	134,120
Plumbing Fixtures	\$940	96	1.48	90,240
Rough-ins	\$465	154	1.17	71,610
Built-In Appliances	\$1,750	77	2.21	134,750
Exterior Stairs	\$2,125	8	0.28	17,000
Heating/Cooling			2.06	125,872
Enclosed Corridors	\$55.20	0	0.00	0
Carports	\$11.30	0	0.00	0
Garages	\$22.87	0	0.00	0
Comm &/or Aux Bldgs	\$69.46	7,762	8.82	539,170
Elevators	\$52,250	4	3.42	209,000
Other:			0.00	0
Other: fire sprinkler	\$2.37	68,865	2.67	163,210
SUBTOTAL			98.26	6,004,238
Current Cost Multiplier	1.02		1.97	120,085
Local Multiplier	0.89		(10.81)	(660,466)
TOTAL DIRECT CONSTRUCTION COSTS			89.42	\$5,463,856
Plans, specs, survey, bldg perm	3.90%		(3.49)	(\$213,090)
Contractor's OH & Profit	11.50%		(10.28)	(628,343)
NET DIRECT CONSTRUCTION COSTS		\$60,031/unit	\$75.65/sf	\$4,622,422

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Application Amendment for Summit Place in Dallas (#13240)

RECOMMENDED ACTION

WHEREAS, Summit Place received an award of 9% Housing Tax Credits in 2013 to newly construct 98 multifamily units in Dallas;

WHEREAS, the Development Owner is requesting approval for changes to the site plan, parking, common areas, number of units, and unit plans due to drainage and code requirements and the reduced square footage of the units and common area, resulting in significant modifications of the site plan and reduced square footage of the units and common area;

WHEREAS, the required changes to the site plan and square footage of units and common areas requires Board approval under 10 TAC §10.405(a)(4); and

WHEREAS, the requested changes do not negatively affect the Development or impact the viability of the transaction and affect the amount of tax credits awarded;

NOW, therefore, it is hereby

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

BACKGROUND

On June 30, 2014, the Development Owner requested several amendments to the previously approved HTC application for Summit Place. The changes requested are detailed below.

Changes to Site Plan and Parking

The Development Owner originally contemplated using an existing storm sewer drain maintained by the Texas Department of Transportation (“TXDOT”) near the northwest corner of the site for the site’s drainage. However, after months of communication with TXDOT the request to use the storm sewer was denied. The addition of a storm sewer drain on the site required a reduction of the building footprint and number of parking spaces to account for topography changes needed to direct the drainage away from the north. The number of parking

spaces decreased from 193 spaces to 166 spaces, which complies with a variance granted by the City of Dallas.

Reduction in Common Area

At application the common area was proposed at 5,295 square feet with the majority of space on the first floor and a community room on the second floor. During the design and building permit process it was discovered that any interior common area on the second floor would be required to be built to commercial codes and add considerable cost to the development. Therefore, the community room was moved from the second floor to the first floor, resulting in a new total area of 5,004 square feet or a 5.5% reduction from application.

Change to the Number of Market Rate Units

The loss of the second floor community room created a large vacant area. In order to use the space efficiently, two market rate units were added, resulting in an increase in the total number of units for the development to 100 units. The number of low income units remains the same at 75 units.

Reduction to Unit Sizes

As a result of the decrease in the building footprint, the interior square footage was impacted as well. Interior air conditioned corridor square footage was reduced from 14,328 to 13,243 and the net rentable area decreased from 90,900 square feet to 86,934 square feet (not including the additional two market rate units located in the community building).

Local Funding Change

At application the Development Owner proposed utilizing twelve housing voucher units from the Dallas Housing Authority to qualify for points under 11.9(d)(2) of the 2013 QAP. However, local funding from the Dallas Housing Authority was finalized at eight (8) housing vouchers and a total funding commitment of over \$1.6 million. Staff has confirmed that this change would not have impacted the Development Owner's final scoring.

In addition to the changes noted above, the Development Owner also indicated that the development is now being constructed to meet the National Association of Home Builders ("NAHB") Green Building certification, which was not originally committed at application. As a result of this and the scope of changes proposed, the total development costs have increased since the last underwriting of this transaction. Real Estate Analysis has evaluated the changes and the impact to the development costs and has concluded that no negative impact would have resulted to the underwriting of this transaction as a result.

Staff recommends approval of the amendment request.



August 4, 2014

To: Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Application Amendment Request
Riverwood Commons
12002
Riverwood Commons, L.P.

On behalf of Riverwood Commons, L.P., we would like to request an amendment to the Application for Riverwood Commons.

At the time of Application, and without the benefit of a final set of building plans, the community space was estimated to be 10,689 square feet. After full building design and construction, the building contained 10,200 square feet of community space. Riverwood Commons is a three story building, thus all space not a part of the inside of the units, which includes hallways, leasing office, closets etc, is considered common/community space. It is difficult to estimate the size of this space prior to having completed plans.

Please accept this letter for our formal request for an amendment to the Application.

Respectfully,

Will Markel
Executive Vice President
Affordable Equity Partners



BUILDING SF	
NRA (NET RENTABLE AREA)	
SPACE	GROSS SF
UNITS	31,673
CORRIDOR	5,421
SUB TOTAL NRA	37,094
NON NRA	
SPACE	GROSS SF
COMMON SPACE	2,743
STORAGE	301
STAIR	1,480
ELEVATOR	255
SUB TOTAL NON NRA	4,779
TOTAL SF	41,873

>>

LOCATION

LOCATION MAP

ILEY ASSOCIATES - ARCHITECTS, P.C.
 801 SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800

COMMONS APARTMENTS

FIRST FLOOR PLAN

WALL LEGEND:

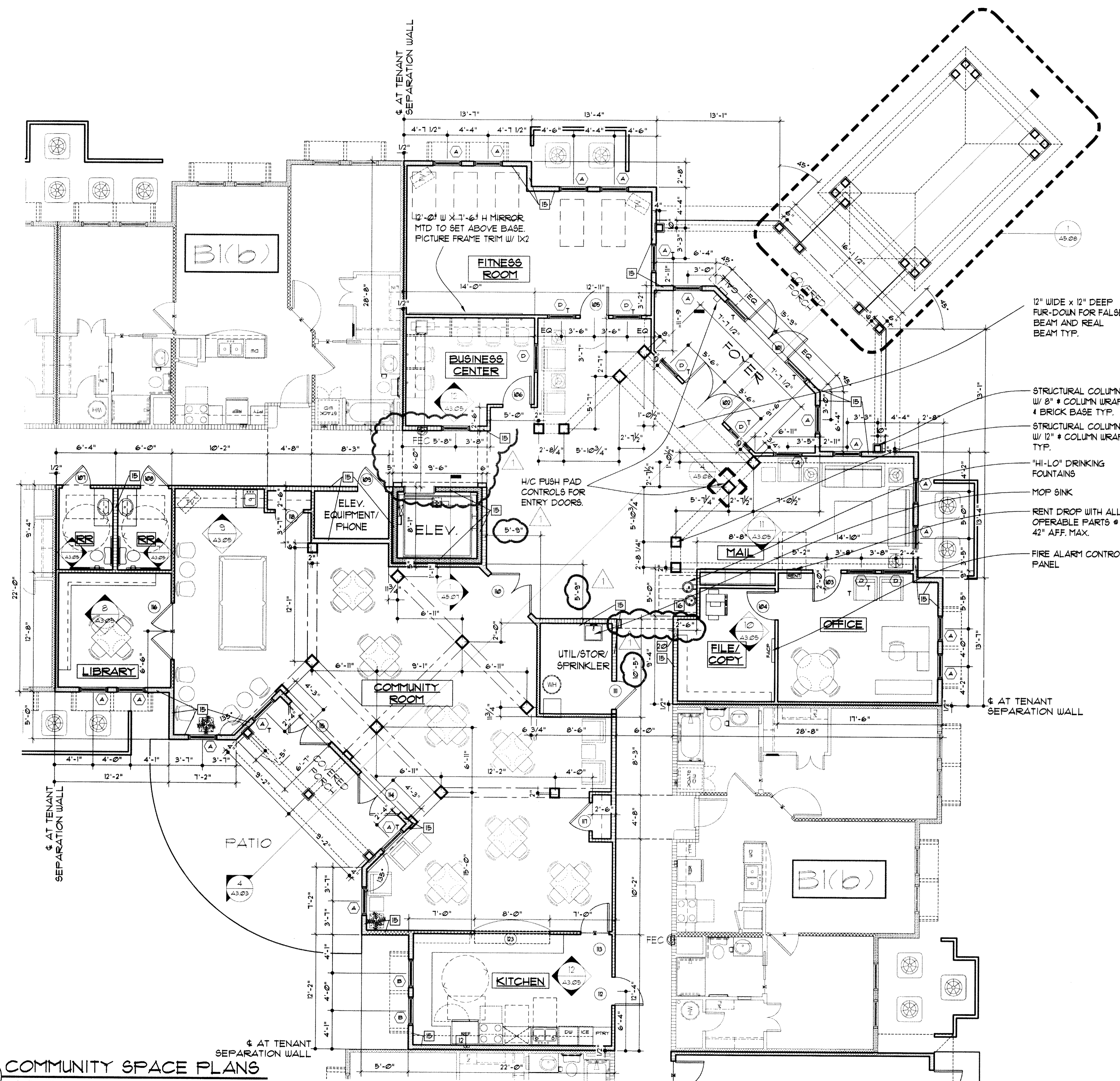
- UNRATED WALL
- 1-HR RATED EXTERIOR WALL
- 1-HR RATED TEN. SEP. WALL
- 1-HR CORRIDOR WALL
- 1-HR INTERIOR BEARING WALL
- 1-HR RATED ATTIC WALL

UNIT LABELING LEGEND:

- TYPE (a) HANDICAP UNIT
- TYPE (b) FAIR HOUSING UNIT
- TYPE (av) HEARING/VISUAL IMPAIRMENT

UNIT PLAN KEY NOTES:

- 1 1/2" ROD AND SHELF AT 5'-4"
- 2 12" SHELF AT 3', 4'-2", 5'-4", AND 6'-6"
- 3 DBL. 12" ROD AND SHELF AT 2'-6", 5'-4"
- 4 12" ROD AND SHELF AT 5'-4"
- 5 16" SHELF AT 5'-4" AND 6'-6"
- 6 16" SHELF AT 3'-4" AND 5'-4"
- 7 DBL. 16" ROD AND SHELF AT 2'-6", 5'-4"
- 8 16" SHELF AT 3', 4'-2", 5'-4", AND 6'-6"
- 9 RECESSED MEDICINE CABINET
- 10 TOILET PAPER HOLDER
- 11 LOW PROFILE ALUM. THRESHOLD
- 12 STANDARD ALUM. THRESHOLD
- 13 ICE MAKER BOX CONNECTION
- 14 WASHER BOX CONNECTION
- 15 DRYER VENT BOX IN 6" WALL
- 16 2x6 WALL
- 17 WATER FOUNTAIN
- 18 EYEWASH SINK @ 33" AFF.
- 19 MOP SINK
- 20 FOLDING ACOUSTIC PARTITION
- 21 RADON PIPE
- 22 ELECTRICAL PANEL BOX
- 23 24" TOWEL BAR
- 24 WALL MOUNTED BATH FAN
- 25 DOOR CAN BE REMOVED AT TENANT'S REQUEST
- 26 TENANT ENTRY SHELF. SEE 8/15/06
- 27 PROVIDE AND INSTALL TWO (2) STOVE TOP "FIRESTOP" (OR EQUAL) FIRE PROTECTION CANISTERS. CANISTERS SHALL BE INSTALLED ON THE UNDERSIDE OF THE RANGE HOOD PRIOR TO OCCUPANCY.



12" WIDE x 12" DEEP FUR-DOWN FOR FALSE BEAM AND REAL BEAM TYP.

STRUCTURAL COLUMN W/ 8" # COLUMN WRAP & BRICK BASE TYP.

STRUCTURAL COLUMN W/ 12" # COLUMN WRAP TYP.

"HI-LO" DRINKING FOUNTAINS

MOP SINK

RENT DROP WITH ALL OPERABLE PARTS @ 42" AFF. MAX.

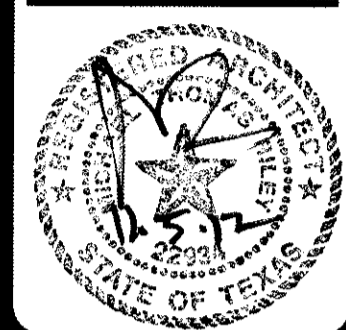
FIRE ALARM CONTROL PANEL

1 COMMUNITY SPACE PLANS
3/16" = 1'-0"

SCALE: 3/16" = 1'-0"

MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
215 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800

RIVERWOOD COMMONS APARTMENTS
BASTROP, TX



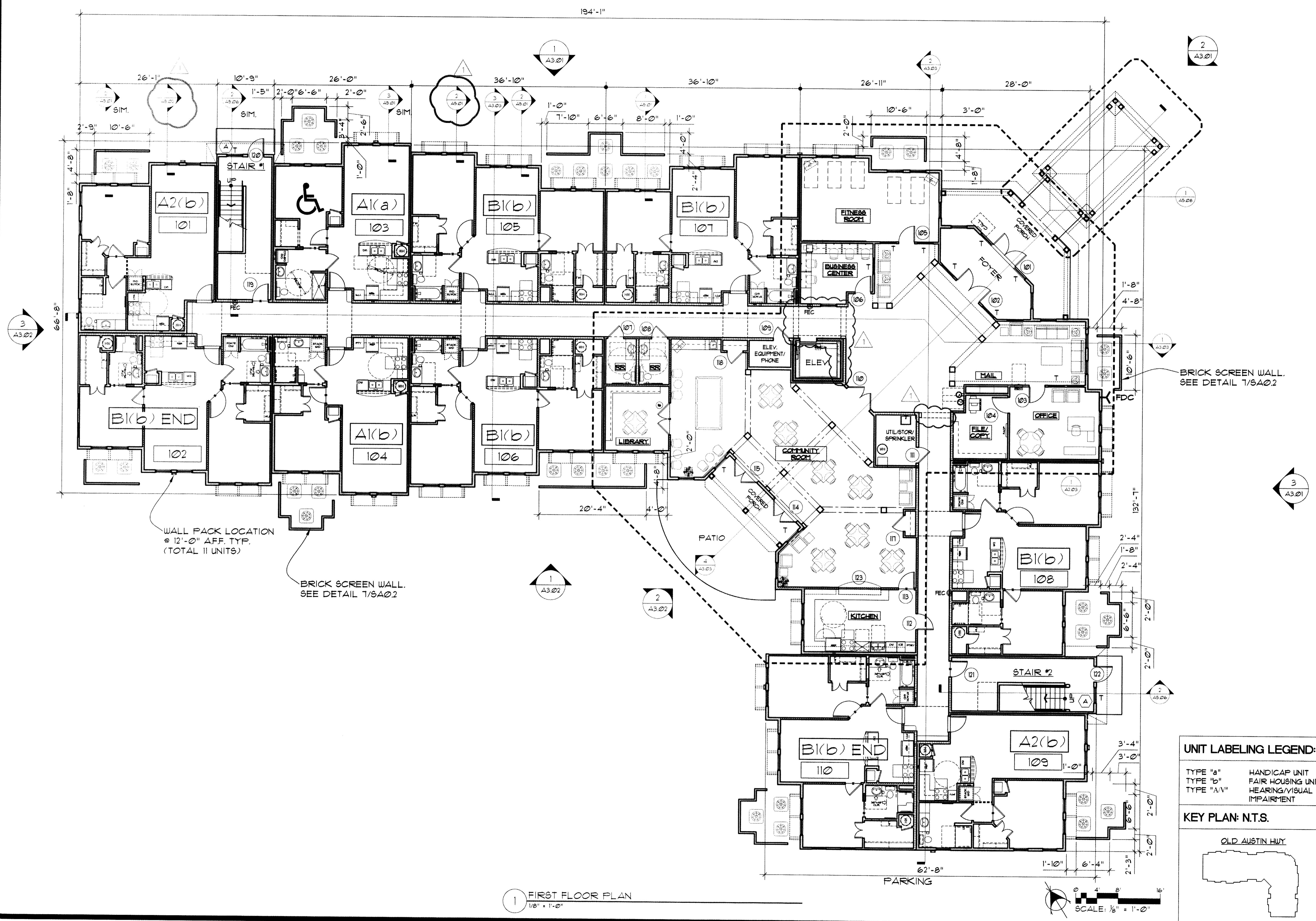
PROJECT: 2010-0713
DATE: 5-21-12
DRAWN BY / CHECKED BY: DJG

COMMUNITY SPACE PLANS

MARRA
RELEASED FOR CONSTRUCTION
A2.03

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PLOTTED: Nov 05, 2012 - 8:59am LOCATION: F:\A1\FairHousing\2010-073_BASTROP, TX\Sheets\2010-073_BASTROP.dwg Plotted By: discalisse - Copyright 2009



WALL PACK LOCATION
@ 12'-0" AFF. TYP.
(TOTAL 11 UNITS)

BRICK SCREEN WALL.
SEE DETAIL 1/5A02

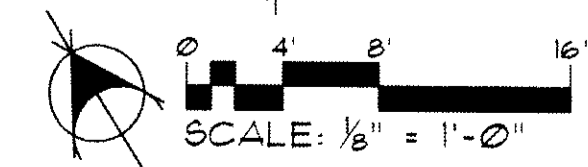
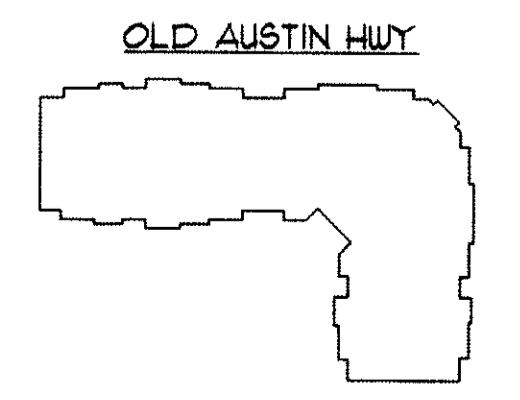
BRICK SCREEN WALL.
SEE DETAIL 1/5A02

1 FIRST FLOOR PLAN
1/8" = 1'-0"

UNIT LABELING LEGEND:

TYPE "a"	HANDICAP UNIT
TYPE "b"	FAIR HOUSING UNIT
TYPE "A/V"	HEARING/VISUAL IMPAIRMENT

KEY PLAN: N.T.S.



REVISIONS	11-5-12
PROJECT	2010-073
DATE	5-21-12
DRAWN BY / CHECKED BY	DJS

MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
 215 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-375-2800
RIVERWOOD COMMONS APARTMENTS
 BASTROP, TX

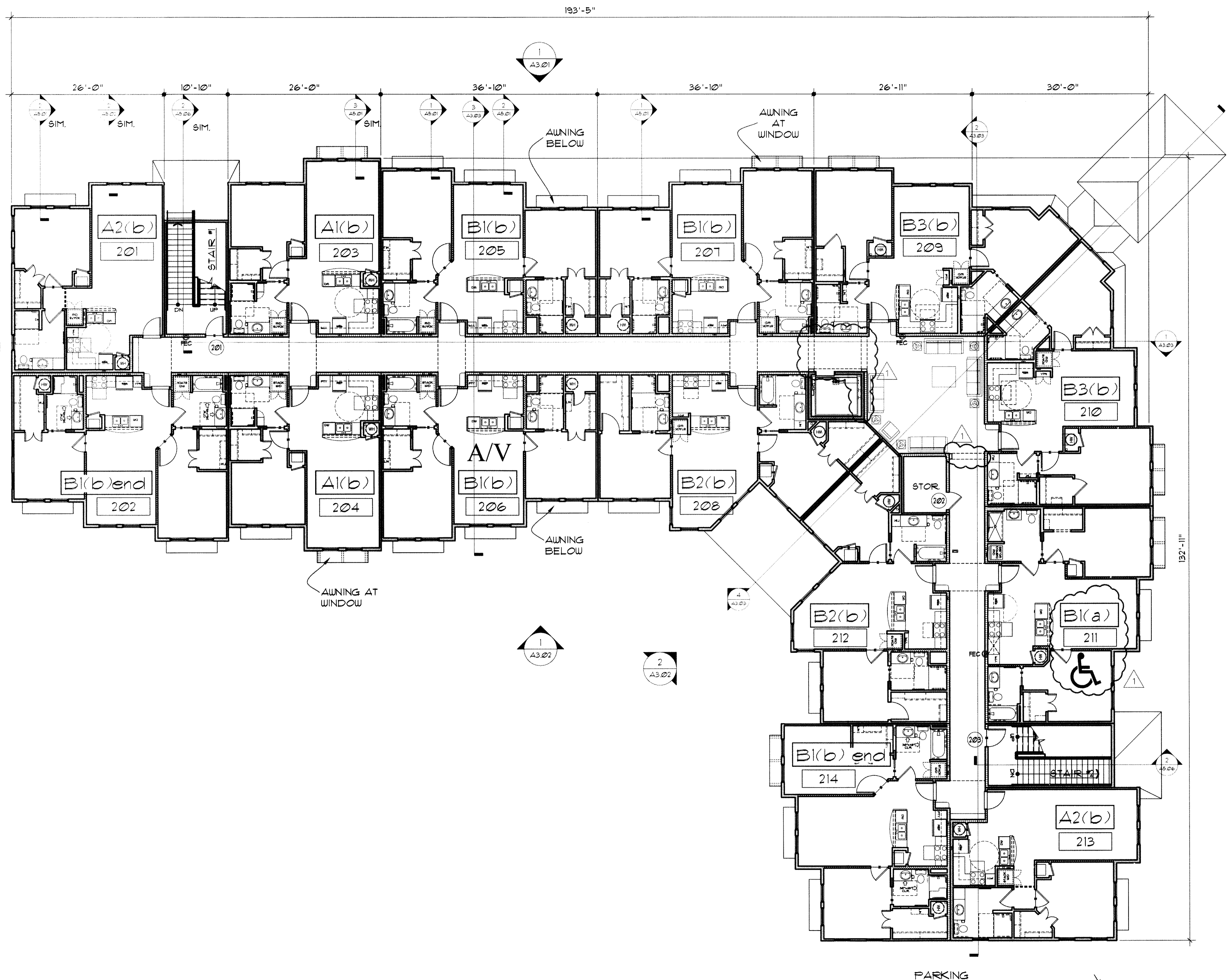
RELEASED FOR CONSTRUCTION

A1.01

FIRST FLOOR PLAN

PLOTTED: Nov. 05, 2012 - 9:01am LOCATION: P:\Affordable Equity Partners\2010-073_BASTROP, TX\Sheets\ 2010-073 A1.02.dwg Plotted By: dscolice - Copyright 2009

amem - R11/2/14 10:38am - RB



2
A3.01

3
A3.02

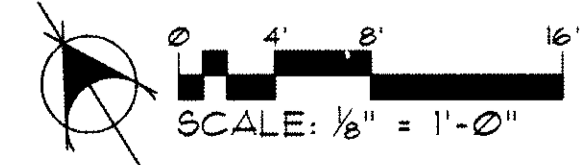
3
A3.01

1
A3.02

2
A3.02

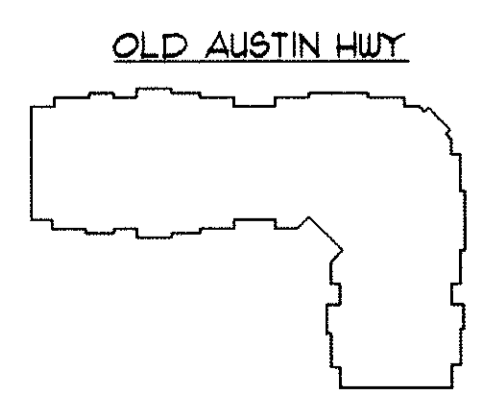
2
A3.02

1 SECOND FLOOR PLAN
1/8" = 1'-0"



UNIT LABELING LEGEND:
TYPE "a" HANDICAP UNIT
TYPE "b" FAIR HOUSING UNIT
TYPE "A/V" HEARING/VISUAL IMPAIRMENT

KEY PLAN: N.T.S.



REVISION	11-9-12
PROJECT	2010-073
DATE	5-21-12
DRAWN BY / CHECKED BY	DJS

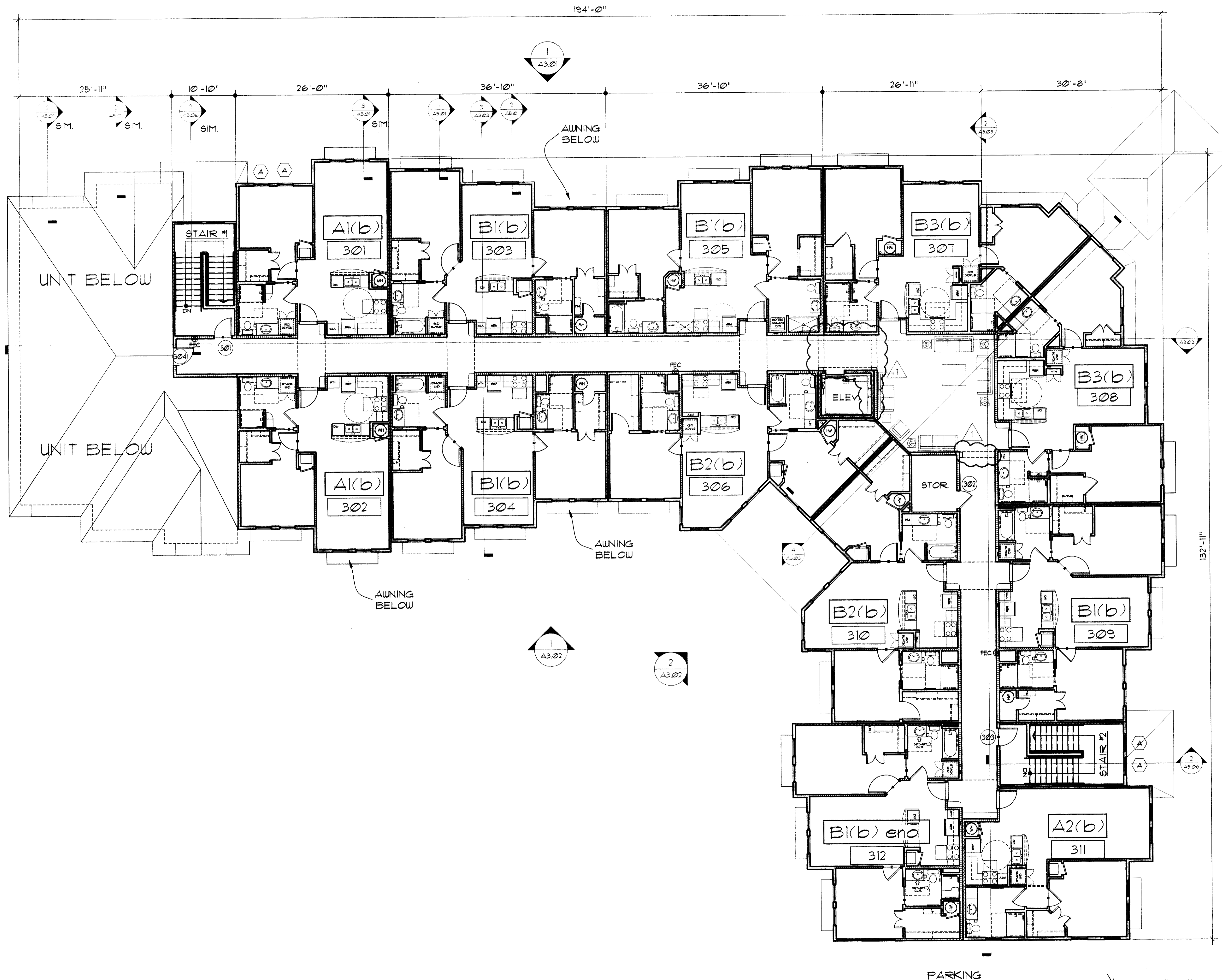
MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
 25 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800
RIVERWOOD COMMONS APARTMENTS
 BASTROP, TX

RELEASED FOR CONSTRUCTION

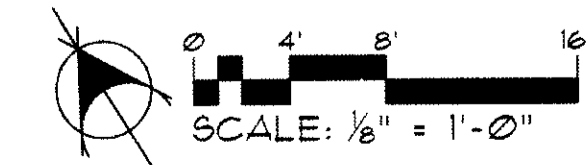
A1.02

FIRST FLOOR PLAN

PLOTTED: Nov 05, 2012 - 9:02am LOCATION: P:\Affordable Equity Partners\2010-073_BASTROP, TX\Sheets\2010-073_BASTROP, TX.dwg Plotted By: ascolise - Copyright 2009

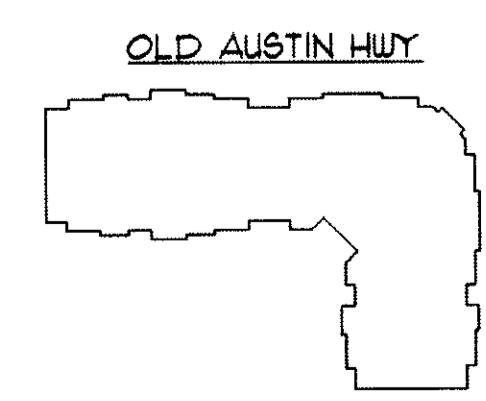


1 THIRD FLOOR PLAN
1/8" = 1'-0"



UNIT LABELING LEGEND:
TYPE "a" HANDICAP UNIT
TYPE "b" FAIR HOUSING UNIT
TYPE "A/V" HEARING/VISUAL IMPAIRMENT

KEY PLAN: N.T.S.



REVISIONS
11-5-12

PROJECT: 2010-073
DATE: 5-21-12
DRAWN BY / CHECKED BY: DJS

MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
215 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800
RIVERWOOD COMMONS APARTMENTS
BASTROP, TX

A1.03

RELEASED FOR CONSTRUCTION

FIRST FLOOR PLAN

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Amendment for Abbington Meadows in Howe (#13115)

RECOMMENDED ACTION

WHEREAS, Abbington Meadows received an award of 9% Housing Tax Credits in 2013 to newly construct 64 multifamily units in Howe;

WHEREAS, the Development Owner is requesting approval for a reduction in the square footage and design of the clubhouse as well as other changes to the site plan and the reduced square footage of the common area results in a reduction of 3% or more and requires Board approval under 10 TAC §10.405(a)(4)(F); and

WHEREAS, the requested changes do not negatively affect the Development or impact the viability of the transaction or affect the amount of tax credits awarded;

NOW, therefore, it is hereby

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

BACKGROUND

On June 26, 2014, the Development Owner requested approval for changes made to the development including a reduction in the square footage of the common area, changes in site plan and design of the building elevations and unit amenities. The original proposal contemplated a clubhouse design that was 5,093 gross square feet. However, in an effort to control construction cost overages a new clubhouse design was reduced by 827 square feet. The design of the building elevations was also adjusted to control construction cost overruns with changes including reduced exterior brick from 50% to 13%; reduced ceiling height from 9 feet to 8 feet and elimination of the vinyl railings and gates on the first floor porches. Finally, the site plan has also been modified to eliminate a drive that originally cut through green space near the playground, a gazebo was removed from the site and the dumpster gates were also removed. It

Howe Abbington Meadows, LP

*c/o Rea Ventures Group, LLC - 2964 Peachtree Road NW, Suite 640 - Atlanta, GA 30305
office (404) 273-1892 - fax (404) 506-9081*

June 26, 2014

Texas Department of Housing and Community Affairs
Attention: Raquel Morales
P O Box 13941
Austin, Texas 78711-3941

RE: Request for Design Changes to Application #13115 (Abbington Meadows, Howe, TX)

Dear Ms. Morales:

In an effort to control cost overruns we have experienced for both onsite and offsite work (both materials and labor), we respectfully request the Department's approval of several design changes from what was submitted in our application. These changes consist of a reduction in the square footage and design of the clubhouse, adjustments to the elevation design of the buildings, and changes to the site plan.

The preliminary design for the clubhouse submitted in the full application (Attachment 1) was 5,093 gross square feet with more than sufficient space to provide the amenities needed to meet the 7 site amenities points committed in the application. In an effort to control construction cost overages after award, a new clubhouse design (Attachment 2) developed by the architect that would cost less (because its floor space was reduced by 827 square feet) but still provide sufficient space and features to attain the 7 site amenities points committed in the application.

The design of the building elevations was also adjusted to control construction cost overruns. These adjustments consisted of reducing exterior brick from 50% to 13%; reducing ceiling height from 9-feet to 8-feet; and eliminating the vinyl railings and gates on the first floor porches. The original elevation design submitted in the application (Attachment 3) and the new, adjusted elevation design (Attachment 4) are both attached for your review.

The site plan was revised in three ways to control cost overruns while still attaining the 7 site amenities point committed to in the application. First, a drive cutting through greenspace near the playground was eliminated. Second, the gazebo was removed. Third, dumpster gates were also removed. The original site plan submitted in the application (Attachment 5) and the revised site plan (Attachment 6) are included for your consideration.

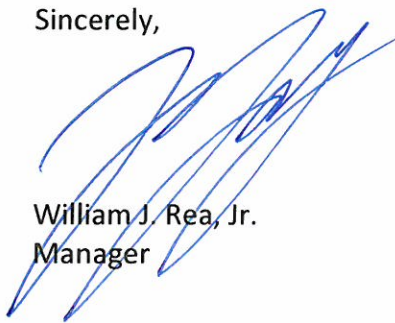
Howe Abbington Meadows, LP

*c/o Rea Ventures Group, LLC - 2964 Peachtree Road NW, Suite 640 - Atlanta, GA 30305
office (404) 273-1892 - fax (404) 506-9081*

Following award, the bids our contractor received for the offsite and onsite work came in significantly higher than the prior experience used to set the application budget. However, with the requested design changes and additional work on the final design of our offsite infrastructure connections we are able to contain the cost overrun to an amount that, while higher than the original application budget, still allows the project to remain financially feasible. The revised underwriting showing the current pro forma with the requested design changes is attached (Attachment 7). The City of Howe has also agreed to additional deferral of city fees via a cash-flow only loan to assist the project in covering these unforeseen cost overruns (Attachment 8). Deferred developer fee is higher than originally projected but can still be repaid from cash flow within 15 years.

We appreciate the opportunity to submit this design change request and trust that the Department will concur with these necessary adjustments in order to maintain the financial feasibility of the Abbington Meadows project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Rea, Jr.', is written over the typed name and title.

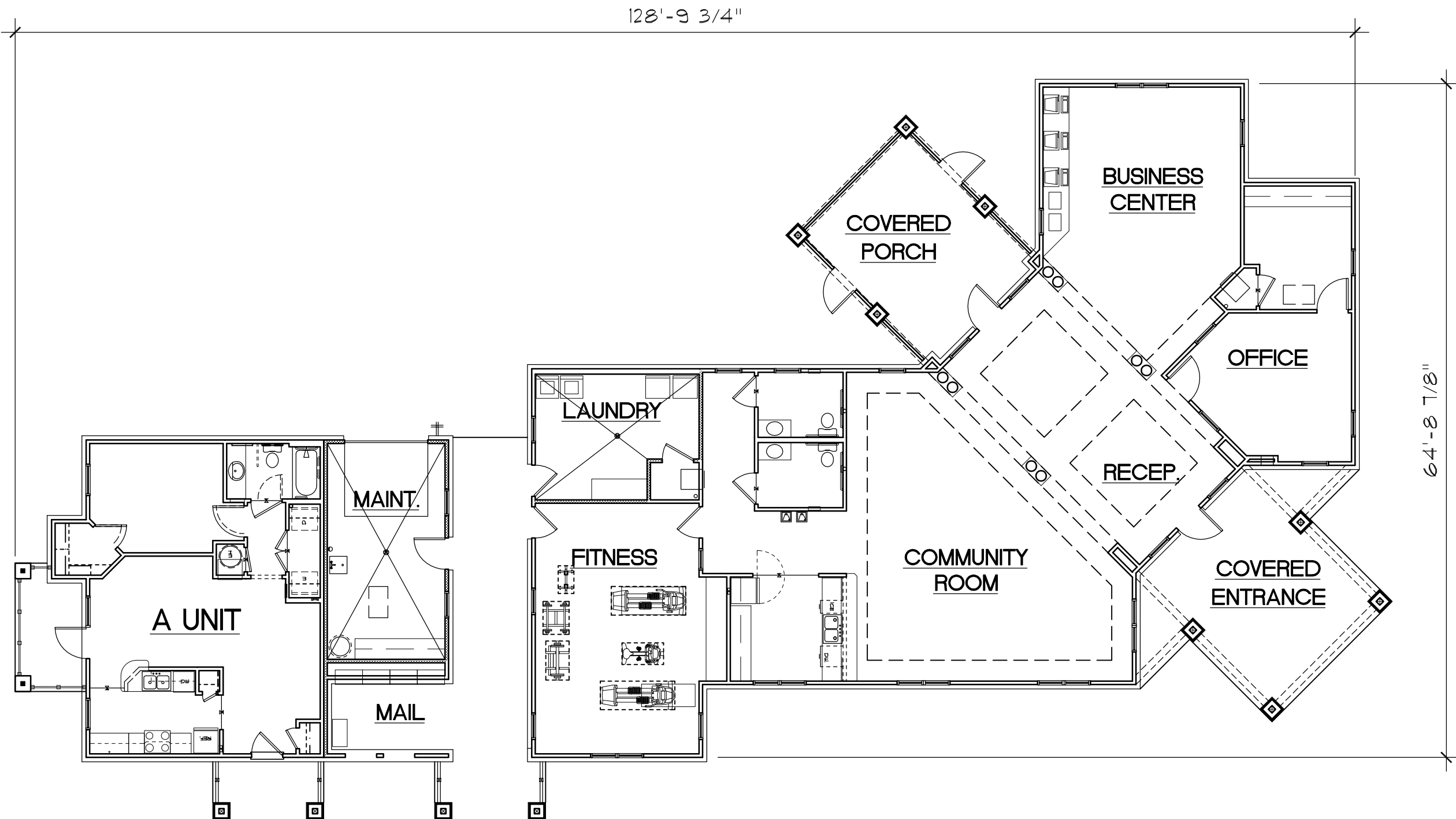
William J. Rea, Jr.
Manager

Howe Abbington Meadows, LP

*c/o Rea Ventures Group, LLC - 2964 Peachtree Road NW, Suite 640 - Atlanta, GA 30305
office (404) 273-1892 - fax (404) 506-9081*

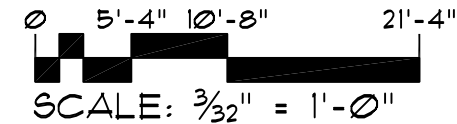
Attachment 1 Original Clubhouse Design Submitted in Application

PLOTTED: Apr 11, 2013 - 3:47pm LOCATION: P:\AREA\Howe, TX\Prelin\ A24.dwg Plotted By: dthompson - Copyright 2013



5,093 GROSS S.F. INCLUDING "A" UNIT

1 COMMUNITY BUILDING W/ 'A' UNIT
 3/32" = 1'-0"



PROJECT	2013
DATE	2/25/13
DRAWN BY / CHECKED BY	DET
REVISIONS	4/1/13

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 215 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800
 ABBINGTON MEADOWS
 HOWE, TEXAS

MARRA

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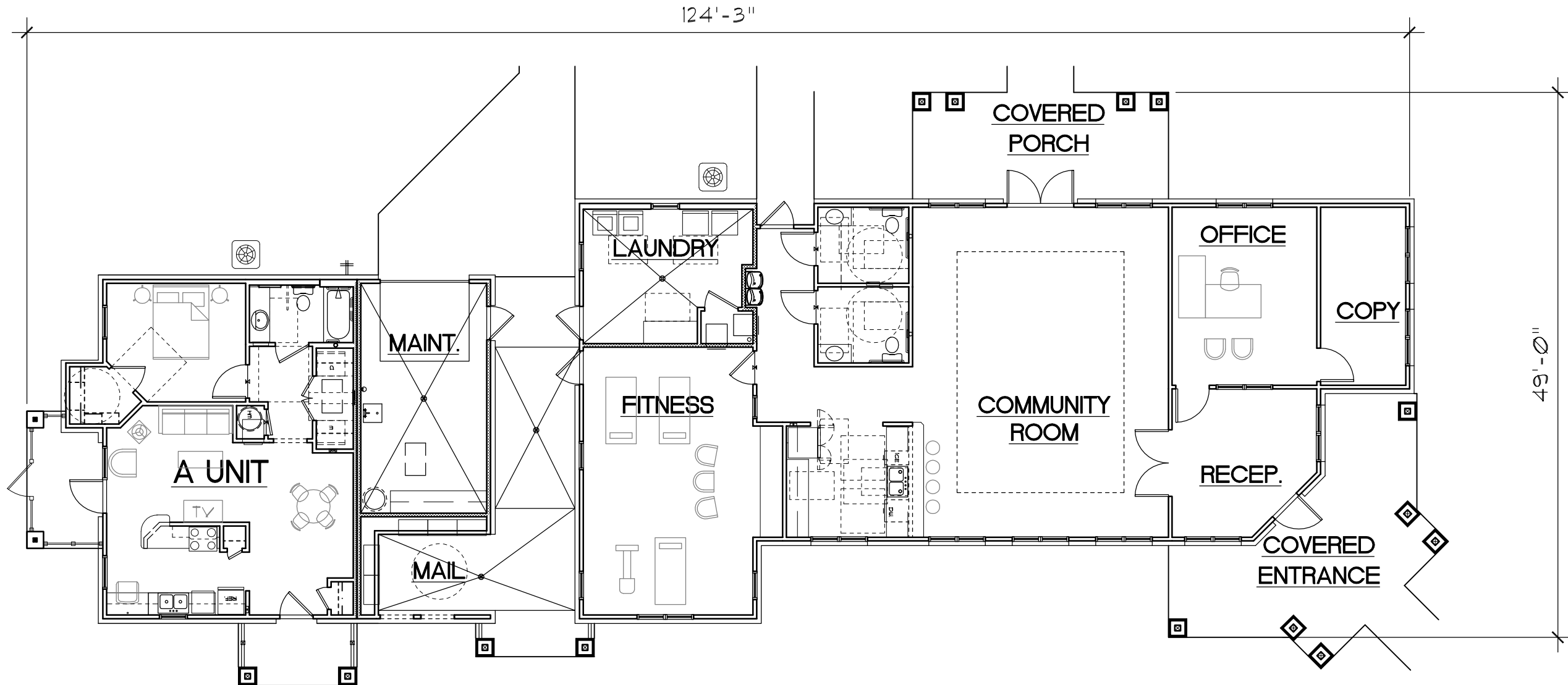
A2.4

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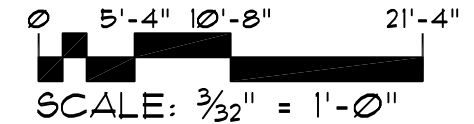
Attachment 2 New Clubhouse Design Requested

PLOTTED: May 29, 2014 - 4:35pm LOCATION: P:\AREA\2013-069 Abbingdon Meadows, Howe, TX\Prelin\A24.dwg Plotted By: dthompson - Copyright 2014



4,266 GROSS S.F. INCLUDING "A" UNIT

1 COMMUNITY BUILDING W/ 'A' UNIT
 3/32" = 1'-0"



PROJECT	2013-069
DATE	5/29/14
DRAWN BY / CHECKED BY	DET
REVISIONS	

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Attachment 3 Original Exterior Elevation Submitted in Application

PLOTTED: Feb 27, 2013 - 8:44pm LOCATION: P:\REA\Howe, TX\Prelim\ A31.dwg Plotted By: dthompson - Copyright 2013

51% BRICK
49% FIBER CEMENT SIDING

- FIBER CEMENT SIDING WITH 1" EXPOSURE
- SEAMLESS ALUMINUM GUTTERS ON FIBER CEMENT FASCIA
- FUNCTIONAL VENT WITH GABLE TOP
- FIBER CEMENT PANELS
- PROJECTING BRICK SOLDIER HEADER AND ROWLOCK SILL
- VINYL RAILING SYSTEM
- FIBER CEMENT PANEL BUILT-UP SQUARE COLUMNS
- 5/4x6 FIBER CEMENT CORNER BOARDS

- 30 YEAR ARCHITECTURAL SHINGLES
- BRICK VENEER
- SINGLE-HUNG VINYL WINDOW WITH FIBER CEMENT CASING TRIM



1 BUILDING 100 AND 200 FRONT ELEVATION
3/32" = 1'-0"

0 5'-4" 10'-8" 21'-4"
SCALE: 3/32" = 1'-0"

PROJECT	2013
DATE	2/25/13
DRAWN BY / CHECKED BY	DET

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Attachment 4 New Exterior Elevation Requested

PROJECT ELEVATION NOTES:

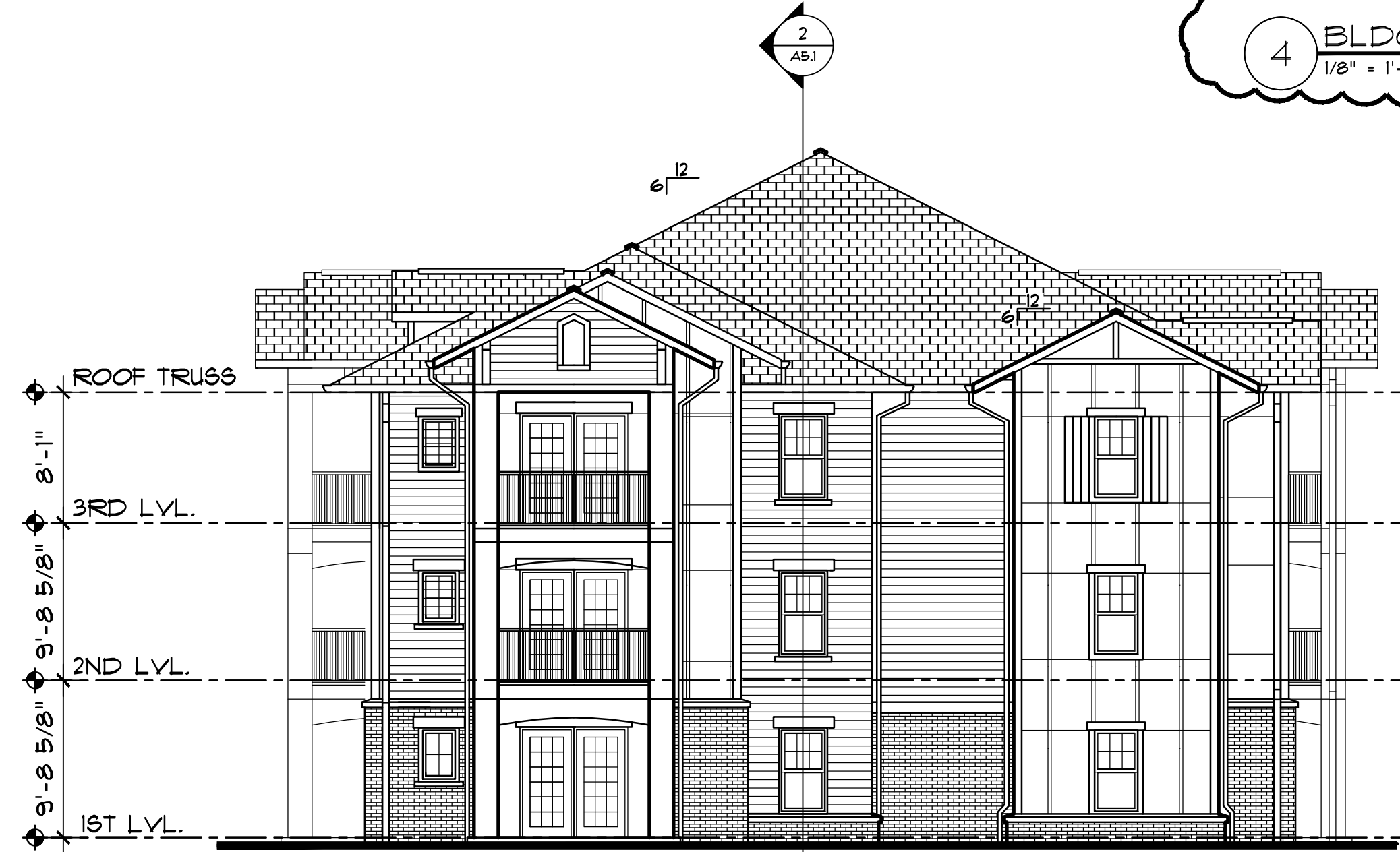
- SEE MECH. PLANS FOR LOCATION OF HYAC DUCT CHASE. WHERE CHASE OCCURS, ALL CHASE WALLS SHALL BE 1 HR. RATED, TYP.
- SEE ELEVATIONS FOR ALL BRICK VENEER LOCATIONS.

ELEVATION KEY NOTES:

- (A) CONT. ROOF RIDGE VENT TYP.
- (B) 30-YEAR ARCHITECTURAL FIBERGLASS SHINGLES
- (C) FUNCTIONAL 24" TALL GABLE END VENT (TYP.)
- (D) FUNCTIONAL 36"x18" GABLE END VENT (TYP.)
- (E) FUNCTIONAL 66"x18" TWIN GABLE END VENT (TYP.)
- (F) FUNCTIONAL 30"x48" GABLE END VENT (TYP.)
- (G) PREFABRICATED 5" ALUM. GUTTER
- (H) PREFABRICATED 3"x4" ALUM. DOWNSPOUTS
- (I) ALL WATER FROM ROOF AND GUTTER SYSTEM PIPED AWAY FROM BUILDINGS AND DISCHARGED NO LESS THAN 6' FROM BUILDING FOUNDATION.
- (J) 6" EXPOSURE WOOD TEXTURE FIBER CEMENT SIDING
- (K) WOOD TEXTURED FIBER CEMENT PANEL
- (L) SMOOTH FINISH FIBER CEMENT PANEL
- (M) 1/2" SMOOTH FINISH FIBER CEMENT BATTEN
- (N) 6" SMOOTH FINISH FIBER CEMENT CORNER BOARDS
- (O) 4" SMOOTH FINISH FIBER CEMENT CORNER BOARDS
- (P) VINYL SHUTTERS, TYP.
- (Q) 8" SOLDIER COURSE ACCENT BAND
- (R) BRICK VENEER
- (S) BRICK ROULOCK COURSE
- (T) BRICK SOLDIER COURSE
- (U) BRICK ROULOCK SILL
- (V) DRAFTSTOP
- (W) METER LOCATION
- (X) VINYL BALUSTRADE AND RAILING - 36" HIGH WITH 36" WIDE ADA COMPLIANT LATCHING SLING GATE
- (Y) VINYL BALUSTRADE AND RAILING - 42" HIGH
- (Z) BUILDING SIGNAGE - SEE 5G1 & 5G2
- (AA) 32" TALL 4x4 BRACKET
- (AB) 2 HR. RATED WALL TO UNDERSIDE OF ROOF DECK
- (AC) HORIZONTAL FIBERCEMENT JOINT PER MANUF.
- (AD) 18" TALL 4x4 BRACKET



4 BLDG 200 REAR ELEVATION
1/8" = 1'-0"



3 BLDG 200 SIDE ELEVATION
1/8" = 1'-0"



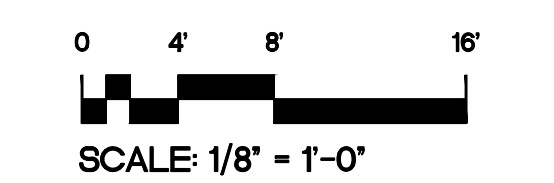
2 BLDG 200 SIDE ELEVATION
1/8" = 1'-0"



1 BLDG 200 FRONT ELEVATION
1/8" = 1'-0"

- (D) 2'-6" TYPICAL AT RAISED GABLE ENDS
- (CC) BREEZEWAY WALL FINISH
- (E) BREEZEWAY WALL FINISH
- (J) BREEZEWAY WALL FINISH
- (BB) BREEZEWAY WALL FINISH
- (L) BREEZEWAY WALL FINISH

TYPICAL BALCONY ARCH DIMENSIONS
RADIUS = 33"
ENDPOINT HEIGHT = 8'0" AFF



PLOTTED: Jun 05, 2014 - 5:20pm LOCATION: P:\AREA\2013-069 Abbington Meadows, Howe, TX\Sheets\A31.dwg Plotted By: mee - Copyright 2014

REVISIONS		
6/16/2014		
PROJECT	2013-069	
DATE	3/5/14	
DRAWN BY / CHECKED BY		DET

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215 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800

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HOWE, TEXAS

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Attachment 5 Original Site Plan Submitted in Application

BUILDING TYPE	ONE BDRM	TWO BDRM	THREE BDRM
#100	0	15	6
#200	0	15	6
#300	13	2	6
CLUBHOUSE	1	0	0
TOTAL	14	32	18

ABBINGTON MEADOWS

HOWE, TEXAS

64 APARTMENT HOMES

- 14 - ONE BEDROOM UNITS @ 715 N.R.S.F.
- 20 - TWO BEDROOM UNITS @ 982 N.R.S.F.
- 12 - TWO BEDROOM UNITS @ 926 N.R.S.F.
- 18 - THREE BEDROOM UNITS @ 1,178 N.R.S.F.

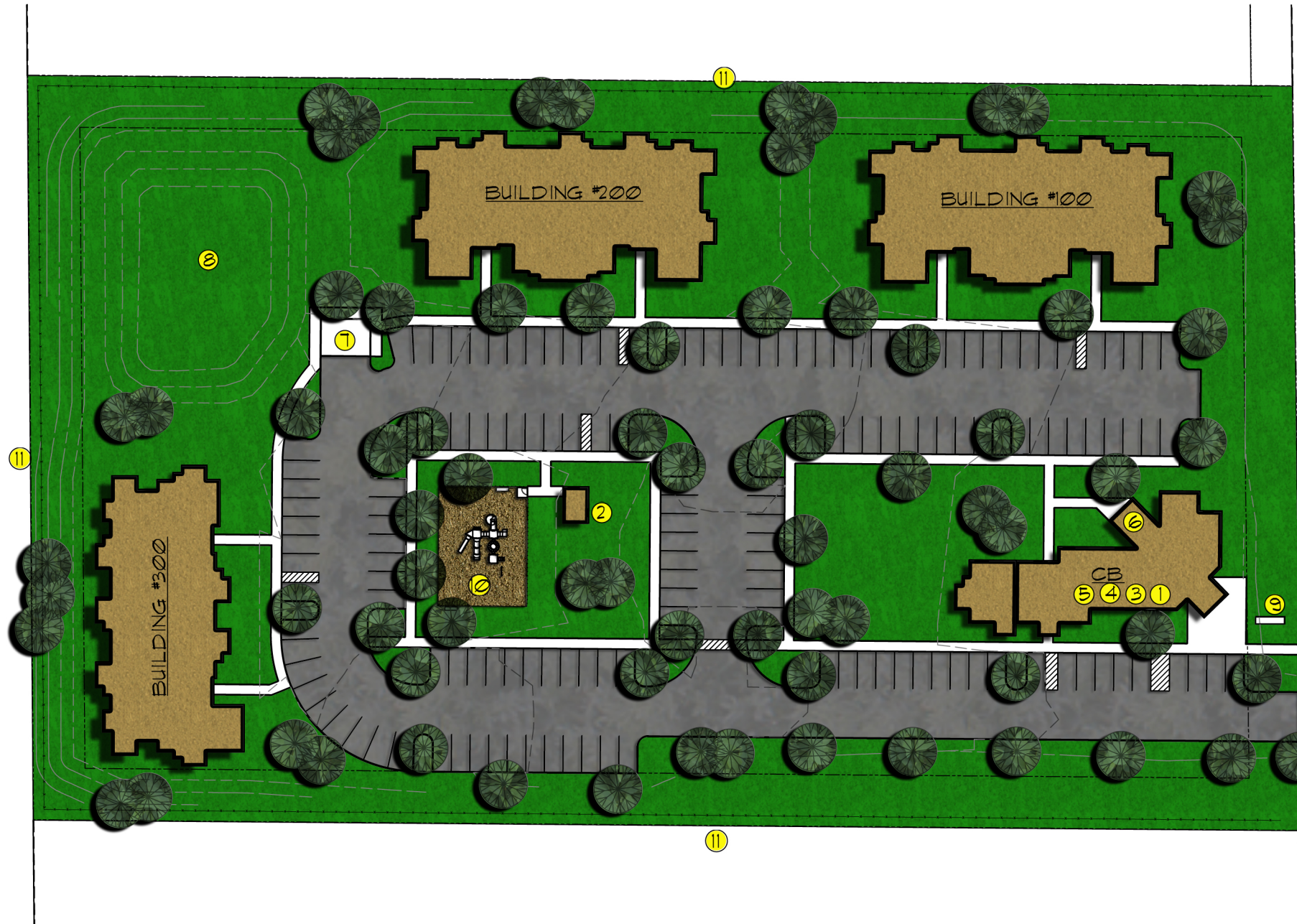
5% OF UNITS SHALL BE FULLY ACCESSIBLE UNITS
 2% OF UNITS SHALL BE EQUIPPED FOR THE SENSORY/HEARING IMPAIRED

THREE STORY BUILDINGS
 FREE STANDING ONE STORY CLUBHOUSE BUILDING
 128 PARKING SPACES PROVIDED @ 2 SP/UNIT
 (INCLUDING 10 H/C/PARKING SPACES)

NO FLOOD PLAIN BOUNDARIES CURRENTLY EXIST ON SITE

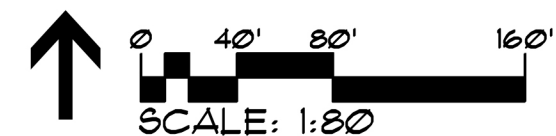
SITE PLAN NOTES

- ① COMMUNITY LAUNDRY ROOM
- ② GAZEBO WITH SITTING AREA
- ③ FURNISHED FITNESS CENTER
- ④ EQUIPPED COMPUTER CENTER
- ⑤ FURNISHED COMMUNITY ROOM
- ⑥ COMMUNITY SUN PORCH
- ⑦ FENCED TRASH DUMPSTER AREA
- ⑧ DETENTION POND AREA
- ⑨ PROJECT SIGN
- ⑩ PLAYGROUND
- ⑪ PERIMETER FENCE



SOUTH COLLINS FWY

ARCHITECTURAL SITE PLAN



MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
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PROJECT	2/0/15	DATE	2/28/15	DRAWN BY / CHECKED BY	DET
REVISIONS			3/1/15		

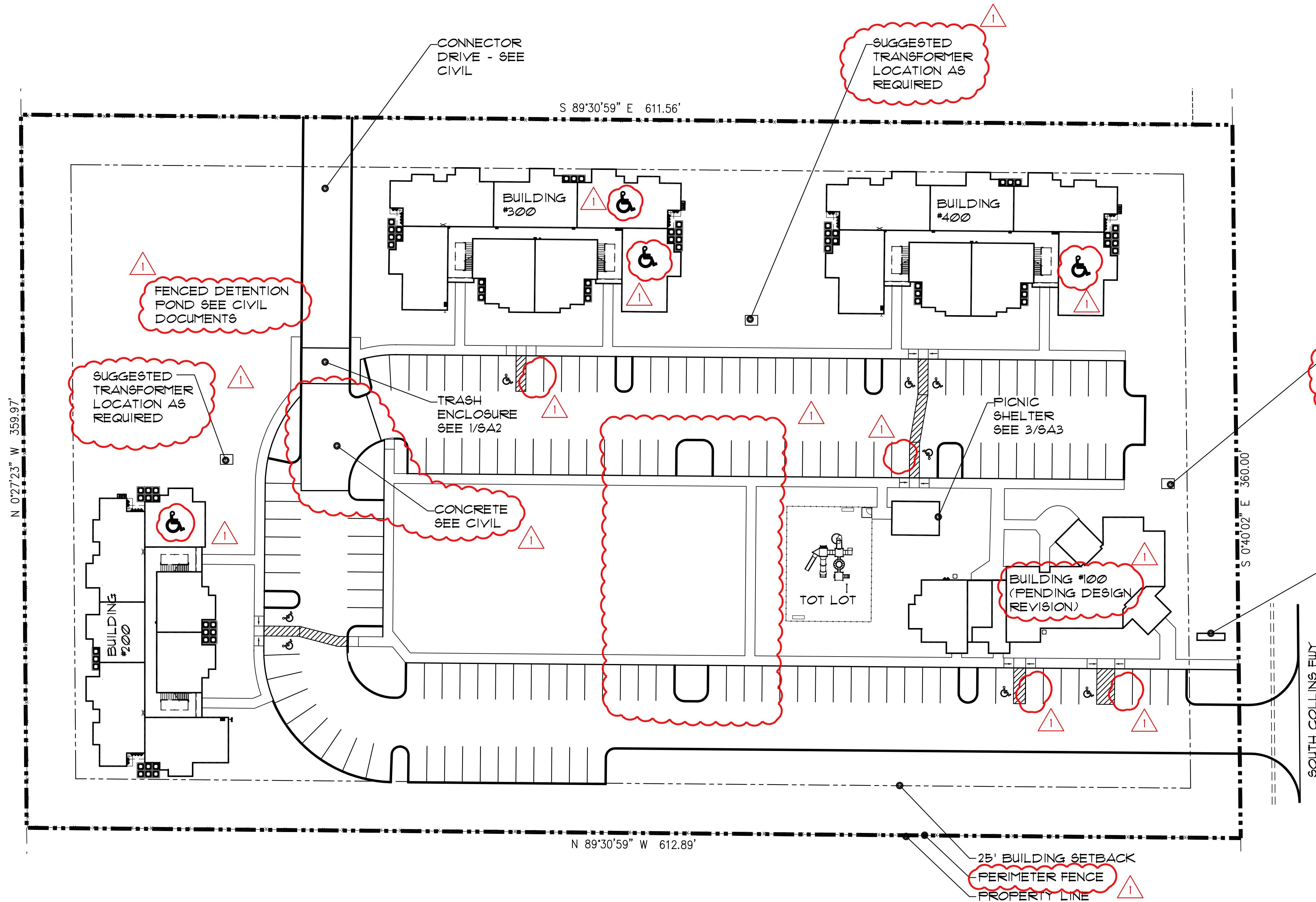
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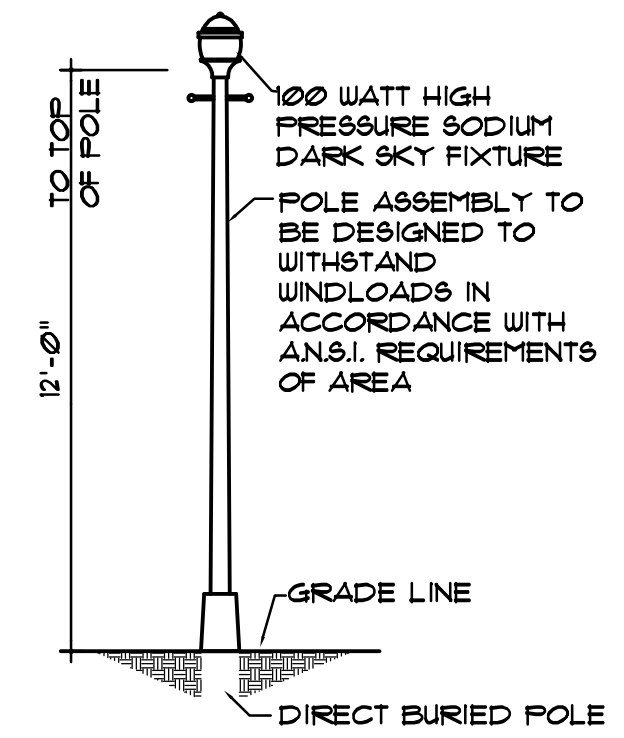
Attachment 6 New Site Plan Requested

PLOTTED: Jun 06, 2014 - 3:46pm LOCATION: P:\AREA\2013-069 Abbingdon Meadows, Howe, TX\Sheets\ 2013-069_SA01.dwg Plotted By: dthompson - Copyright 2014

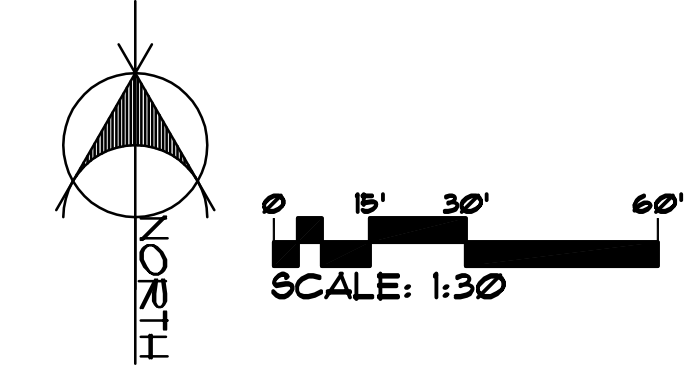


INFORMATION FOR AMENITIES REQUIREMENTS ONLY. SEE CIVIL DOCUMENTS FOR PARKING, ROAD LAYOUT AND SITE RELATED INFORMATION.

SEE ELECTRICAL SHEETS FOR BUILDING WALL PACK INFORMATION.



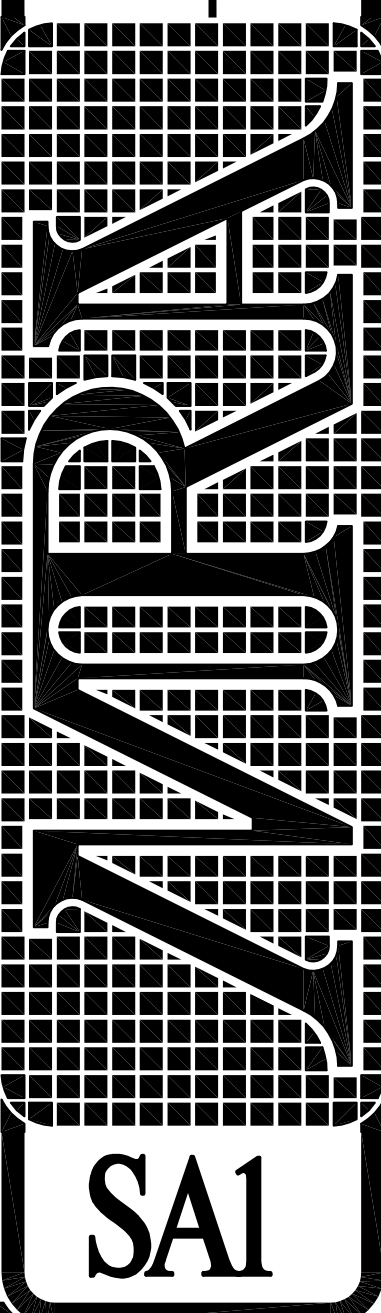
SITE LIGHTING SHALL BE DESIGNED BY LOCAL POWER PROVIDER AND APPROVED BY OWNER



1 ARCHITECTURAL SITE PLAN

1"=30'

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25 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800
ABBINGTON MEADOWS
HOWE, TEXAS



REVISIONS	6/6/14
PROJECT	2013-069
DATE	3/5/14
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office (404) 273-1892 - fax (404) 506-9081*


Attachment 7 Current Underwriting

Rent Schedule (Continued)

		% of LI	% of Total	
HOUSING TAX CREDITS	TC30%	10%	6%	4
	TC40%			0
	TC50%	23%	14%	9
	TC60%	67%	41%	26
	HTC LI Total			39
	EO			0
	MR			25
	MR Total			25
	Total Units			64
	MORTGAGE REVENUE BOND	MRB30%		
MRB40%				0
MRB50%				0
MRB60%				0
MRB LI Total				0
MRBMR				0
MRBMR Total				0
MRB Total				0

		% of LI	% of Total	
HOUSING TRUST FUND	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	HTF LI Total			0
	MR			0
	MR Total			0
	HTF Total			0
	HOME	30%		
LH/50%				0
HH/60%				0
HH/80%				0
HOME LI Total				0
EO				0
MR				0
MR Total				0
HOME Total			0	
OTHER	Total OT Units			0

BEDROOMS	0			0
	1			14
	2			32
	3			18
	4			0
	5			0

Cost Per Square Foot Table	Development is Rehabilitation			No	Cost Per Sq. Ft. =	N/A
	If not "Rehabilitation," select "Yes" if the Development is one of the following:					
(Building Costs)	Elevator served	Supportive Housing	Single Family	 If "Yes" above, these elections do not apply. See manual for instructions.		
	Cost Per Sq. Ft. =	Cost Per Sq. Ft. =	Cost Per Sq. Ft. =			
\$ 3,774,200	N/A	N/A	N/A			
	Development is New Construction, Reconstruction, or Adaptive Reuse			Yes	Cost Per Sq. Ft. =	\$ 60.91

|

Utility Allowances

Applicant must attach to this form documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application Packet. This exhibit must clearly indicate which utility costs are included in the estimate.

Note: If more than one entity (Sec. 8 administrator, public housing authority) is responsible for setting the utility allowance(s) in the area of the development location, then the selected utility allowance must be the one which most closely reflects the actual expenses.

If an independent utility cost evaluation is conducted it must include confirming documentation from all the relevant utility providers.

If other reductions to the tenant rent is required such as the cost of flood insurance for the tenant's contents, documentation for these reductions to gross rent should also be attached.

Utility	Who Pays	Energy Source	0BR	1BR	2BR	3BR	4BR	Date
Heating				\$ 14	\$ 18	\$ 21		Housing Authority of Grayson County
Cooking				\$ 5	\$ 5	\$ 6		Housing Authority of Grayson County
Other Electric				\$ 10	\$ 13	\$ 15		Housing Authority of Grayson County
Air Conditioning				\$ 12	\$ 13	\$ 15		Housing Authority of Grayson County
Water Heater				\$ 12	\$ 16	\$ 16		Housing Authority of Grayson County
Water				\$ 13	\$ 15	\$ 17		Housing Authority of Grayson County
Sewer				\$ 8	\$ 12	\$ 12		Housing Authority of Grayson County
Trash								
flat fee								
other				\$ 4	\$ 4	\$ 4		Housing Authority of Grayson County
Totals			\$ -	\$ 78	\$ 96	\$ 106	\$ -	

Other (Describe)

2014 Utility Allowance decreased from 2013 Utility Allowance submitted with original application



Allowances for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

See Public Reporting Statement and Instructions on back

Locality		Unit Type					Date (mm/dd/yyyy)
Housing Authority of Grayson County		Apartments					01/01/2018
Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	8	9	10	12	13	13
	b. Bottle Gas	14	16	20	21	23	23
	c. Oil / Electric	10	14	18	21	25	26
	d. Coal / Other						
Cooking	a. Natural Gas	4	4	4	5	5	5
	b. Bottle Gas	4	6	6	8	8	9
	c. Oil / Electric	5	5	6	6	7	7
	d. Coal / Other						
Other Electric		10	13	15	15	15	
Air Conditioning		9	12	13	15	16	
Water Heating	a. Natural Gas	4	6	8	8	9	9
	b. Bottle Gas	10	12	14	16	18	19
	c. Oil / Electric	10	12	16	16	16	17
	d. Coal / Other						
Water		12	13	15	17	19	
Sewer		8	8	12	12	12	
Trash Collection		8	8	8	8	8	
Range/Microwave		5	5	5	5	5	
Refrigerator		6	6	6	6	6	
Other -- specify		4	4	4	4	4	

Actual Family Allowances To be used by the family to compute allowance. Complete below for the actual unit rented.		Utility or Service	per month cost
Name of Family Address of Unit Number of Bedrooms		Heating	\$
		Cooking	
		Other Electric	
		Air Conditioning	
		Water Heating	
		Water	
		Sewer	
		Trash Collection	
		Range/Microwave	
		Refrigerator	
		Other	
		Total	\$

ANNUAL OPERATING EXPENSES

General & Administrative Expenses			
Accounting	\$	5,500.00	
Advertising	\$	3,600.00	
Legal fees	\$	960.00	
Leased equipment	\$	0.00	
Postage & office supplies	\$	1,920.00	
Telephone	\$	2,560.00	
Other <u>Tenant Screening Software</u>	\$	2,304.00	
Other <u>Travel</u>	\$	300.00	
Total General & Administrative Expenses:			\$ 17,144.00
Management Fee:	Percent of Effective Gross Income:	4.03%	\$ 21,000.00
Payroll, Payroll Tax & Employee Benefits			
Management	\$	31,200.00	
Maintenance	\$	20,280.00	
Other <u>Payroll Taxes & Benefits</u>	\$	14,066.00	
Other <u>Describe</u>	\$	0.00	
Total Payroll, Payroll Tax & Employee Benefits:			\$ 65,546.00
Repairs & Maintenance			
Elevator	\$		
Exterminating	\$	3,200.00	
Grounds	\$	12,000.00	
Make-ready	\$	6,400.00	
Repairs	\$	10,500.00	
Pool	\$		
Other <u>Describe</u>	\$		
Other <u>Describe</u>	\$		
Total Repairs & Maintenance:			\$ 32,100.00
Utilities (Enter Development Owner expense)			
Electric	\$	9,600.00	
Natural gas	\$		
Trash	\$	3,788.00	
Water & sewer	\$	6,800.00	
Other <u>Describe</u>	\$		
Other <u>Describe</u>	\$		
Total Utilities:			\$ 20,188.00
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.27	\$ 16,900.00
Property Taxes:			
Published Capitalization Rate:	Source:	<u>Property Tax Advisors est.</u>	
Annual Property Taxes:	\$	59,500.00	
Payments in Lieu of Taxes:	\$		
Other Taxes <u>Describe</u>	\$		
Other Taxes <u>Describe</u>	\$		
Total Property Taxes:			\$ 59,500.00
Reserve for Replacements:	Annual reserves per unit:	\$ 250.00	\$ 16,000.00
Other Expenses			
Cable TV	\$		
Supportive service contract fees	\$	4,800.00	
TDHCA Compliance fees	\$	2,560.00	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer <u>Only</u>)	\$		
Security	\$		
Other <u>Describe</u>	\$		
Other <u>Describe</u>	\$		
Total Other Expenses:			\$ 7,360.00
TOTAL ANNUAL EXPENSES			\$ 255,738.00
		Expense per unit:	\$ 3995.91
		Expense to Income Ratio:	49.13%
NET OPERATING INCOME (before debt service)			\$ 264,752.10
Annual Debt Service			
<u>USDA 538 Loan</u>	\$	227,484.87	
<u>Howe City Loan (now cash flow only)</u>	\$	0.00	
<u>Describe Source</u>	\$		
<u>Describe Source</u>	\$		
TOTAL ANNUAL DEBT SERVICE			\$ 227,484.87
		Debt Coverage Ratio:	1.16
NET CASH FLOW			\$ 37,267.23

15 Year Rental Housing Operating Proforma

All Programs Must Complete the following:

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of rental income and expenses), and principal and interest debt service. The Department currently considers an annual growth rate of 2% for income and 3% for expenses to be reasonably conservative estimates. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	LEASE-UP	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15
POTENTIAL GROSS ANNUAL RENTAL INCOME		\$555,012	\$566,112	\$577,434	\$588,983	\$600,763	\$663,291	\$732,327
Secondary Income		\$ 7,680.00	\$ 7,833.60	\$ 7,990.27	\$ 8,150.08	\$ 8,313.08	\$ 9,178.31	\$ 10,133.60
POTENTIAL GROSS ANNUAL INCOME	\$0	\$562,692	\$573,946	\$585,425	\$597,133	\$609,076	\$672,469	\$742,460
Provision for Vacancy & Collection Loss		\$ 42,201.90	\$ 43,045.94	\$ 43,906.86	\$ 44,784.99	\$ 45,680.69	\$ 50,435.18	\$ 55,684.51
Rental Concessions		\$ -						
EFFECTIVE GROSS ANNUAL INCOME	\$0	\$520,490	\$530,900	\$541,518	\$552,348	\$563,395	\$622,034	\$686,776
EXPENSES								
General & Administrative Expenses		\$ 17,144.00	\$17,658	\$18,188	\$18,734	\$19,296	\$22,369	\$25,932
Management Fee		\$ 21,000.00	\$ 21,630.00	\$ 22,278.90	\$ 22,947.27	\$ 23,635.69	\$ 27,400.24	\$ 31,764.38
Payroll, Payroll Tax & Employee Benefits		\$ 65,546.00	\$ 67,512.38	\$ 69,537.75	\$ 71,623.88	\$ 73,772.60	\$ 85,522.66	\$ 99,144.21
Repairs & Maintenance		\$ 32,100.00	\$ 33,063.00	\$ 34,054.89	\$ 35,076.54	\$ 36,128.83	\$ 41,883.22	\$ 48,554.13
Electric & Gas Utilities		\$ 9,600.00	\$ 9,888.00	\$ 10,184.64	\$ 10,490.18	\$ 10,804.88	\$ 12,525.82	\$ 14,520.86
Water, Sewer & Trash Utilities		\$ 10,588.00	\$ 10,905.64	\$ 11,232.81	\$ 11,569.79	\$ 11,916.89	\$ 13,814.94	\$ 16,015.30
Annual Property Insurance Premiums		\$ 16,900.00	\$ 17,407.00	\$ 17,929.21	\$ 18,467.09	\$ 19,021.10	\$ 22,050.67	\$ 25,562.77
Property Tax		\$ 59,500.00	\$ 61,285.00	\$ 63,123.55	\$ 65,017.26	\$ 66,967.77	\$ 77,634.00	\$ 89,999.09
Reserve for Replacements		\$ 16,000.00	\$ 16,480.00	\$ 16,974.40	\$ 17,483.63	\$ 18,008.14	\$ 20,876.37	\$ 24,201.44
Other Expenses:		\$ 7,360.00	\$ 7,580.80	\$ 7,808.22	\$ 8,042.47	\$ 8,283.74	\$ 9,603.13	\$ 11,132.66
TOTAL ANNUAL EXPENSES	\$0	\$255,738	\$263,410	\$271,312	\$279,452	\$287,835	\$333,680	\$386,827
NET OPERATING INCOME	\$0	\$264,752	\$267,490	\$270,205	\$272,896	\$275,560	\$288,354	\$299,949
DEBT SERVICE								
		\$227,485	\$227,485	\$227,485	\$227,485	\$227,485	\$227,485	\$227,485
Second Deed of Trust Annual Loan Payment		0	0	0	0	0		
Third Deed of Trust Annual Loan Payment								
Other Annual Required Payment:								
Other Annual Required Payment:								
NET CASH FLOW	\$0	\$37,267	\$40,005	\$42,721	\$45,412	\$48,075	\$60,869	\$72,464
Debt Coverage Ratio	#DIV/0!	1.16	1.18	1.19	1.20	1.21	1.27	1.32
City of Howe - Cash Flow Only Note		\$3,456	\$30,992	\$30,992	\$30,992	\$30,992		
Other (Describe)								

By signing below I (we) are certifying that the above 15 Year pro forma has been reviewed and is acceptable. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

		Phone:	
Signature, Authorized Representative, Construction or Permanent Lender	Date	Email:	
Printed Name			

Development Cost Schedule

Self Score Total: 118

This Development Cost Schedule must be consistent with the Summary Sources and Uses of Funds Statement. All Applications must complete the total development cost column and the Tax Payer Identification column. Only HTC applications must complete the Eligible Basis columns and the Requested Credit calculation below:

TOTAL DEVELOPMENT SUMMARY			Scratch Paper/Notes	
	Total Cost	Eligible Basis (If Applicable)		
		Acquisition	New/Rehab.	
ACQUISITION				
Site acquisition cost	500,000			
Existing building acquisition cost				
Closing costs & acq. legal fees				
Easements for Sewer Extension	0			
Other (specify) - see footnote 1				
Subtotal Acquisition Cost	\$500,000	\$0	\$0	
OFF-SITES²				
Off-site concrete				
Storm drains & devices				
Water & fire hydrants	177,100			
Off-site utilities				
Sewer lateral(s)	246,818			
Off-site paving	1,900			
Off-site electrical				
Grading, Striping & Signage	1,000			
Other (specify) - see footnote 1				
Subtotal Off-Sites Cost	\$426,818	\$0	\$0	
SITE WORK³				
Demolition	15,000			Cole Engineering & Great Southern (GC)
Rough grading	70,000		70,000	Cole Engineering & Great Southern (GC)
Fine grading	25,000		25,000	Cole Engineering & Great Southern (GC)
On-site concrete	52,600		52,600	Cole Engineering & Great Southern (GC)
On-site electrical	35,000		35,000	Cole Engineering & Great Southern (GC)
On-site paving	167,600		167,600	Cole Engineering & Great Southern (GC)
On-site utilities	169,000		169,000	Cole Engineering & Great Southern (GC)
Decorative masonry				
Bumper stops, striping & signs	6,700		6,700	Cole Engineering
Perimeter Fencing	68,300		68,300	Cole Engineering
Subtotal Site Work Cost	\$609,200	\$0	\$594,200	
SITE AMENITIES				
Landscaping	64,000		64,000	Great Southern, LLC (general contractor)
Pool and decking				
Athletic court(s), playground(s)	35,000		35,000	Great Southern, LLC (general contractor)
Fencing				
Picnic Shelter	25,000		25,000	Great Southern, LLC (general contractor)
Subtotal Site Amenities Cost	\$124,000	\$0	\$124,000	
BUILDING COSTS*:				
Concrete	351,360		351,360	Great Southern, LLC (general contractor)
Masonry	73,182		73,182	Great Southern, LLC (general contractor)
Metals	98,789		98,789	Great Southern, LLC (general contractor)
Woods and Plastics	941,840		941,840	Great Southern, LLC (general contractor)
Thermal and Moisture Protection	99,104		99,104	Great Southern, LLC (general contractor)
Roof Covering	61,137		61,137	Great Southern, LLC (general contractor)
Doors and Windows	142,162		142,162	Great Southern, LLC (general contractor)

TOTAL HOUSING DEVELOPMENT COSTS⁵	\$9,050,564	\$0	\$7,441,982
- Commercial Space Costs⁶			
TOTAL RESIDENTIAL DEVELOPMENT COSTS	\$9,050,564		

The following calculations are for HTC Applications only.

Deduct From Basis:

Federal grant proceeds used to finance costs in Eligible Basis			
Non-qualified non-recourse financing			
Non-qualified portion of higher quality units §42(d)(5)			
Historic Credits (residential portion only)			
Total Eligible Basis		\$0	\$7,441,982
**High Cost Area Adjustment (100% or 130%)			130%
Total Adjusted Basis		\$0	\$9,674,577
Applicable Fraction			61%
Total Qualified Basis	\$5,891,817	\$0	\$5,891,817
Applicable Percentage ⁷			9.00%
Calculated Credits	\$530,264	\$0	\$530,264

Credits Supported by Eligible Basis \$530,264

Name of contact for Cost Estimate: Eric Buffenbarger

Phone Number for Contact: (404) 250-4093

Footnotes:

¹ An itemized description of all "other" costs must be included at the end of this exhibit.

² All Off-Site costs must be justified by a Third Party engineer in accordance with the Department's format provided in the Offsite Cost Breakdown form.

³ (HTC Only) Site Work expenses, indirect construction costs, developer fees, construction loan financing and other financing costs may or may not be included in Eligible Basis. Site Work costs must be justified by a Third Party engineer in accordance with the Department's format provided in the Site Work Cost Breakdown form.

⁴ (HTC Only) Only fees paid to a consultant for duties which are not ordinarily the responsibility of the developer, can be included in Eligible Basis. Otherwise, consulting fees are included in the calculation of maximum developer fees.

⁵ (HTC Only) Provide all costs & Eligible Basis associated with the Development.

⁶ (HTC Only) Costs associated with construction of facilities that generate revenue through commercial uses or from fees charged to tenants (covered parking individual storage units, etc.) must not be included in Eligible Basis and must be removed from "Total Housing Development Costs" to determine "Total Residential Development Costs."

⁷ (HTC Only) Use the appropriate Applicable Percentages as defined in §10.3 of the Uniform Multifamily Rules.

Howe Abbington Meadows, LP

*c/o Rea Ventures Group, LLC - 2964 Peachtree Road NW, Suite 640 - Atlanta, GA 30305
office (404) 273-1892 - fax (404) 506-9081*

Attachment 8

Loan Agreement with City of Howe for Additional Deferred Fees Loan

CITY OF HOWE/ABBINGTON MEADOWS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement ("Agreement") is made and entered into by and between HOWE ABBINGTON MEADOWS, LP, a Georgia limited partnership (hereinafter the "Borrower") REA VENTURES GROUP, a Georgia limited liability company, LLC ("ReaVentures"), and the CITY OF HOWE, TEXAS, a municipal corporation ("City"). Borrower and ReaVentures hereinafter referred to as "Owner."

Recitals

- A. The City is authorized by Chapter 380 of the Texas Local Government Code to make loans of money to promote state and local economic development and to stimulate business and commercial activity in Howe.
- B. Owner is developing a multifamily rental housing development to be known as Abbington Meadows upon certain real property located in the City of Howe, Texas (hereinafter the "Development").
- C. By letter dated February 14, 2013, the City set out certain requirements for the Development, which are incorporated herein by reference.
- D. By letter dated February 14, 2013, ReaVentures acknowledged and agreed to said requirements for the Development, which are incorporated herein by reference, and Borrower likewise acknowledges and agrees to said requirements.
- E. Owner will extend a 12" water main to the Development at their sole expense from near the intersection of Bledsoe Street (renamed LB Kirby Dr.) and Sunset Street, including a bore under US75, at no cost or liability to the City.
- F. Owner will extend a 12" sewer main to the Development at their sole expense from a manhole near 1110 South Collins Freeway (US75) north of the Development, at no cost or liability to the City. This Sewer main extension and the Water main extension in par. E are collectively referred to as the "Extensions."
- G. Owner and City understand and agree that said Extensions are required under existing ordinance, regulations and requirements, are proper, and are a condition for the Development, and that upon completion of the Extensions, the Owner will dedicate the off-site portion of the Extensions to the City and the City will maintain such portions of the Extensions that are public mains.
- H. The City has determined that substantial economic benefit, including the generation of additional sales and property taxes and the creation of new opportunities of employment, will accrue to the City as a result of the Development, the construction of the water and sewer mains, and the construction and operation of the Development.

I. Owner has requested a deferral on the estimated tap fees for the Development in the form of a loan.

J. The Development and related improvements to be constructed by Owner will promote economic development and stimulate business and commercial activity in Howe, will create jobs, and will expand the tax base by construction of real property improvements.

K. The City finds that the loan of money to Borrower, as a deferral of tap fee expenses, will further the creation of the Development, will promote economic development, stimulate business and commercial activity and is a proper purpose in compliance with Local Government Code Chapter 380.

L. Owner accepts the loan of money as a deferral of tap fees and agrees that the Development will be in accordance with the terms and conditions set forth in this Agreement as well as all applicable ordinances, regulations, requirements and procedures of the City.

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

I.

Authority and Condition Precedent

1.1 The City represents that its execution and performance of this Agreement constitutes a valid and binding obligation.

1.2 Borrower and ReaVentures represent that its execution and performance of this Agreement constitutes a valid and binding obligation.

1.3 Owner and the City agree that all Recitals are true, correct and incorporated for all purposes.

II.

Loan

2.1 City will agree to defer City tap fees due and arising from the Development up to the amount of \$115,200.00, in the form of the attached loan and in the terms set out in the Exhibits attached.

2.2 The City, and/or its representative(s) including third-parties contracted by the City, has the right to inspect all relevant records of Borrower and ReaVentures, in connection with the Development as the City finds are reasonably necessary to verify compliance with all requirements of this Agreement and Exhibits.

2.3 Compliance with City Regulations. Owner will comply with all applicable City ordinances and regulations in connection with the Development.

2.4 In the event that Owner fails to fulfill its obligations under the loan and terms as set out in Exhibits 1 and 2 attached, after receipt of notice and expiration of the cure period described in Exhibits 1 and 2 attached, all tap fees being immediately due and payable, the City may, at its sole discretion, terminate this Agreement, the City shall have no more obligations under this Agreement and, in addition, shall have all rights and remedies under law and equity, including but not limited to suit for specific performance, injunctive relief, mandamus, and actual damages.

III.

General Terms

3.1 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute regarding its meaning or application, be interpreted fairly and reasonably and neither more strongly for, nor against any party.

3.2 Sovereign Immunity. The parties agree that City has not waived its sovereign immunity by entering into and performing its respective obligations under this Agreement and the parties further agree that this agreement is not a contract for goods or services under LGC 271.151.

3.3 PARTIES' ACKNOWLEDGMENT OF CITY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNER'S WAIVER AND RELEASE OF CLAIMS.

A. OWNER RELEASES THE CITY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS PURSUANT TO THIS AGREEMENT.

B. OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST THE CITY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION BASED UPON THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE EXTENSIONS AND THE TAP FEES.

C. OWNER WAIVES THEIR RIGHT TO STATUTORY OR CONSTITUTIONAL TAKINGS CLAIMS UNDER THE TEXAS CONSTITUTION AND FEDERAL CONSTITUTION, TO CLAIMS FOR ILLEGAL EXACTIONS, TO CLAIMS OF VIOLATION OF A CIVL RIGHT, FOR ANY VIOLATION OF A PROPERTY RIGHT, TO ANY STATUTORY CLAIMS UNDER CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE, AND/OR ANY OTHER LAW, STATUTE OR OTHERWISE ARISING FROM OBLIGATIONS SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE EXTENSIONS AND THE TAP FEES.

D. OWNER RECOGNIZES THAT THE ENTRY OF THIS AGREEMENT IS NOT A GUARANTEE OF ANYTHING AND THAT THERE IS NO GUARANTEE OF FUTURE AGREEMENTS, FUNDING OR OTHER MATTERS. OWNER WAIVES ANY CLAIMS FOR SUCH FAILURES. OWNER HEREBY AGREES TO FULLY RELEASE, DISCHARGE AND ACQUIT THE CITY OF HOWE, TEXAS, AND ALL THEIR PAST, PRESENT AND FUTURE OFFICERS, ELECTED OFFICIALS, EMPLOYEES, AGENTS, INSURERS, RISK POOL, CLAIM HANDLERS, ATTORNEYS, CONSULTANTS, ENGINEERS AND HEIRS (ALL BOTH IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES), AND THOSE IN PRIVITY WITH ANY OF THEM, WHETHER NAMED HEREIN OR NOT (HEREINAFTER "RELEASED PARTIES"), FROM ALL ACTIONS, CAUSES OF ACTION, CLAIMS (INCLUDING SUBROGATION CLAIMS AND CLAIMS FOR CONTRIBUTION AND INDEMNITY), SUITS FOR DECLARATORY JUDGMENT, APPPLICATIONS FOR INJUNCTIONS OR ORDERS, AND DEMANDS, ON ACCOUNT OF, OR IN

CONNECTION WITH, OR IN ANY WAY GROWING OUT OF THE AGREEMENT, THESE NEGOTIATIONS, AND ALL COSTS OF ANY AND ALL CLAIMS FOR LOSS, DAMAGE, WORK, INJURY OR OTHER MATTERS ARISING FROM THIS AGREEMENT OR THE CONTEMPLATED WORK AND THESE NEGOTIATIONS. THIS AGREEMENT DOES NOT CREATE ANY RIGHT, GUARANTEE OR PROMISE OF FUTURE ACTION.

E. OWNER AGREES NOT TO ASSERT OR PROSECUTE ANY FUTURE CLAIMS OR LAWSUIT FOR INJURIES AND/OR DAMAGES, FOR DECLARATORY JUDGMENT, OR SEEK COURT ORDERS DIRECTING ANY ACTION BY THE RELEASED PARTIES ARISING OUT OF OR IN CONNECTION WITH THE ABOVE DESCRIBED EVENTS, THESE NEGOTIATIONS, THIS AGREEMENT, EXTENSIONS AND TAP FEES. OWNER FURTHER AGREES TO DEFEND, HOLD HARMLESS AND INDEMNIFY THE RELEASED PARTIES FOR ANY EXPENSES, COSTS, AND ATTORNEY'S FEES INCURRED SHOULD IT BECOME NECESSARY TO TAKE LEGAL ACTION TO ENFORCE THIS RELEASE AND INDEMNITY SECTION. IT IS INTENDED THAT THIS RELEASE AND INDEMNITY WILL COVER ALL CLAIMS OR SUITS, INCLUDING BUT NOT LIMITED TO TAKINGS, CONSTITUTIONAL OR STATUTORY RIGHTS, THE TEXAS GOVERNMENT CODE, THE TEXAS LOCAL GOVERNMENT CODE, THE WATER CODE, THE TEXAS CONSTITUTION, ANY STATE OR FEDERAL STATUTE OR REGULATION, THE U.S. CONSTITUTION, CITY ORDINANCES, CITY REGULATIONS, LOSS OF MONEY, LOSS OF PROFITS, LOSS OF PROPERTY, LOSS OF RIGHTS, 42 USC 1983, DEFENSE COSTS, ATTORNEY'S FEES, INTEREST AND ALL OTHER CAUSES OF ACTIONS AND DAMAGES.

F. THIS AGREEMENT DOES NOT WAIVE ANY IMMUNITY, DEFENSE OR CONDITION PRECEDENT TO SUIT AGAINST THE CITY AND IS NOT INTENDED TO CREATE ANY RIGHT, INTEREST OR CLAIM. ALL IMMUNITY, DEFENSES AND CONDITIONS PRECEDENT TO SUIT ARE SPECIFICALLY RETAINED.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

3.4 Vested Rights/Chapter 245 Waiver. This agreement shall confer no vested rights on the property, or any portion thereof. Nothing in this Agreement shall be implied to vest any rights in the parties. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code and nothing in this Agreement shall be considered to provide the City with fair notice of Owner's Development. OWNER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT BASED UPON THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

3.5 Attorney's Fees. In any legal proceeding brought to enforce the terms of this Agreement, including but not limited to a proceeding brought pursuant to ¶ 3.3 or 3.4 above or asserting releases, waiver or defenses pursuant to ¶ 3.3 or 3.4 above, the City may recover its reasonable and necessary attorneys' fees actually incurred.

3.6 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in the State courts of Grayson County, Texas.

3.7 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement

which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

3.8 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

3.9 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

3.10 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with Owner or the construction or operation of any portion of the Development.

3.11 Exhibits. The following Exhibits are attached and incorporated by reference for all purposes:

Exhibit "1" Fee Deferral Agreement;

Exhibit "2" Promissory Note; and,

Exhibit "3" Guaranty.

3.12 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

EXECUTED by the authorized representatives of the parties on the dates indicated below to be effective as of the Effective Date of _____.

HOWE ABBINGTON MEADOWS, LP
a Georgia limited partnership


By: ABBINGTON MEADOWS PARTNER, LLC
a Georgia limited liability company
Its: General Partner

By: _____
Name: William S. Rea, Jr.
Title: Managing Member
Date: 6/16/14

ReaVentures Group LLC
a Georgia limited liability company

By: _____
Name: William J. Rea, Jr.
Title: Managing Member
Date: 6/16/14

CITY OF HOWE, TEXAS

By: 
Name: Jeff Stanley
Title: Mayor

FEE DEFERRAL AGREEMENT

THIS FEE DEFERRAL AGREEMENT (hereinafter the "**Agreement**") is entered into as of this 13th day of June, 2014, by and between HOWE ABBINGTON MEADOWS, LP, a Georgia limited partnership (hereinafter the "**Borrower**") and the CITY OF HOWE, TEXAS (hereinafter the "**City**").

- A. The Borrower is developing a multifamily rental housing development to be known as Abbington Meadows upon certain real property located in the City of Howe, Texas (hereinafter the "**Development**").
- B. The Borrower requested that the City defer water and sewer tap fees payable to City with respect to the Development in the amount of up to One Hundred Fifteen Thousand, Two Hundred and No Hundredths Dollars (\$115,200.00) (the "**Deferral**").
- C. The City Council approved a portion of the Deferral at its February 19, 2013 meeting pursuant to Resolution No. 13-0002.
- D. The City Council approved the full amount of the Deferral at its June 12, 2014 meeting pursuant to Resolution No. 14-00__.
- E. The Borrower and City desire to memorialize the specific terms of the Deferral in this Agreement.
- F. Actual tap fees shall be calculated pursuant City ordinances and procedures.
- G. Borrower has estimated and budgeted \$135,585.00 for building, permit, plat, materials testing and inspection fees payable to the City. To the extent the actual building, permit, plat, materials testing and inspection fees paid to the City are less than \$135,585.00, those budgeted funds shall be paid to the City and applied to tap fees and the Deferral shall be reduced by that amount. Any difference between the budgeted amount and the actual cost, as set out in this paragraph, will be paid by Borrower to the City for application to the tap fees.

NOW THEREFORE, in consideration of the covenants contained herein, the sum of TEN DOLLARS (\$10.00) in hand paid to each of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the City agree as follows:

1. **Deferment of Fees.** The City agrees to the Deferral in accordance with the terms of this Agreement. Borrower agrees to repay the Deferral amount in accordance with the terms of this Agreement.
2. **Repayment Terms.** The Borrower shall repay the Deferral amount as follows:

- a. Interest. The interest rate is fixed at three percent (3%) simple interest per annum.
- b. Payments. Borrower shall make annual payments solely from Excess Cash Flow (hereinafter defined).
 - i. Until the calendar year after the Development receives final certificates of occupancy for all buildings from the City, Borrower shall make an interest only payment on or before May 1st of each calendar year.
 - ii. Commencing the calendar year after the Development receives final certificates of occupancy for all buildings from the City, the Excess Cash Flow shall be remitted to the City on or before May 1st of the immediately following calendar year to be applied against the outstanding balance of the Deferral amount. All payments shall be applied first in payment of accrued interest and any remainder to payment of principal.
 - iii. **“Excess Cash Flow”** shall mean the amount by which x) the actual rents plus other income from the Development exceed y) the Development's total actual operating expenses, asset management fee, debt service, repayment of any unpaid loans made by a Limited Partner and unpaid adjuster amounts due to a Limited Partner. Excess cash flow shall be determined as of the end of each calendar year. Notwithstanding the foregoing, Excess Cash Flow shall be limited to Thirty-One Thousand and No Hundredths Dollars (\$31,000.00). The General Partner and Developer do not get paid any Cash Flow until after the City payments.
 - iv. As an example:
 1. On May 1, 2015 Borrower makes an interest only payment;
 - a. On August 15, 2015 the Development receives final certificates of occupancy for all buildings from the City;
 2. On May 1, 2016 Borrower makes a payment of Excess Cash Flow for the 2015 calendar year of *partial* operations;
 3. On May 1, 2017 Borrower makes a payment of Excess Cash Flow for the 2016 calendar year of *full* operations;
 4. On May 1, 2018 Borrower makes a payment of Excess Cash Flow for the 2017 calendar year of *full* operations;
 5. On May 1, 2019 Borrower makes a payment of Excess Cash Flow for the 2018 calendar year of *full* operations together with any remaining Deferral amount and all accrued and unpaid interest;

- c. Maturity. The balance of the Deferral amount together with all accrued and unpaid interest shall be due payable in full five (5) years after the date of this Agreement (the “**Maturity Date**”).
 - d. Promissory Note. The payment obligations of Borrower hereunder shall be evidenced by a Promissory Note attached hereto.
3. **No Prepayment Penalties**. Borrower may pre-pay the Deferral amount at any time without penalty, subject only to the amount of unpaid interest that has accrued to the date of such payment in full.
4. **Default and Remedies**. The Borrower’s failure to make any payment required under this Agreement shall constitute an event of default. Prior to exercising any remedies, the City shall give Borrower and Limited Partner (hereinafter defined) simultaneous written notice of any event of default. Borrower and Limited Partner have the right to cure any event of default by thirty (30) days after receipt of written notice of default by Borrower and Limited Partner prior to exercise of any remedies by the City. If such default remains uncured more than thirty (30) days after receipt of written notice by Borrower and Limited Partner, the City may declare the unpaid balance immediately due and payable.
- a. Any cure of any default or event of default made or tendered by any general or limited partner of Borrower (including Limited Partner), shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.
 - b. “**Limited Partner**” shall mean collectively CREA Abbington Meadows, LLC, a Delaware limited liability company, and CREA SLP, LLC, an Indiana limited liability company.
5. **Notices**. Any notice, demand, request or other communication which may or are required to be given hereunder shall be in writing and shall be sent by statutory overnight delivery return receipt requested or certified United States mail return receipt requested to the party at the following address or at such other address as the party may furnish in writing:

To City:

City of Howe
116 E. Haning St.
Howe, Texas 75459
Attention: Jeff Stanley

To Borrower:

Howe Abbington Meadows, LP
2964 Peachtree Road NW, Suite 640
Atlanta, GA 30305

With copy to:

Coleman Talley LLP
910 N Patterson St
Valdosta, GA 31601
Attention: Gregory Q. Clark, Esq.

With copy to:

City Real Estate Advisors, Inc.
30 S. Meridian Street, Suite 400
Indianapolis, Indiana 46204
Attention: Asset Management

As needed, with copy to:

CREA Abbingdon Meadows, LLC
c/o City Real Estate Advisors, Inc
30 South Meridian Street, Suite 400
Indianapolis, Indiana 46204
Attention: Asset Management

As needed, with copy to:

CREA SLP, LLC
c/o City Real Estate Advisors, Inc
30 South Meridian Street, Suite 400
Indianapolis, Indiana 46204
Attention: Asset Management

6. **Entire Agreement.** This Agreement incorporates the terms of all agreements between the City and the Borrower with regard to the subject matter of this Agreement.
7. **Successors.** The provisions of this Agreement bind and inure to the benefit of the undersigned parties and their successors and assigns.
8. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of Texas.

9. **Assignment.** The City shall not assign, pledge or otherwise encumber, for security or otherwise, the Deferral fee amount or this Agreement, or any portion(s) thereof or any right(s) of the City thereto, without the prior written consent of the Borrower.

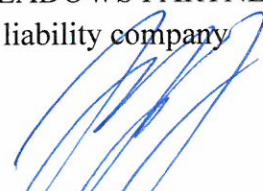
[Signatures Appear on Following Page]

IN WITNESS WHEREOF, this Agreement has been entered into by the undersigned as of the date first above written.

BORROWER:

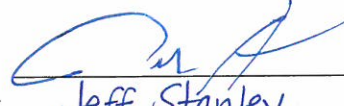
HOWE ABBINGTON MEADOWS, LP
a Georgia limited partnership

By: ABBINGTON MEADOWS PARTNER, LLC
a Georgia limited liability company
Its: General Partner

By: 
Name: William S. Bea, Jr.
Title: Managing Member

CITY:

CITY OF HOWE, TEXAS

By: 
Name: Jeff Stanley
Title: Mayor

PROMISSORY NOTE

\$115,200.00

Executed: June 13, 2014

FOR VALUE RECEIVED, the undersigned, HOWE ABBINGTON MEADOWS, LP, a Georgia limited partnership ("**Maker**"), having an address of 2964 Peachtree Road NW, Suite 640, Atlanta, GA 30305 hereby promises to pay to the order of the CITY OF HOWE, TEXAS ("**Holder**"), having an address of 116 E. Haning St., Howe, Texas 75459, the principal sum of One Hundred Fifteen Thousand, Two Hundred and No Hundredths Dollars (\$115,200.00), with interest and principal payable as hereinafter provided.

1. Fee Deferral. This Promissory Note ("**Note**") evidences the obligations of Maker under that certain Fee Deferral Agreement between Maker and Holder of even date herewith (the "**Agreement**"). This Note is subject to all terms and definitions of the Agreement.
2. Interest. The interest rate payable under this Note is fixed at three percent (3%) simple interest per annum.
3. Maturity Date. If not sooner paid, all outstanding principal of this Note together with accrued and unpaid interest thereon shall be paid to the Holder on June 30, 2019 (the "**Maturity Date**").
4. Payments. The outstanding principal balance of this Note together with all interest accrued and unpaid with respect thereto shall be due and payable as follows:
 - a. Maker shall make payment to Holder, its successors and/or assigns via delivery of lawful money of the United States of America to Holder at the address set forth above, or at such other place as Holder may designate in writing. All payments shall be applied first to interest due hereunder, if any, and any balance shall be applied to the reduction of principal.
 - b. Maker shall make annual payments solely from Excess Cash Flow (hereinafter defined).
 - i. Until the calendar year after the Development (hereinafter defined) receives final certificates of occupancy for all buildings from Holder, Maker shall make an annual interest only payment on or before May 1st of each calendar year.
 - ii. Commencing the calendar year after the Development receives final certificates of occupancy for all buildings from Holder, the Excess Cash Flow shall be remitted to Holder on or before May 1st of the immediately following calendar year to be applied against the outstanding balance of this Note.

- iii. **“Excess Cash Flow”** shall mean the amount by which x) the actual rents plus other income from the Development exceed y) the Development's total actual operating expenses, asset management fee, debt service, repayment of any unpaid loans made by a Limited Partner and unpaid adjuster amounts due to a Limited Partner. Excess cash flow shall be determined as of the end of each calendar year. Notwithstanding the foregoing, Excess Cash Flow shall be limited to Thirty-One Thousand and No Hundredths Dollars (\$31,000.00). The General Partner and Developer do not get paid any Cash Flow until after the City payments.
 - iv. **“Development”** shall mean Maker’s planned multifamily rental housing development to be known as Abbington Meadows and located upon certain real property located in the City of Howe, Texas.
- 5. **Prepayment.** Maker may prepay any amount due under this Note. There shall be no prepayment fee or premium charged on the amount of any prepayment.
 - 6. **Defaults.** Maker’s failure to make any payment required under this Note shall constitute an event of default. Prior to exercising any remedies, Holder shall give Maker and Limited Partner (as defined in the Agreement) simultaneous written notice of any event of default. If such default remains uncured more than thirty (30) days after receipt of written notice by Borrower and Limited Partner, Holder may declare the unpaid balance immediately due and payable.
 - 7. **Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall comply with the terms of the Agreement.
 - 8. **Security.** This Note is unsecured.
 - 9. **Recourse.** This Note is a fully recourse obligation of Maker and its general partner, Abbington Meadows Partner, LLC a Georgia limited liability company.
 - 10. **Venue.** This Note, and the application and interpretation hereof, shall be governed by and construed in accordance with the law of the state of **Texas** applicable to contracts executed in and to be performed in the state of **Texas. Grayson County, Texas**, shall be the venue of any legal action concerning this Note and/or the transactions contemplated hereby.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, this Note has been executed as of the date first hereinabove written.

MAKER

HOWE ABBINGTON MEADOWS, LP
a Georgia limited partnership

By: ABBINGTON MEADOWS PARTNER, LLC
a Georgia limited liability company
Its: General Partner

By: _____
Name: William S. Rea, Jr.
Title: Managing Member

CITY OF HOWE/ABBINGTON MEADOWS GUARANTY AGREEMENT

NOW, WHEREFORE, IT IS AGREED,

FIRST: Rea Ventures Group LLC, a Georgia limited liability company, residing at 2964 Peachtree Road NW, Suite 640, Atlanta, GA 30305 ("Guarantor") guarantees the payment of the loan in the amount of up to \$115,200.00, as well as any and all interest and penalties owed in accordance with the terms of the Fee Deferral Agreement and Promissory Note signed by HOWE ABBINGTON MEADOWS, LP, a Georgia limited partnership, residing at 2964 Peachtree Road NW, Suite 640, Atlanta, GA 30305 ("the Loan Agreement").

SECOND: Guarantor shall take all reasonable measures to assure that HOWE ABBINGTON MEADOWS, LP, repays the loan in accordance with the terms of the Loan Agreement and to cooperate with the City of Howe in collecting past-due loan payments, together with any interest and penalties accrued under the terms of the Loan Agreement.

THIRD: That if HOWE ABBINGTON MEADOWS, LP, defaults on the Loan Agreement with the City of Howe, Guarantor shall pay the City of Howe the outstanding balance of the aforesaid loan, together with any interest and penalties accrued under the terms of the loan, within thirty days of receiving written notice of HOWE ABBINGTON MEADOWS, LP's default.

FOURTH: Notwithstanding the modification of the Loan Agreement so as to extend the repayment periods or so as to increase or decrease the amount of periodic payments, Guarantor shall remain bound by the obligations set out in this Guarantor's Agreement.

FIFTH: If HOWE ABBINGTON MEADOWS, LP defaults on the loan payments, and if Guarantor fails to pay the outstanding balance of the aforesaid loan together with any interest and penalties accrued under the terms of the loan as required under Article THIRD above, Guarantor shall submit to the jurisdiction of the state courts in Grayson County, Texas, and Guarantor hereby waives all challenges to the jurisdiction of those courts and pertinent authorities in relation to all legal process and other legal action that may be deemed necessary by the City of Howe, Texas for the collection of monies owed on account of the breach of this Guarantor's Agreement. Guarantor also agrees to pay the City of Howe, Texas, all reasonable legal fees, expenses, and court costs actually incurred by the City of Howe in collecting amounts owed under this Guarantor's Agreement.

[signature on following page]

Rea Ventures Group, LLC
a Georgia limited liability company

By: _____

Name: William S. Rea, Jr.

Title: Managing Member

Date: 6/16/14

On this 16th day of June, 2014, before me, the undersigned notary public, personally appeared **as the Manager of Rea Ventures Group, LLC (Guarantor)**, known to me to be the person whose name is subscribed to the within instrument and acknowledged that **as the Manager of Rea Ventures Group, LLC (Guarantor)**, executed the same for the purposes therein contained.

Sean M Brady
Notary Public, State of Georgia

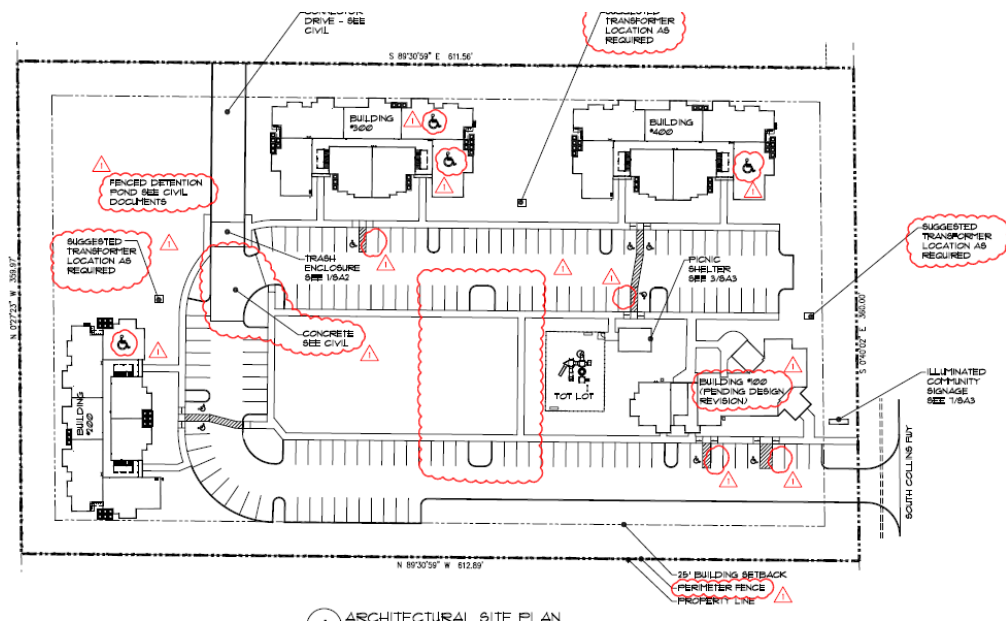


should be noted that the original seven points committed to at application for site amenities will continue to be met via other amenities on the approved TDHCA amenity list. A comparison of the original and revised site plans are depicted below:

Original Site Plan



Revised Site Plan



The owner also provided revised financial exhibits with the amendment request. Real Estate Analysis has evaluated the changes and the impact to the development costs and has concluded that no negative impact would have resulted to the underwriting of this transaction as a result.

Staff recommends approval of the amendment request.



DEVELOPMENT IDENTIFICATION

TDHCA Application #: 13115 Program(s): 9% LIHTC

Abbington Meadows

Address/Location: SWC of Hall Cemetery Road and S. Collins Freeway

City: Howe County: Grayson Zip: 75459

Population: Family Program Set-Aside: Rural Area: Rural

Activity: New Construction Building Type: Garden (Up to 3-story) Region: 3

Analysis Purpose: Amendment/Pre-Construction

APPLICATION HISTORY

Report Date	PURPOSE
07/01/13	Original Allocation

ALLOCATION

TDHCA Program	PREVIOUS ALLOCATION				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (Annual)	\$500,000				\$500,000				

CONDITIONS

Any unsatisfied conditions from prior underwriting reports remain applicable. Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

DEAL SUMMARY

Applicant awarded 2013 tax credits. As a result of \$350K in total development cost increases, the Applicant is requesting an amendment to the application changing some of the physical attributes to the development's design to lower costs. Additionally, changes to the capital structure have also occurred as discussed below.

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Profoma)					
NOI:	\$264,752	Avg. Rent:	\$723	Expense Ratio:	49.1%
Debt Service:	\$227,485	B/E Rent:	\$684	Controllable Expenses:	\$2,109
Net Cash Flow:	\$37,267	Occupancy:	92.50%	Property Taxes/Unit:	\$930
Aggregate DCR:	1.16:1	B/E Occupancy:	85.88%	Program Rent Year:	2013

Lower utility allowances increase gross potential rents (\$14/unit/month average). Market rent assumptions consistent with prior underwriting. Applicant lowered the overall expense pro forma \$3K (net) including lowering the management fee from 5% to 4%. Applicant's NOI used for sizing.

All feasibility indicators remain positive as underwritten. DCR no longer includes the City of Howe loan which is now cash flow as discussed below.

DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	\$98,814/ac	\$7,813/unit	\$500,000	Contractor Fee	\$690,500
Offsite + Site work		\$18,125/unit	\$1,160,018	Developer Fee	\$945,000
Building Cost	\$60.91/sf	\$58,972/unit	\$3,774,200	Soft Cost	\$1,324,346
Contingency	5.71%	\$4,430/unit	\$283,500	Reserves	\$373,000
Total Development Cost					
	\$9,050,564	\$141,415/unit			

Conclusion:

Total development cost increased \$341K primarily in off-site and site work costs (\$266K). Building costs remain unchanged however specification changes offset reported market price increases. Financing costs up due to a higher interest rate (1%) on the senior debt (4.25% to 5.25%).

Changes to the building design include: (1) reducing ceiling height from 9' to 8'; (2) decreasing masonry from 51% to 13%; and, (3) a reducing community space by 827 square feet.

Financing costs up due to a higher interest rate (1%) on the senior debt (4.25% to 5.25%).

REA's building re-costing is \$161K lower than original costing due to the design/specification changes.

UNDERWRITTEN CAPITALIZATION

INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
USDA 538 Loan	USDA/TXRD Loan(s)	\$5,928,500	5.25%	75%
Churchill Stateside Group	HTC	\$1,839,816	\$0.92	23%
City of Howe	Loan	\$115,200	3.00%	1%
		\$7,883,516	Total Sources	

PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
USDA 538 Loan	\$3,800,000	5.25%	40	40	\$3,800,000	5.25%	40	40	42%
City of Howe	\$115,000	3.00%	5	5	\$115,000	3.00%	0	5	1%
Total	\$3,915,000				\$3,915,000				

Comments:

USDA senior debt reduced \$300K at a 5.25% interest rate (up 1% from prior underwriting). The city loan is now a cash flow loan to maintain a DCR within threshold.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Churchill Stateside Group	\$4,599,540	\$0.92		\$4,599,540	\$0.92	51%	
Howe Abbington Estates, LP	\$535,824		57%	\$536,024		6%	57%
Total	\$5,135,564			\$5,135,564			
				\$9,050,564			Total Sources

Comments:

Syndication price up from \$.86 to \$.92 generating \$300K of additional equity. Assuming repayment of the city loan is senior to the deferred developer fee (if not repaid otherwise), the deferred fee is repayable within 15 years of the Applicant's long-term pro forma.

CONCLUSIONS

No change to the previously awarded tax credit allocation as a result of this amendment request is recommended at this time. A final determination of the allocation will be made at cost certification.

Underwriter: Eric Weiner

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

UNIT MIX/RENT SCHEDULE

Abbington Meadows, Howe, 9% LIHTC #13115

LOCATION DATA	
CITY:	Howe
COUNTY:	Grayson
PROGRAM REGION:	3
PIS Date:	On or After 1/18/2013
IREM REGION:	

UNIT DISTRIBUTION		
# Beds	# Units	% Total
Eff		
1	14	21.9%
2	32	50.0%
3	18	28.1%
4		
TOTAL	64	100.0%

Applicable Programs
9% Housing Tax Credits

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjustment	130%
Applicable Fraction	60.93%
APP % Acquisition	
APP % Construction	9.00%
Average Unit Size	968

UNIT MIX / MONTHLY RENT SCHEDULE

HTC				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC30%	1	1	1	715	\$347	\$78	\$269	\$0	\$0.38	\$269	\$269	\$269	\$269	\$0.38	\$0	\$695	0.97	\$426
TC50%	2	1	1	715	\$578	\$78	\$500	\$0	\$0.70	\$500	\$1,000	\$1,000	\$500	\$0.70	\$0	\$695	0.97	\$195
TC60%	5	1	1	715	\$694	\$78	\$616	\$0	\$0.86	\$616	\$3,080	\$3,080	\$616	\$0.86	\$0	\$695	0.97	\$79
MR	6	1	1	715	\$0	\$78		NA	\$0.97	\$695	\$4,170	\$4,170	\$695	\$0.97	NA	\$695	0.97	\$0
TC30%	1	2	2	926	\$417	\$97	\$320	\$1	\$0.35	\$321	\$321	\$320	\$320	\$0.35	\$0	\$800	0.86	\$480
TC50%	2	2	2	926	\$695	\$97	\$598	\$1	\$0.65	\$599	\$1,198	\$1,196	\$598	\$0.65	\$0	\$800	0.86	\$202
TC60%	7	2	2	926	\$834	\$97	\$737	\$1	\$0.80	\$738	\$5,166	\$5,159	\$737	\$0.80	\$0	\$800	0.86	\$63
MR	2	2	2	926	\$0	\$97		NA	\$0.86	\$800	\$1,600	\$1,650	\$825	\$0.89	NA	\$825	0.89	\$0
TC30%	1	2	2	982	\$417	\$97	\$320	\$1	\$0.33	\$321	\$321	\$320	\$320	\$0.33	\$0	\$800	0.81	\$480
TC50%	2	2	2	982	\$695	\$97	\$598	\$1	\$0.61	\$599	\$1,198	\$1,196	\$598	\$0.61	\$0	\$800	0.81	\$202
TC60%	7	2	2	982	\$834	\$97	\$737	\$1	\$0.75	\$738	\$5,166	\$5,159	\$737	\$0.75	\$0	\$800	0.81	\$63
MR	10	2	2	982	\$0	\$97		NA	\$0.81	\$800	\$8,000	\$8,250	\$825	\$0.84	NA	\$825	0.84	\$0
TC30%	1	3	2	1,178	\$481	\$106	\$375	\$0	\$0.32	\$375	\$375	\$375	\$375	\$0.32	\$0	\$900	0.76	\$525
TC50%	3	3	2	1,178	\$802	\$106	\$696	\$0	\$0.59	\$696	\$2,088	\$2,088	\$696	\$0.59	\$0	\$900	0.76	\$204
TC60%	7	3	2	1,178	\$963	\$106	\$857	\$0	\$0.73	\$857	\$5,999	\$5,999	\$857	\$0.73	\$0	\$900	0.76	\$43
MR	7	3	2	1,178	\$0	\$106		NA	\$0.76	\$900	\$6,300	\$6,650	\$950	\$0.81	NA	\$950	0.81	\$0
TOTALS/	64			61,966				\$0	\$0.75	\$723	\$46,251	\$46,881	\$733	\$0.76	\$0	\$815	\$0.84	\$83

ANNUAL POTENTIAL GROSS RENT:	\$555,012	\$562,572
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STABILIZED PROFORMA

Abbingdon Meadows, Howe, 9% LIHTC #13115

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT			PRIOR REPORT		TDHCA				VARIANCE		
	Database	Other	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT				\$0.75	\$723	\$555,012	\$544,632	\$557,112	\$562,572	\$733	\$0.76		1.3%	\$7,560
Laundry, Etc.					\$10.00	\$7,680	7,680	0					0.0%	(7,680)
Underwriter's Total Secondary Income								7,680	\$7,680	\$10.00			100.0%	7,680
POTENTIAL GROSS INCOME		\$ -				\$562,692	\$552,312	\$564,792	\$570,252				1.3%	\$7,560
Vacancy & Collection Loss					7.5% PGI	(42,202)	(41,423)	(42,359)	(42,769)	7.5% PGI			1.3%	(567)
Non-Rental Units/Concessions						-	0						0.0%	-
EFFECTIVE GROSS INCOME		\$ -				\$520,490	\$510,889	\$522,433	\$527,483		0.37%		1.3%	\$6,993

General & Administrative	\$24,026	\$375/Unit	22,800	3.29%	\$0.28	\$268	\$17,144	\$24,884	\$22,800	\$22,800	\$356	\$0.37	4.32%	-24.8%	(5,656)
Management	\$35,623	8.0% EGI	16,107	4.03%	\$0.34	\$328	\$21,000	\$25,451	\$26,122	\$21,099	\$330	\$0.34	4.00%	-0.5%	(99)
Payroll & Payroll Tax	\$57,122	\$893/Unit	51,151	12.59%	\$1.06	\$1,024	\$65,546	\$73,500	\$73,500	\$73,500	\$1,148	\$1.19	13.93%	-10.8%	(7,954)
Repairs & Maintenance	\$42,284	\$661/Unit	28,220	6.17%	\$0.52	\$502	\$32,100	\$32,000	\$35,200	\$35,200	\$550	\$0.57	6.67%	-8.8%	(3,100)
Utilities	\$23,658	\$370/Unit	9,271	1.84%	\$0.15	\$150	\$9,600	\$9,540	\$9,271	\$9,271	\$145	\$0.15	1.76%	3.6%	329
Water, Sewer, & Trash	\$40,485	\$633/Unit	39,112	2.03%	\$0.17	\$165	\$10,588	\$8,400	\$8,400	\$10,588	\$165	\$0.17	2.01%	0.0%	-
Property Insurance	\$18,357	\$0.30 /sf	14,539	3.25%	\$0.27	\$264	\$16,900	\$15,000	\$15,000	\$16,900	\$264	\$0.27	3.20%	0.0%	-
Property Tax 2.8006	\$33,440	\$523/Unit	39,095	11.43%	\$0.96	\$930	\$59,500	\$47,894	\$56,304	\$56,304	\$880	\$0.91	10.67%	5.7%	3,196
Reserve for Replacements	\$21,401	\$334/Unit	12,815	3.07%	\$0.26	\$250	\$16,000	\$16,000	\$16,000	\$16,000	\$250	\$0.26	3.03%	0.0%	-
Cable TV			-	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Supportive service contract fees			-	0.92%	\$0.08	\$75	\$4,800	\$4,800	\$4,800	\$4,800	\$75	\$0.08	0.91%	0.0%	-
TDHCA Compliance fees			-	0.49%	\$0.04	\$40	\$2,560	\$1,560	\$1,560	\$1,560	\$24	\$0.03	0.30%	64.1%	1,000
TOTAL EXPENSES				49.13%	\$4.13	\$3,996	\$ 255,738	\$ 259,029	\$ 268,956	\$ 268,022	\$4,188	\$4.33	50.81%	-4.6%	\$ (12,284)
NET OPERATING INCOME ("NOI")				50.87%	\$4.27	\$4,137	\$264,752	\$251,860	\$253,477	\$259,461	\$4,054	\$4.19	49.19%	2.0%	\$5,291

CONTROLLABLE EXPENSES	\$2,931/Unit				\$2,109/Unit	-5.12%		\$149,170/Unit		\$2,365/Unit					
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LONG TERM OPERATING PROFORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
EFFECTIVE GROSS INCOME	\$520,490	\$530,900	\$541,518	\$552,348	\$563,395	\$622,034	\$686,776	\$758,256	\$837,176	\$924,310	\$1,020,512	\$1,126,728
LESS: TOTAL EXPENSES	255,738	263,200	270,882	278,790	286,931	331,377	382,771	442,208	510,951	590,468	682,456	788,881
NET OPERATING INCOME	\$264,752	\$267,700	\$270,636	\$273,558	\$276,464	\$290,657	\$304,004	\$316,048	\$326,224	\$333,841	\$338,056	\$337,847
LESS: DEBT SERVICE	227,485	227,485	227,485	227,485	227,485	227,485	227,485	227,485	227,485	227,485	227,485	227,485
NET CASH FLOW	\$37,267	\$40,215	\$43,151	\$46,073	\$48,980	\$63,172	\$76,519	\$88,563	\$98,740	\$106,356	\$110,571	\$110,362
CUMULATIVE NET CASH FLOW	\$37,267	\$77,482	\$120,633	\$166,707	\$215,686	\$503,420	\$859,746	\$1,279,100	\$1,753,321	\$2,271,050	\$2,817,028	\$3,371,257
DEFERRED DEVELOPER FEE BALANCE	\$498,757	\$458,542	\$415,391	\$369,317	\$320,338	\$32,604	\$0	\$0	\$0	\$0	\$0	\$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.16	1.18	1.19	1.20	1.22	1.28	1.34	1.39	1.43	1.47	1.49	1.49
EXPENSE/EGI RATIO	49.13%	49.58%	50.02%	50.47%	50.93%	53.27%	55.73%	58.32%	61.03%	63.88%	66.87%	70.02%

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Abbingdon Meadows, Howe, 9% LIHTC #13115

DEBT / GRANT SOURCES																	
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									Prior Underwriting		AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App						Applicant	TDHCA						DCR	LTC
USDA 538 Loan		1.14	1.16	\$227,485	5.25%	40	40	\$3,800,000	\$4,100,000	\$4,100,000	\$3,800,000	40	40	5.25%	227,485	1.16	42.0%
CASH FLOW DEBT / GRANTS																	
City of Howe		1.03	1.05	\$24,797	3.00%	5	5	\$115,000			\$115,000	5	0	3.00%		1.16	1.3%
TOTAL DEBT / GRANT SOURCES				\$252,282				\$3,915,000	\$4,124,960	\$4,124,960	\$3,915,000				\$227,485		43.3%
NET CASH FLOW		\$7,180	\$12,470											NET OPERATING INCOME	\$264,752	\$37,267	NET CASH FLOW

EQUITY SOURCES															
APPLICANT'S PROPOSED EQUITY STRUCTURE						Prior Underwriting		AS UNDERWRITTEN EQUITY STRUCTURE							
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Totals		
						Applicant	TDHCA						Total Developer Fee:	15-Year Cash Flow:	
Churchill Stateside Group	LIHTC Equity	50.8%	\$500,000	0.92	\$4,599,540	\$4,299,570	\$4,299,570	\$4,599,540	\$0.9199	\$500,000	50.8%	\$71,868			
Howe Abbingdon Estates, LP	Deferred Developer Fees	5.9%	(57% Deferred)		\$535,824	\$284,135	\$284,135	\$536,024	(57% Deferred)		5.9%		Total Developer Fee:	\$945,000	
Additional (Excess) Funds Req'd		0.0%			\$200	\$0	\$0	\$0			0.0%		15-Year Cash Flow:	\$859,746	
TOTAL EQUITY SOURCES		56.7%			\$5,135,564	\$4,583,705	\$4,583,705	\$5,135,564			56.7%		Cash Flow after Deferred Fee:	\$323,722	
TOTAL CAPITALIZATION					\$9,050,564	\$8,708,665	\$8,708,665	\$9,050,564							

DEVELOPMENT COST / ITEMIZED BASIS													
APPLICANT COST / BASIS ITEMS					Prior Underwriting		TDHCA COST / BASIS ITEMS				COST VARIANCE		
Land Acquisition	Eligible Basis		Total Costs	Amount	Prior Underwriting		Total Costs		Eligible Basis		%	\$	
	Acquisition	New Const. Rehab			Applicant	TDHCA	Acquisition	New Const. Rehab					
Easements for Sewer Extension			\$7,813 / Unit	\$500,000	\$500,000	\$500,000	\$500,000	\$7,813 / Unit			0.0%	\$0	
Off-Sites		\$265,500	\$6,669 / Unit	\$426,818	\$265,500	\$265,500	\$426,818	\$6,669 / Unit			0.0%	\$0	
Sitework		\$594,200	\$9,519 / Unit	\$609,200	\$504,600	\$504,600	\$609,200	\$9,519 / Unit	\$594,200		0.0%	\$0	
Site Amenities		\$124,000	\$1,938 / Unit	\$124,000	\$124,000	\$124,000	\$124,000	\$1,938 / Unit	\$124,000		0.0%	\$0	
Building Costs		\$3,774,200	\$60.91 /sf	\$58,972/Unit	\$3,774,200	\$3,780,000	\$3,963,444	\$3,802,763	\$59,418/Unit	\$61.37 /sf	\$3,802,763	-0.8%	(\$28,563)
Contingency		\$269,500	5.66%	5.75%	\$283,500	\$283,500	\$283,500	\$283,500	5.71%	5.96%	\$269,500	0.0%	\$0
Contractor's Fees		\$629,000	12.51%	13.23%	\$690,500	\$654,500	\$654,500	\$690,500	13.16%	13.13%	\$629,000	0.0%	\$0
Indirect Construction	0	\$770,085	\$12,267 / Unit	\$785,085	\$810,085	\$810,085	\$785,085	\$12,267 / Unit	\$770,085	\$0	0.0%	\$0	
Developer's Fees	\$0	\$945,000	13.97%	13.59%	\$945,000	\$945,000	\$945,000	\$945,000	13.54%	14.48%	\$945,000	0.0%	\$0
Financing		\$335,997	\$8,426 / Unit	\$539,261	\$369,980	\$369,980	\$539,261	\$8,426 / Unit	\$335,997	\$0	0.0%	\$0	
Reserves			\$5,828 / Unit	\$373,000	\$371,500	\$219,599	\$226,024	\$3,532 / Unit			65.0%	\$146,976	
UNADJUSTED BASIS / COST		\$0	\$7,707,482	\$141,415 / Unit	\$9,050,564	\$8,708,665	\$8,740,208	\$8,932,151	\$139,565 / Unit	\$7,470,545	\$0	1.3%	\$118,413
Acquisition Cost for Identity of Interest Seller				\$0									
Contingency		\$0											
Contractor's Fee		\$0											
Interim Interest		\$0											
Developer's Fee	\$0	\$0		\$0	\$0								
ADJUSTED BASIS / COST		\$0	\$7,707,482	\$141,415/unit	\$9,050,564	\$8,708,665		\$8,932,151	\$139,565/unit	\$7,470,545	\$0	1.3%	\$118,413
TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):					\$9,050,564								

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Abbington Meadows, Howe, 9% LIHTC #13115

CREDIT CALCULATION ON QUALIFIED BASIS			
Applicant		TDHCA	
Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$0	\$7,707,482	\$7,470,545
Deduction of Federal Grants	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$7,707,482	\$7,470,545
High Cost Area Adjustment		130%	130%
TOTAL ADJUSTED BASIS	\$0	\$10,019,727	\$9,711,709
Applicable Fraction	60.93%	60.93%	60.93%
TOTAL QUALIFIED BASIS	\$0	\$6,105,362	\$5,917,676
Applicable Percentage	0.00%	9.00%	9.00%
ANNUAL CREDIT ON BASIS	\$0	\$549,483	\$532,591
CREDITS ON QUALIFIED BASIS	\$549,483		\$532,591

ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		
Method	Annual Credits	Proceeds
Eligible Basis	\$549,483	\$5,054,734
Gap	\$558,269	\$5,135,564
Original Request	\$500,000	\$4,599,540
Current Request	\$500,000	\$4,599,540

FINAL ANNUAL LIHTC ALLOCATION		
Method	Current Request	Variance to Request
Credits	\$500,000	\$0
Total Equity Proceeds	\$4,599,540	\$0

Building Cost/SF			
Development Category	New Construction	Category Building Cost/SF (Mean)	\$62.03 /sf
NRA	61,966	Calculated Building Cost/SF ⁽³⁾	\$60.91 /sf
Elevator Served Enclosed Corridors ⁽¹⁾	0	Building Cost Variance (\$)	\$1.12 /sf
Common Area ⁽²⁾	0	Variance to Mean (%)	1.8%
Total SF for QAP Calculation	61,966	Building Cost/SF reported in Application ⁽³⁾	\$61.00 /sf
		Variance to Mean based on Application	1.7%

- (1) Supportive Housing, Qualified Elderly or 4-Story Development
- (2) Up to \$50 SF/Unit common area for Supportive Housing
- (3) Excludes Structured Parking

DIRECT CONSTRUCTION COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Garden (Up to 3-story)	61,966 SF	\$60.18	3,729,011
Adjustments				
Exterior Wall Finish	1.04%		0.63	\$38,782
	0.00%		0.00	0
	0.00%		0.00	0
Roofing/Pitch			1.03	64,000
Subfloor			(0.15)	(9,547)
Floor Cover			2.68	166,069
Breezeways	\$25.59	9,900	4.09	253,361
Balconies	\$25.36	5,400	2.21	136,931
Plumbing Fixtures	\$940	150	2.28	141,000
Rough-ins	\$465	128	0.96	59,520
Built-In Appliances	\$1,750	64	1.81	112,000
Exterior Stairs	\$2,125	12	0.41	25,500
Heating/Cooling			2.06	127,650
Enclosed Corridors	\$44.69	0	0.00	0
Carports	\$11.30	0	0.00	0
Garages		0	0.00	0
Comm &/or Aux Bldgs	\$76.17	3,551	4.37	270,491
Elevators		0	0.00	0
Other:			0.00	0
Other: fire sprinkler	\$2.30	75,417	2.80	173,459
SUBTOTAL			85.34	5,288,226
Current Cost Multiplier	0.98		-1.71	(105,765)
Local Multiplier	0.87		-11.09	(687,469)
TOTAL DIRECT CONSTRUCTION COSTS			72.54	\$4,494,992
Plans, specs, survey, bldg permits	3.90%		-2.83	(175,305)
Contractor's OH & Profit	11.50%		-8.34	(516,924)
NET DIRECT CONSTRUCTION COSTS		\$59,418/unit	\$61.37/sf	\$3,802,763

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Amendment for Riverwood Commons in Bastrop (#12002/11041)

RECOMMENDED ACTION

WHEREAS, in response to the 2011 wildfires in Bastrop, Riverwood Commons received a forward commitment in 2011 for a 2012 9% Housing Tax Credit award and also received HOME funds to construct 36 multifamily units in Bastrop;

WHEREAS, construction of the Development is complete, and the Development Owner has submitted the cost certification documentation to the Department;

WHEREAS, the cost certification documentation revealed that common area square footage decreased 4.57% from 10,689 square feet to 10,200 square feet;

WHEREAS, the square footage at application was based on preliminary drawings, and the size of the common space was not determined until the plans were finalized;

WHEREAS, Board approval is required for a reduction of 3 percent or more in the square footage of the units or common areas, and the Owner has complied with the amendment requirements in Texas Government Code §2306.6712 and 10 TAC §10.405(a); and

WHEREAS, the requested change does not negatively affect the Development or impact the viability of the transaction;

NOW, therefore, it is hereby

RESOLVED, that the application amendment for Riverwood Commons is approved as presented to this meeting.

BACKGROUND

The tax credit application for Riverwood Commons was submitted in 2011 and approved for a forward commitment of 2012 9% Housing Tax Credits and HOME funds to construct 36 new multifamily units in Bastrop. On December 13, 2012, the Board approved an increase to the development site from 1.44 acres to 1.527 acres. The Development placed in service in November 2013, and the cost certification is currently under review. On August 4, 2014, the Development Owner requested approval for a 4.57% decrease in common area square footage from 10,689 square feet to 10,200 square feet.

The Development is made up of one L-shaped three-story residential building with enclosed corridors on all floors and no separate community building. The floor plans in the application identified the office and community room near the entrance on the first floor and storage areas and laundry rooms on the second and third floors. The final building plans identify a similar design with the community rooms near the entrance on the first floor. However, the area of the enclosed corridors decreased, and the laundry rooms were eliminated. The Owner reported that each unit now has laundry equipment instead of the community laundry rooms.

The Owner explained that the square footage at application was based on preliminary drawings, and the size of the common space was not determined until the plans were finalized after the award. The application reported 8,820 square feet of interior corridors and 1,869 square feet of common area. It is not clear what was included in the 1,869 square feet of common area identified in the application. The Owner reported that the Development as-built has 5,421 square feet of corridor space, 2,743 square feet of common space, 301 square feet of storage, 1,480 square feet of stair space, and 255 square feet of elevator space. Overall, total common area space decreased by 489 square feet.

Staff recommends approval of the amendment request.



August 4, 2014

To: Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Application Amendment Request
Riverwood Commons
12002
Riverwood Commons, L.P.

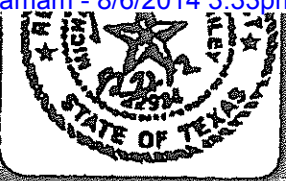
On behalf of Riverwood Commons, L.P., we would like to request an amendment to the Application for Riverwood Commons.

At the time of Application, and without the benefit of a final set of building plans, the community space was estimated to be 10,689 square feet. After full building design and construction, the building contained 10,200 square feet of community space. Riverwood Commons is a three story building, thus all space not a part of the inside of the units, which includes hallways, leasing office, closets etc, is considered common/community space. It is difficult to estimate the size of this space prior to having completed plans.

Please accept this letter for our formal request for an amendment to the Application.

Respectfully,

Will Markel
Executive Vice President
Affordable Equity Partners



BUILDING SF	
NRA (NET RENTABLE AREA)	
SPACE	GROSS SF
UNITS	31,673
CORRIDOR	5,421
SUB TOTAL NRA	37,094
NON NRA	
SPACE	GROSS SF
COMMON SPACE	2,743
STORAGE	301
STAIR	1,480
ELEVATOR	255
SUB TOTAL NON NRA	4,779
TOTAL SF	41,873

>>

LOCATION

LOCATION MAP

ILEY ASSOCIATES - ARCHITECTS, P.C.
 801 SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800

COMMONS APARTMENTS

FIRST FLOOR PLAN

WALL LEGEND:

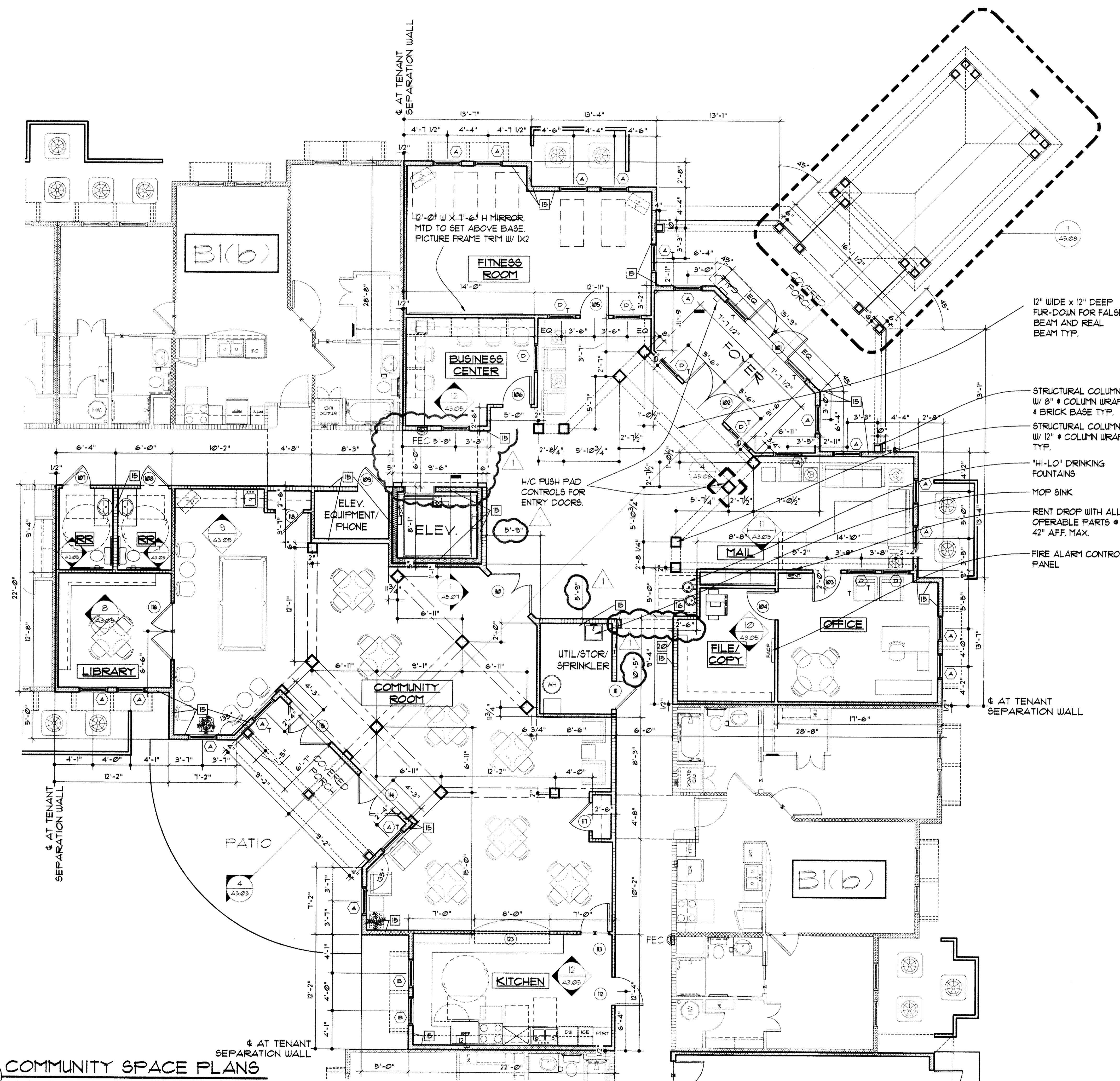
- UNRATED WALL
- 1-HR RATED EXTERIOR WALL
- 1-HR RATED TEN. SEP. WALL
- 1-HR CORRIDOR WALL
- 1-HR INTERIOR BEARING WALL
- 1-HR RATED ATTIC WALL

UNIT LABELING LEGEND:

- TYPE (a) HANDICAP UNIT
- TYPE (b) FAIR HOUSING UNIT
- TYPE (av) HEARING/VISUAL IMPAIRMENT

UNIT PLAN KEY NOTES:

- 1 16" ROD AND SHELF AT 5'-4"
- 2 12" SHELF AT 3', 4'-2", 5'-4", AND 6'-6"
- 3 DBL. 12" ROD AND SHELF AT 2'-6", 5'-4"
- 4 12" ROD AND SHELF AT 5'-4"
- 5 16" SHELF AT 5'-4" AND 6'-6"
- 6 16" SHELF AT 3'-4" AND 5'-4"
- 7 DBL. 16" ROD AND SHELF AT 2'-6", 5'-4"
- 8 16" SHELF AT 3', 4'-2", 5'-4", AND 6'-6"
- 9 RECESSED MEDICINE CABINET
- 10 TOILET PAPER HOLDER
- 11 LOW PROFILE ALUM. THRESHOLD
- 12 STANDARD ALUM. THRESHOLD
- 13 ICE MAKER BOX CONNECTION
- 14 WASHER BOX CONNECTION
- 15 DRYER VENT BOX IN 6" WALL
- 16 2x6 WALL
- 17 WATER FOUNTAIN
- 18 EYEWASH SINK @ 33" AFF.
- 19 MOP SINK
- 20 FOLDING ACOUSTIC PARTITION
- 21 RADON PIPE
- 22 ELECTRICAL PANEL BOX
- 23 24" TOWEL BAR
- 24 WALL MOUNTED BATH FAN
- 25 DOOR CAN BE REMOVED AT TENANT'S REQUEST
- 26 TENANT ENTRY SHELF. SEE 8/15/06
- 27 PROVIDE AND INSTALL TWO (2) STOVE TOP "FIRESTOP" (OR EQUAL) FIRE PROTECTION CANISTERS. CANISTERS SHALL BE INSTALLED ON THE UNDERSIDE OF THE RANGE HOOD PRIOR TO OCCUPANCY.



12" WIDE x 12" DEEP FUR-DOWN FOR FALSE BEAM AND REAL BEAM TYP.

STRUCTURAL COLUMN W/ 8" # COLUMN WRAP & BRICK BASE TYP.

STRUCTURAL COLUMN W/ 12" # COLUMN WRAP TYP.

"HI-LO" DRINKING FOUNTAINS

MOP SINK

RENT DROP WITH ALL OPERABLE PARTS @ 42" AFF. MAX.

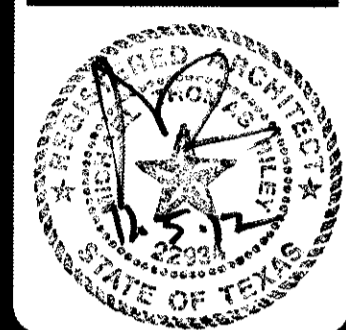
FIRE ALARM CONTROL PANEL

1 COMMUNITY SPACE PLANS
3/16" = 1'-0"

SCALE: 3/16" = 1'-0"

MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
215 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800

RIVERWOOD COMMONS APARTMENTS
BASTROP, TX



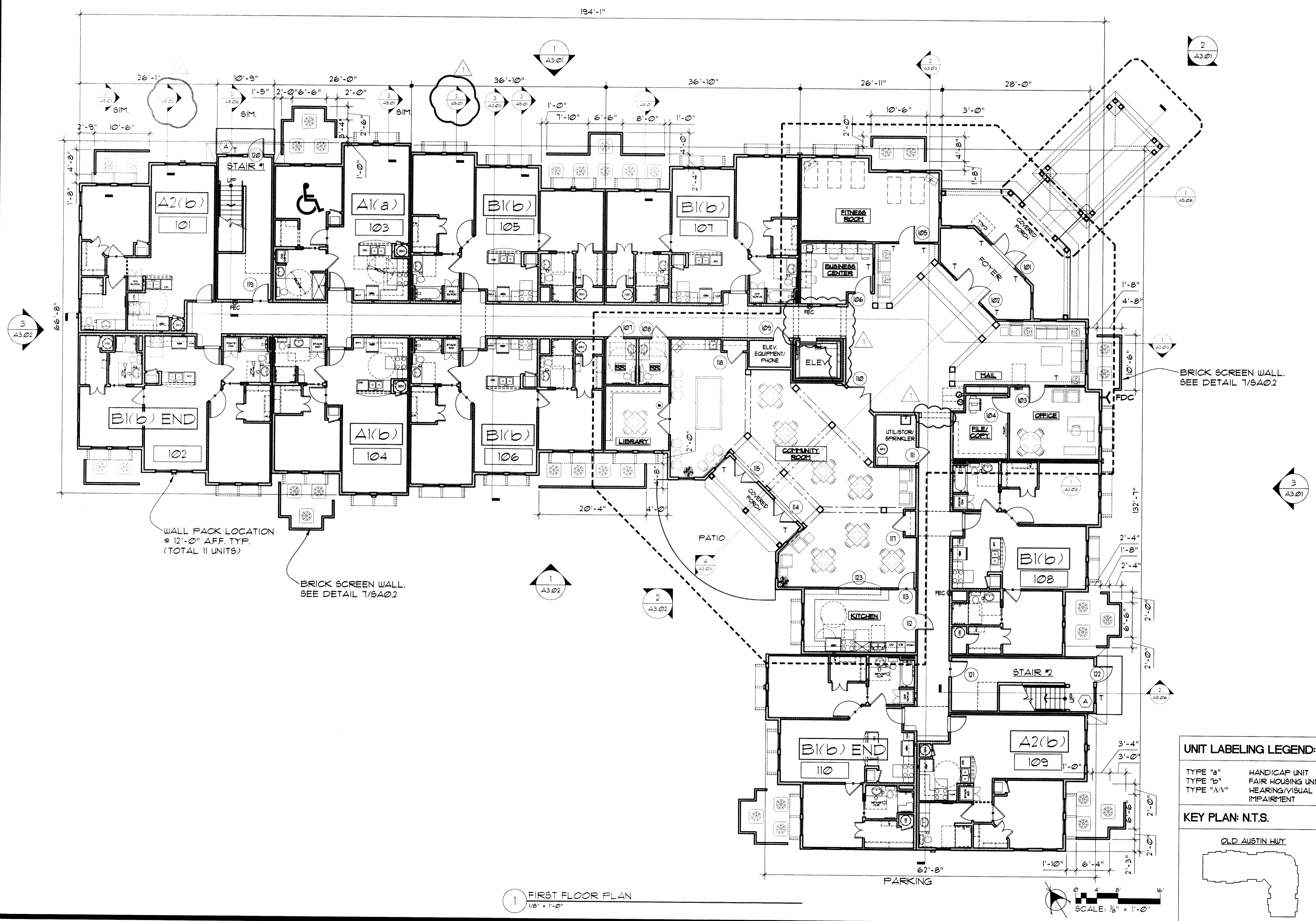
PROJECT: 2010-0713
DATE: 5-21-12
DRAWN BY / CHECKED BY: DJG

COMMUNITY SPACE PLANS

MARRA
RELEASED FOR CONSTRUCTION
A2.03

PLOT1ED: Nov 05, 2012 - 9:05am LOCATION: P:\A\Fordasdale Equity Partners\2010-0713_BASTROP, TX\Sheets\ 2010-0713_A2.03.dwg Plotted By: dscalcise - Copyright: 2004

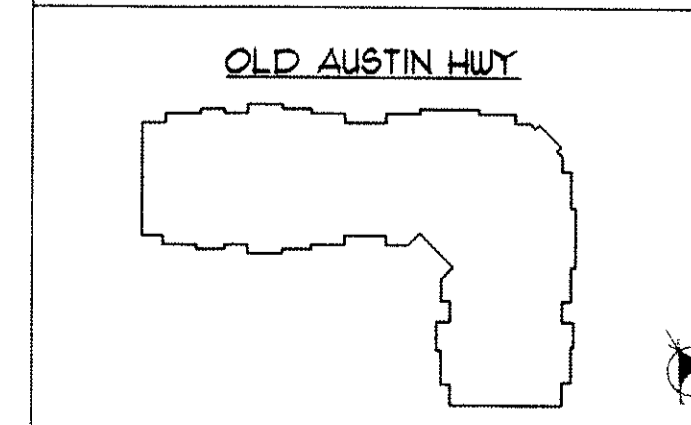
PLOTTED: Nov 05, 2012 - 8:59am LOCATION: F:\A1\FairHousing\2010-073_BASTROP, TX\Sheets\2010-073_BASTROP.dwg Plotted By: discalisse - Copyright 2009



UNIT LABELING LEGEND:

TYPE "a"	HANDICAP UNIT
TYPE "b"	FAIR HOUSING UNIT
TYPE "A/V"	HEARING/VISUAL IMPAIRMENT

KEY PLAN: N.T.S.



1 FIRST FLOOR PLAN
1/8" = 1'-0"

REVISIONS
11-5-12

PROJECT
2010-073

DATE
5-21-12

DRAWN BY / CHECKED BY
DJG

MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
215 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-375-2800

RIVERWOOD COMMONS APARTMENTS
BASTROP, TX

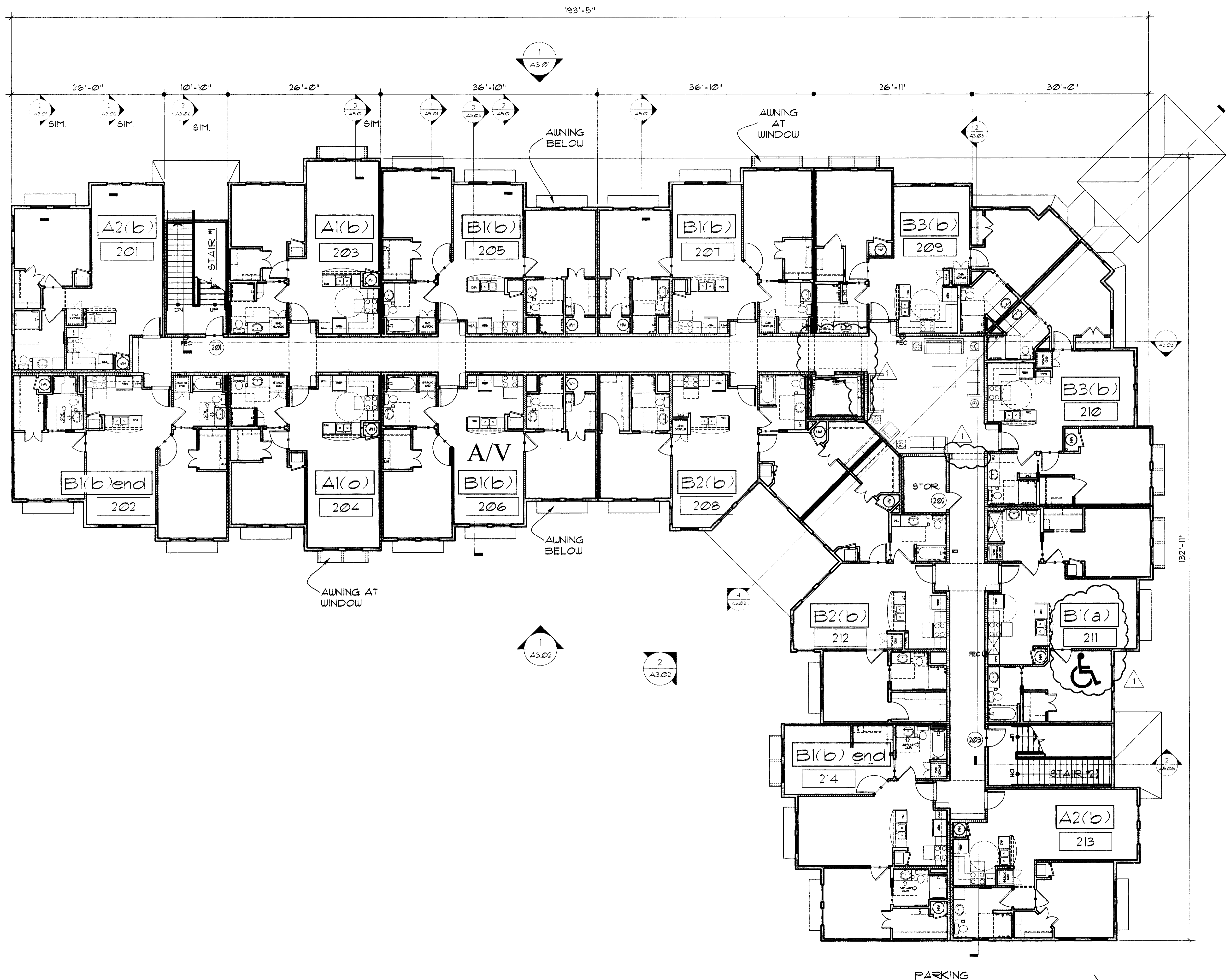
FIRST FLOOR PLAN

RELEASED FOR CONSTRUCTION

A1.01

PLOTTED: Nov. 05, 2012 - 9:01am LOCATION: P:\Affordable Equity Partners\2010-073_BASTROP, TX\Sheets\ 2010-073 A1.02.dwg Plotted By: dscolice - Copyright 2009

amem - R1412114 10:38am - RB



2
A3.01

3
A3.02

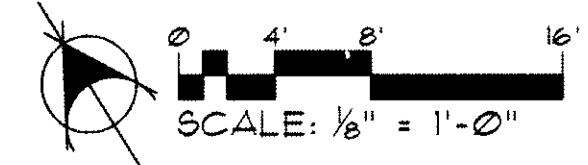
3
A3.01

1
A3.02

2
A3.02

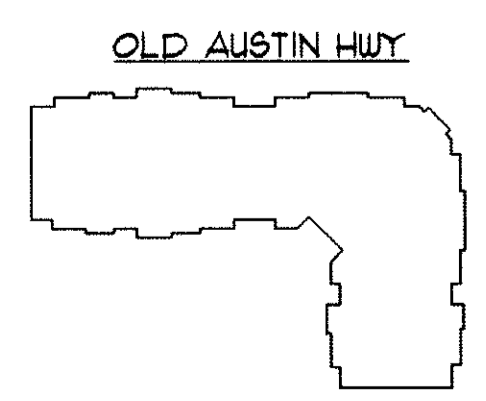
2
A3.02

1 SECOND FLOOR PLAN
1/8" = 1'-0"



UNIT LABELING LEGEND:
TYPE "a" HANDICAP UNIT
TYPE "b" FAIR HOUSING UNIT
TYPE "A/V" HEARING/VISUAL IMPAIRMENT

KEY PLAN: N.T.S.



REVISION	11-9-12
PROJECT	2010-073
DATE	5-21-12
DRAWN BY / CHECKED BY	DJS

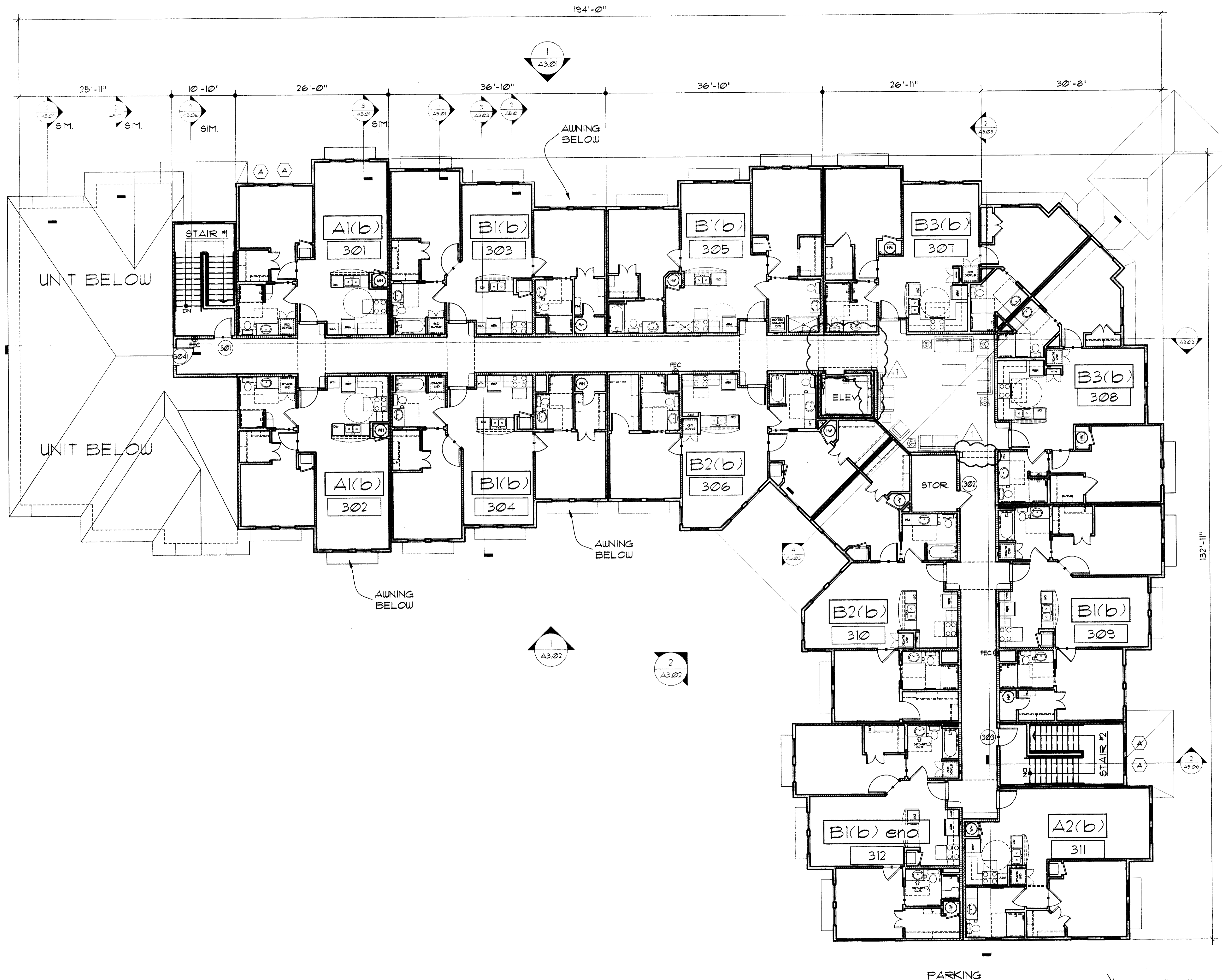
MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
 25 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800
 RIVERWOOD COMMONS APARTMENTS
 BASTROP, TX

RELEASED FOR CONSTRUCTION

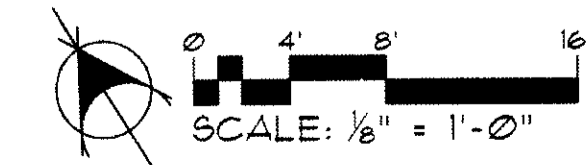
A1.02

FIRST FLOOR PLAN

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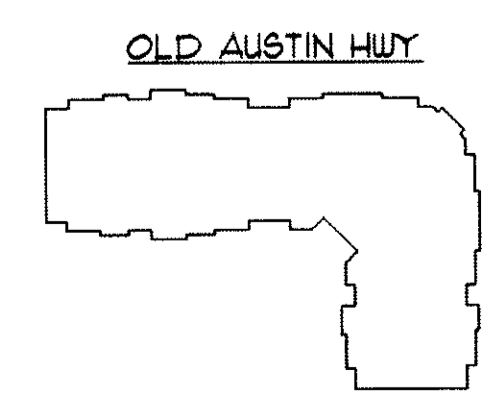


1 THIRD FLOOR PLAN
1/8" = 1'-0"



UNIT LABELING LEGEND:
TYPE "a" HANDICAP UNIT
TYPE "b" FAIR HOUSING UNIT
TYPE "A/V" HEARING/VISUAL IMPAIRMENT

KEY PLAN: N.T.S.



REVISIONS
11-5-12

PROJECT: 2010-073
DATE: 5-21-12
DRAWN BY / CHECKED BY: DJS

MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
215 CHURCH STREET SUITE 200 DECATUR GEORGIA 30030-3329 404-373-2800
RIVERWOOD COMMONS APARTMENTS
BASTROP, TX

A1.03

RELEASED FOR CONSTRUCTION

FIRST FLOOR PLAN

1q

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action Regarding an Extension Request Relating to a Determination Notice for Housing Tax Credits with another Issuer

RECOMMENDED ACTION

WHEREAS, the Board previously approved a Determination Notice for the Village at Palm Center at its meeting on June 5, 2014;

WHEREAS, due to timing issues associated with notification requirements under the Uniform Relocation Act the Applicant will be unable to close on the bonds by September 5, 2014, the deadline as required by the Board in the Determination Notice and a condition of the award; and

WHEREAS, the applicant has requested a sixty (60) day extension of the original deadline to November 5, 2014, in order to close on the financing associated with the development;

NOW, therefore, it is hereby

RESOLVED, that the extension of the deadline to close on the financing associated with the Determination Notice for the Village at Palm Center is hereby approved and the original deadline to close on the associated financing is extended to November 5, 2014.

BACKGROUND

General Information: Village at Palm Center was originally approved by the Board on June 5, 2014. The original award was conditioned upon closing occurring no later than 120 days (September 5, 2014) from Board approval. This condition was generally consistent with the requirements of a bond transaction utilizing non-traditional carryforward (the subject applicant received a traditional carryforward reservation). For non-traditional carryforward reservations, a statutory 150-day deadline for closing is imposed and the Determination Notice for any associated 4% award expires if closing does not occur within this timeframe or if the financing structure or terms change. Traditional carryforward reservations are not specifically addressed in the rule and this recommendation addressed the proposal in a manner to result in consistency. Staff believes that closing within a reasonable period after Board action is important and consistent with the constraints present for most other bond transactions.

The applicant submitted a request to the Department to extend this deadline 60 days to November 5, 2014. The reason for the delay in closing relates to notification requirements under the Uniform Relocation Act. Specifically, the development is proposed on a site that is currently occupied by a flea market with approximately 70 commercial tenants. The seller of the site did not want to provide the

tenants with the required 90-day notice before the Houston City Council approved the CDBG funding. The approval by the City Council occurred on June 18, 2014, and the notice was subsequently provided to the tenants. It is anticipated that a substantial number of the flea market tenants will not move until after September 5, 2014, which was the original deadline imposed on the award. Staff is recommending the Board approve the 60 day extension as requested by the applicant and that closing occur no later than November 5, 2014.

COATS | ROSE

A Professional Corporation

BARRY J. PALMER

bpalmer@coatsrose.com
Direct Dial
(713) 653-7395
Direct Fax
(713) 890-3944

August 25, 2014

By Email to tom.gouris@tdhca.state.tx.us

Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Attention: Tom Gouris, Deputy Executive Director

RE: #13428 – Village at Palm Center – Extension Request.

Dear Tom:

As you and I discussed by telephone on Friday, August 22, Houston 5110 Griggs Road Residential, LP, is requesting an extension of the deadline to close on the bond issuance and 4% housing tax credits for the above referenced project. The Village Palm Center is a complicated transaction with local bond financing, 4% housing tax credits, City of Houston CDBG – Disaster Recovery funds, TIRZ funds, and conditional commercial letter of credit financing for a retail portion of the project. The Determination Notice dated June 9, 2014, provided a deadline of September 5, 2014 for closing on this bond issuance, but due to the complexity of the transaction and the requirement that Uniform Relocation Act procedures be followed, additional time is needed in order to close.

The City of Houston staff has inquired whether it is possible to extend the September 5 deadline. This project is being built on a site that is currently used to house a flea market with approximately 70 tenants. The seller of the site did not want to provide the tenants with the 90-day Uniform Relocation Act Notification before the Houston City Council approved the CDBG – Disaster Recovery financing. City Council Ordinance 2014-0636 was approved on June 18, 2014, and the requisite 90 – day notice was subsequently provided to the tenants. As a result, the tenants have until the end of September to move in accordance with federal law. Both the City of Houston and the Investor Limited Partner have concerns about closing before the tenants have moved out. While the developer is assisting the seller in locating an appropriate replacement site for the flea market, and the tenants have been notified of their relocation assistance, it appears that a substantial number of tenants will not move until after September 5th. In order to provide time for the site to be completely vacated, we are requesting a 60 – day extension of the deadline

3 East Greenway Plaza, Suite 2000 Houston, Texas 77046-0307
Phone: 713-651-0111 Fax: 713-651-0220
Web: www.coatsrose.com

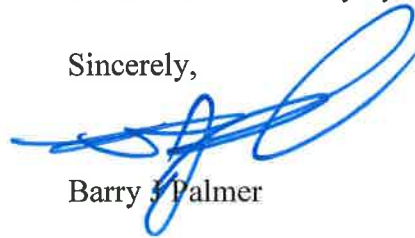
HOUSTON | CLEAR LAKE | AUSTIN | DALLAS | SAN ANTONIO | NEW ORLEANS

Tom Gouris, Deputy Executive Director
August 25, 2014
Page 2

provided in the Determination Notice. We believe that 60 days will provide sufficient time to make sure that all tenants have relocated from the project site.

Thank you for the opportunity to make this request for an extension. As discussed, in the event this extension requires Board approval, it would be appreciated if this request is placed on the Agenda for the September 4, 2014, TDHCA Board Meeting. In accordance with the 2014 Rules, a check in the amount of \$500 for the extension fee will be delivered today by separate cover.

Sincerely,



Barry J. Palmer

cc: Tim Irvine
Cari Garcia
Lucy Trevino
Chris Akbari

REPORT ITEMS

R1

ORAL PRESENTATION

R2

BOARD REPORT ITEM
PROGRAM PLANNING, POLICY, AND METRICS (3PM)
SEPTEMBER 4, 2014

Presentation on the Department Quarterly Snapshot tool.

BACKGROUND

The Program Planning, Policy, and Metrics group (“3PM”) prepares and updates the “Department Snapshot” to give Board members and stakeholders a quick reference resource to gauge where each program stands in meeting its highest level objectives, chiefly expenditures.

A companion document, the Snapshot User Guide, is located on the Department’s website. It is available at <http://tdhca.state.tx.us/metrics> for any reader interested in learning more about the report as well as the business and technical definitions for each program. It should be noted that one field name has changed beginning with the previous iteration of the Snapshot. “Non-TDHCA Admin Funds for Programming” will now be “Funds for Subrecipient Programming.” Staff believes this change will add clarity to the meaning of the data in that column.

Quarterly Snapshot Department Level

Program Type	Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Persons Served	Demolished Properties
					Retained	Expended	% Expended											
Single Family	MCC	\$ 181,341,604	N/A	\$ 181,341,604	N/A	N/A	N/A	\$ 181,341,604	\$ -	\$ 181,341,604	100.0%		\$ 371,198,407	55.2%		2,607		
	TMP	\$ 600,000,000	N/A	\$ 600,000,000	N/A	N/A	N/A	\$ 600,000,000	\$ 196,127,507	\$ 403,872,493	67.3%		\$ 390,308,596	65.1%		2,919		
	HOME	\$ 239,549,369	\$ 24,938,300	\$ 264,487,669	\$ 16,637,610	\$ 15,493,503	0%	\$ 247,850,059	\$ 26,303,617	\$ 221,546,442	89.4%		\$ 169,517,595	68.4%		4,538		
	NSP	\$ 92,999,047	\$ 5,622,547	\$ 98,621,593	\$ 6,671,648	\$ 6,278,508	94.1%	\$ 91,949,945	\$ 5,315,787	\$ 86,634,158	94.2%		\$ 80,150,626	87.2%		1,944		161
	HTF	\$ 28,052,447	\$ 2,827,346	\$ 30,879,793	\$ 1,204,859	\$ 1,060,197	88.0%	\$ 29,674,934	\$ -	\$ 29,674,934	100%		\$ 26,142,433	88.1%		631		
	CSHC	\$ 10,417,048	\$ -	\$ 10,417,048	\$ 139,886	\$ 50,263	35.9%	\$ 10,277,162	\$ 2,183,334	\$ 8,093,828	78.8%		\$ 3,385,148	32.9%		156	26,683	
Multi-Family	9% HTC	\$ 58,633,207	\$ 2,915,861	\$ 61,549,068	N/A	N/A	N/A	\$ 61,549,068	\$ 1	\$ 61,549,067	100%		N/A	N/A	N/A	0		
	4% HTC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$ 6,372,608	100%		\$ -	0%		2,152		
	MF Bonds	\$ -	N/A	\$ -	N/A	N/A	N/A	\$ -	\$ -	\$ -	0%		N/A	N/A	N/A	0		
Community Affairs	LIHEAP	\$ 255,750,494	N/A	\$ 255,750,494	\$ 6,091,792	\$ 1,770,362	29.1%	\$ 249,658,702	\$ 1,081,766	\$ 52,478,262	99.6%		\$ 24,856,802	57.1%		3,389		
	CEAP									\$ 196,098,674			\$ 117,717,190					
	DOE	\$ 5,681,699	N/A	\$ 5,681,699	\$ 413,402	\$ 23,715	5.7%	\$ 5,268,297	\$ 1,010,084	\$ 4,258,213	81%	[In Progress]	\$ 1,579,370	30.0%	[In Progress]	0		
	ESG	\$ 6,944,311	N/A	\$ 6,944,311	\$ 260,410	\$ 182,616	70.1%	\$ 6,683,901	\$ -	\$ 6,683,901	100%		\$ 4,951,773	74.1%			19,683	
	HHSP	\$ 5,000,000	N/A	\$ 5,000,000	N/A	N/A	N/A	\$ 5,000,000	\$ -	\$ 5,000,000	100.0%		\$ 2,774,367	55.5%			5,586	
	CSBG	\$ 62,401,160	N/A	\$ 62,401,160	\$ 2,574,243	\$ 999,616	38.8%	\$ 59,826,917	\$ 1,300,000	\$ 58,526,917	97.8%		\$ 38,464,008	64.3%			562,968	
	BSCC	\$ 50,000	N/A	\$ 50,000	N/A	N/A	N/A	\$ 50,000	\$ -	\$ 50,000	100%		\$ 46,317	92.6%				
	Section 8	\$ 6,800,972	N/A	\$ 6,800,972	\$ 549,216	\$ 222,664	40.5%	\$ 6,251,756	\$ -	\$ 6,251,756	100%		\$ 3,080,986	49.3%		831		

Trendlines represent the percent Contracted and Expended for each program. The markers represent a past quarter represented on a Snapshot.

Performance data varies from program to program. Some programs track "Units" or "Households." Others track "Persons Served" or "Properties." For most programs, only one of the measures of performance is represented. For those where more are represented, the figures do not overlap but instead represent separate services.

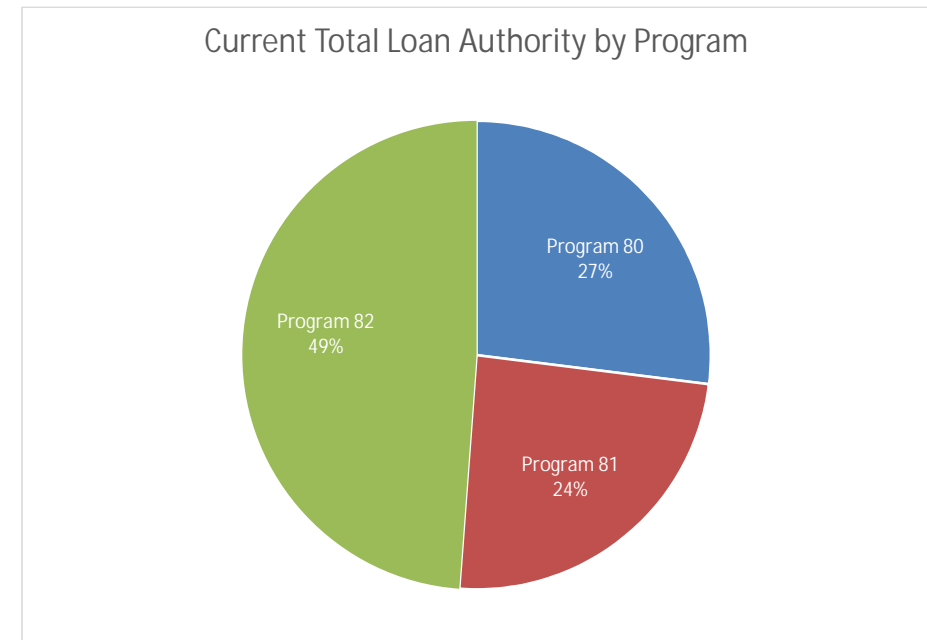
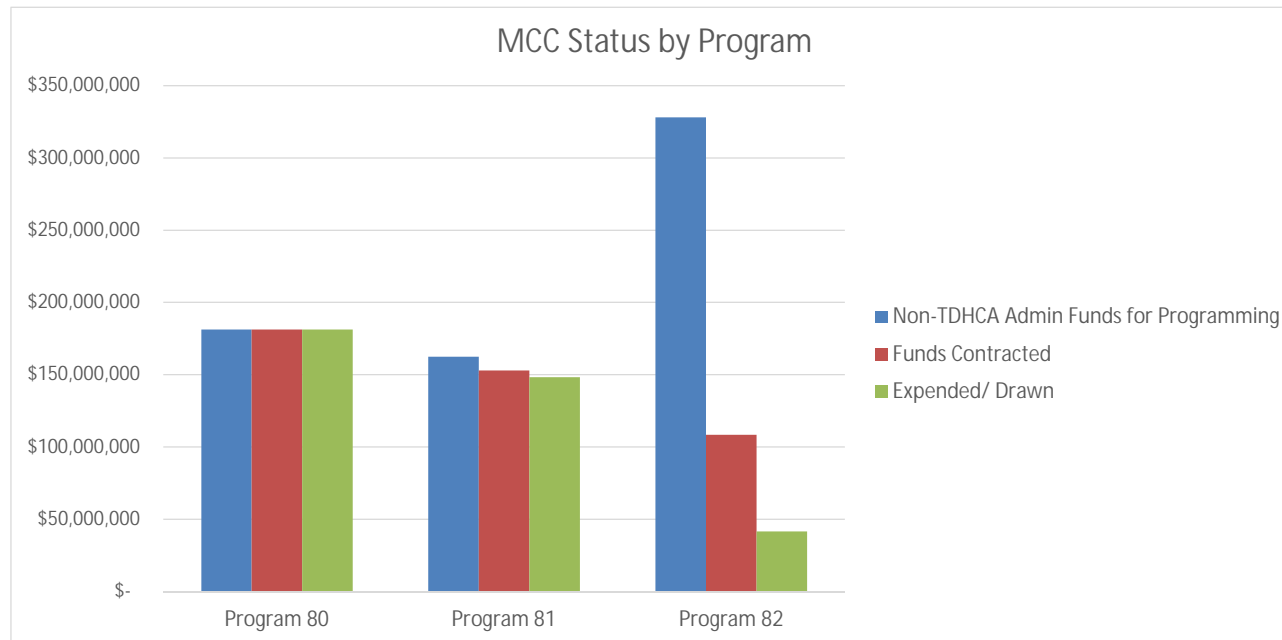
Quarterly Snapshot

Program Area - Mortgage Credit Certificate

MCC Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Deadline
				Retained	Expended	% Expended										
Program 80	\$ 181,341,604	N/A	\$ 181,341,604	N/A	N/A	N/A	\$ 181,341,604	\$ -	\$ 181,341,604	100.0%		\$ 181,329,983	100.0%		1,261	N/A
Program 81	\$ 162,500,000	N/A	\$ 162,500,000	N/A	N/A	N/A	\$ 162,500,000	\$ 9,631,585	\$ 152,868,415	94.1%		\$ 148,246,451	91.2%		1,053	N/A
Program 82	\$ 328,125,000	N/A	\$ 328,125,000	N/A	N/A	N/A	\$ 328,125,000	\$ 219,634,523	\$ 108,490,477	33.1%	[In Progress]	\$ 41,621,973	12.7%	[In Progress]	293	N/A
Total	\$ 671,966,604	N/A	\$ 671,966,604	N/A	N/A	N/A	\$ 671,966,604	\$ 229,266,108	\$ 442,700,496	65.9%		\$ 371,198,407	55.2%		2,607	N/A
Prog. Terms	Loan Authority						Loan Authority		Committed in Pipeline			Issued			Originated	

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

This Snapshot report is the first iteration to show the new MCC Program 82. The addition of this program is the cause of the dip in the cumulative % Contracted and % Expended. When a new program is added, the total amount of award rises but the program has not been heavily Contracted or Expended so the overall percentage



The bar chart shows the status of each MCC program. The chart shows the progress of the total loan authority as its Committed in the Pipeline and then Issued. The blue lines show how much funding is intended to go to the subrecipients or households. This is essentially the yardstick by which we can measure progress. The red bar shows the amount contracted. For example, the red bar for Program 80 shows that almost 100% of the Total Loan Authority has been obligated, also referred to as Committed in the Pipeline. Finally, the green bar indicates the amount of funds that have been expended, also referred to in the MCC program as "Issued." In the MCC program, the issuance of credits is the goal of the program and thus the final metric used to determine progress.

TDHCA's MCC program is split into Programs 80, 81, and 82. As the above chart shows, the \$672 million in current Total Loan Authority is split between the two programs. Just under half is for the newer program 82 whereas of the remainder, over half is for Program 80.

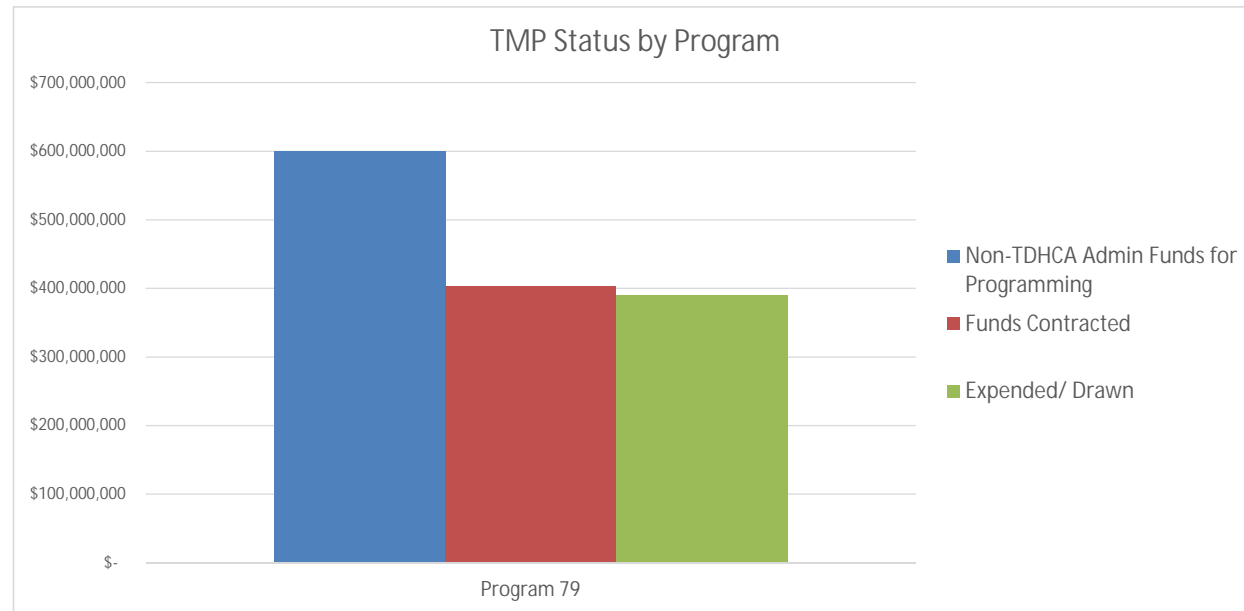
As one might expect, the older program is further along in the final goal of full expenditures where the most recent year is moving along but not as fully expended.

Quarterly Snapshot

Program Area - My First Texas Home (TMP)

TMP Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Deadline
				Retained	Expended	% Expended										
Program 79	\$ 600,000,000	N/A	\$ 600,000,000	N/A	N/A	N/A	\$ 600,000,000	\$ 196,127,507	\$ 403,872,493	67.3%		\$ 390,308,596	65.1%		2,919	N/A
Prog. Terms	Program Cap		Program Cap				Program Cap		Reservations & Compliance		Purchased/Servicer & Investor/Trustee					

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



The bar chart shows the status of the TMP program. The chart shows the progress of the funds as they come through the initial Reservations & Compliance stage (blue bar), go through Underwriting Certifications & Exceptions (red bar), and then finally the loans are Purchased (green bar). These stages, respectively, are comparable to the Award, Contracted, and Expended phases of other programs. Unlike the MCC program, there is currently only a single TMP program. The chart above shows that of the \$600M program cap, 67% or about \$403M has reached the Reservations & Compliance stage (or Contracted in the Snapshot). Further, 65% or about \$390M in loans have been purchased by a Servicer or Investor/Trustee (Expended). For the TMP program, the purchase of the loans are the funds being put to their final purpose and are thus the final metric of success.

Quarterly Snapshot Program Area - HOME

Program Year	Award to Administer	Program Income ^{^^}	Total Cumulative Funds	TDHCA Administrative Funds*			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units**	PI Allocation	PI Expended
				Retained	Expended	% Expended											
2008	\$ 40,043,225		\$ 40,043,225				\$ 40,043,225	\$ -	\$ 40,043,225	100.0%		\$ 38,019,193	94.9%		852	\$ 3,121,537	\$ 3,121,537
2009	\$ 43,933,530		\$ 43,933,530				\$ 43,933,530	\$ 1,364,942	\$ 42,568,588	96.9%		\$ 40,358,561	91.9%		714	\$ 3,460,474	\$ 3,460,474
2010	\$ 43,593,825		\$ 43,593,825				\$ 43,593,825	\$ 490,801	\$ 43,103,024	98.9%		\$ 37,422,274	85.8%		948	\$ 4,686,260	\$ 4,686,260
2011	\$ 39,180,788		\$ 39,180,788				\$ 39,180,788	\$ 1,354,987	\$ 37,825,801	96.5%		\$ 27,894,400	71.2%		692	\$ 2,773,909	\$ 2,773,909
2012	\$ 24,284,636		\$ 24,284,636				\$ 24,284,636	\$ 3,594,255	\$ 20,690,381	85.2%		\$ 517,158	2.1%		793	\$ -	\$ -
2013	\$ 24,029,941		\$ 24,029,941				\$ 24,029,941	\$ 14,284,787	\$ 9,745,154	40.6%		\$ 1,200,262	5.0%		65	\$ 6,378,250	\$ 6,378,250
2014	\$ 24,483,424		\$ 24,483,424				\$ 24,483,424	\$ 21,851,456	\$ 2,631,968			\$ -			0	\$ 4,517,869	\$ 3,685,316
HOME PI	N/A	\$ 24,938,300	\$ 24,938,300				\$ 24,938,300	\$ -	\$ 24,938,300	100.0%	N/A	\$ 24,105,747	96.7%	N/A	474	N/A	N/A
HOME Admin	\$ -	\$ -	\$ -	\$ 16,637,610	\$ 15,493,503	93.1%	\$ (16,637,610)	\$ (16,637,610)	\$ -	0.0%	N/A	\$ -	0.0%	N/A	N/A	N/A	N/A
Total	\$ 239,549,369	\$ 24,938,300	\$ 264,487,669	\$ 16,637,610	\$ 15,493,503		\$ 247,850,059	\$ 26,303,617	\$ 221,546,442	89.4%		\$ 169,517,595	68.4%		4,538	\$ 24,938,300	\$ 24,105,747

* TDHCA Administrative Funds figures are not available on a per year basis

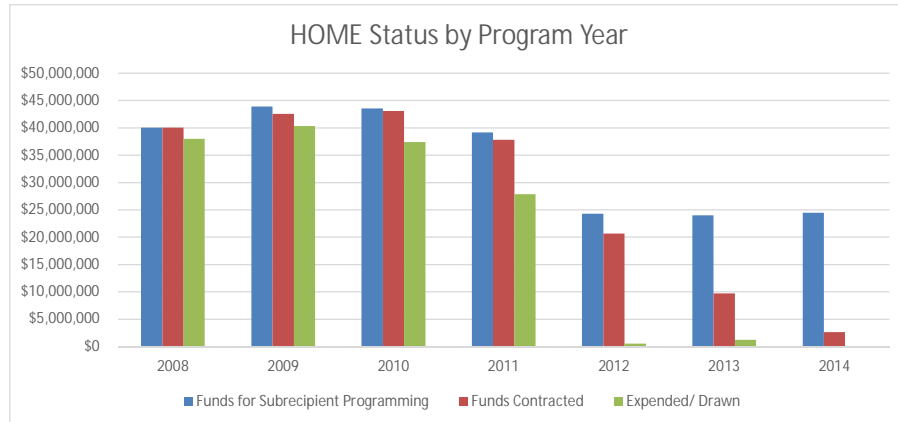
^^ Program Income is from Program Years 2008 - 2013

** HOME units are counted at commitment, divided proportionally across the contributing funding years

^ The HOME Snapshot represents both single family and multifamily activities

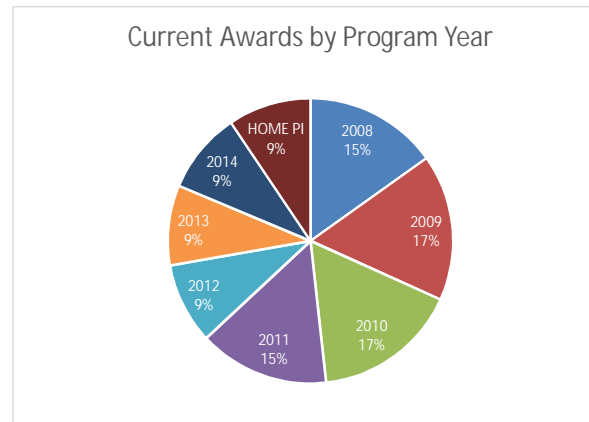
- Once a program year is reflected as being 100% expended, it will no longer be represented on the Snapshot

As the Trendlines show, there is fluctuation in the % Contracted and % Expended between quarters. This is due to the timing of Program Income. As PI is accrued, the percentages drop. As the PI is committed and expended, the percentages rise again. The trendlines occasionally show dips due to Program Income and Deobligated funds. When IDIS codes the incoming funds against a specific year, those years will show a decrease in the percentages Contracted and Expended. It is also important to note that with Trendlines, the vertical distance in each point is relative to the values of each point. Thus, in one cell, a seemingly large vertical difference in values may be less than 1%, whereas in an adjacent cell a seemingly small vertical distance represents 10%. The value of the trendlines is in reflecting relative change over time.

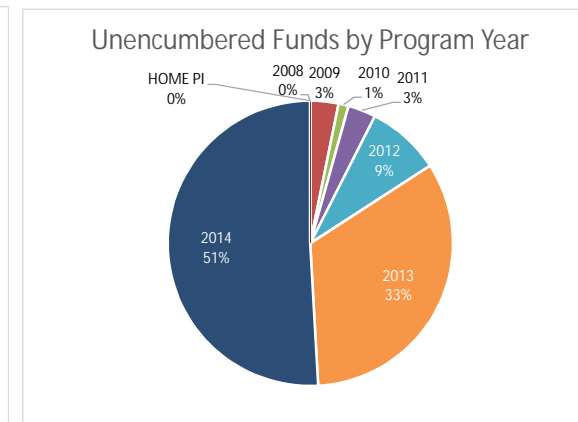


The bar chart shows the status of the program by program year. The chart shows the progress of the obligations and expenditures for awards to subrecipients in that year, not the actual obligations and expenditures that took place during that year. For example, the red line for 2008 shows that the entire ~\$41M in that year's award has been obligated. Some of that amount may have been obligated in more recent years. The above bar chart is a look at the status of a year's progress, not the activity that took place during that year.

The blue lines show how much funding was awarded to TDHCA for Administrators in that year. This is essentially the yardstick by which we can measure progress. The red lines show the funds that have been obligated by executed contract or reservation setup agreement. As one might expect, the older years are fully obligated where the most recent year is moving along but not fully obligated. The green line represents expenditures, the final metric the Snapshot uses to measure progress.



This pie chart simply shows the distribution of funds for the HOME program from HUD across the program years. For example, of the roughly \$239M TDHCA is administering, most of it is split into program years equalling about 16% or ~\$40M until 2011 when the award amount began declining.



HUD Performance Metrics		
Metric	Due Date	Progress
Commitment	4/30/2014	100%
Draw	6/30/2014	100%



The primary HUD metric for determining the status of the HOME program throughout each year is our progress in the above table. HUD determines that by certain dates, a certain amount of both draws (expenditures) must be reached and then later, a certain amount of funds must be committed. As is shown in the above table, TDHCA met its deadline for amount drawn.

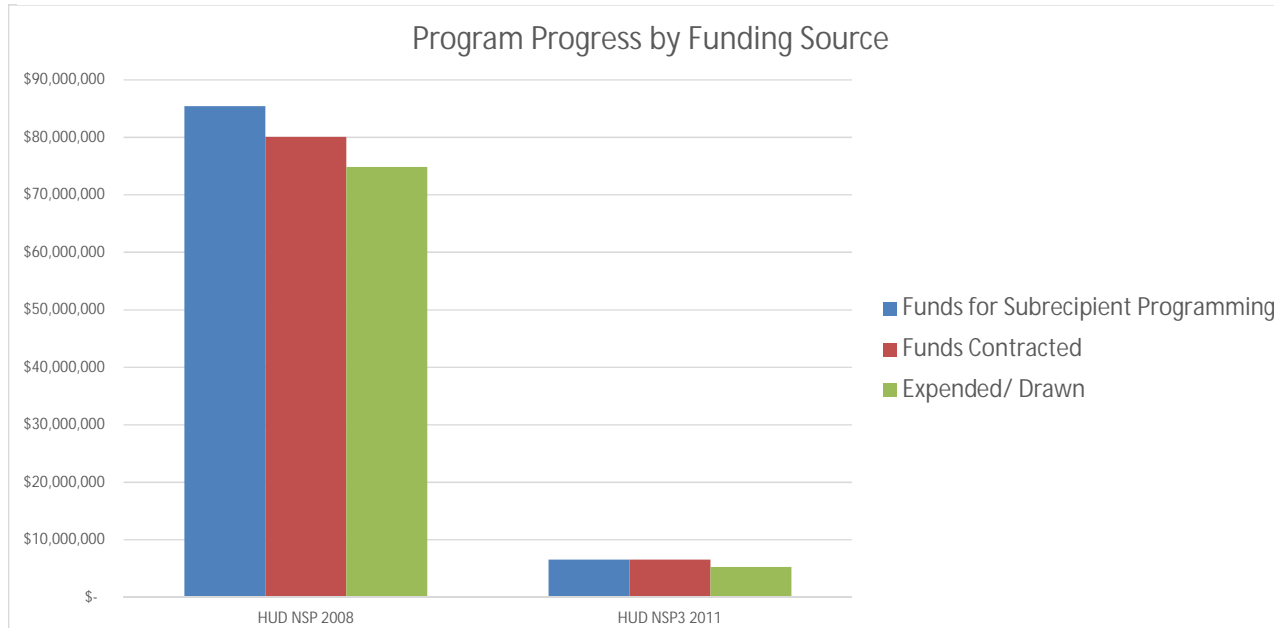
Quarterly Snapshot

Program Area - Neighborhood Stabilization Program (NSP)

Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Demolished Properties
				Retained	Expended	% Expended										
HUD NSP 2008	\$ 85,714,069	\$ -	\$ 85,714,069	\$ 5,380,896	\$ 5,380,896	100%	\$ 80,333,173	\$ 258,710	\$ 80,074,463	99.7%		\$ 69,812,364	86.9%		1,878	161
PI NSP 2008	\$ -	\$ 5,622,547	\$ 5,622,546.62	\$ 562,255	\$ 169,114	30.1%	\$ 5,060,292	\$ 5,057,077	\$ 3,215	0.1%		\$ 5,060,292	100%		0	0
HUD NSP3 2011	\$ 7,284,978	\$ -	\$ 7,284,978	\$ 728,498	\$ 728,498	100.0%	\$ 6,556,480	\$ -	\$ 6,556,480	100%		\$ 5,277,970	80.5%		66	0
PI NSP3 2011	\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -	\$ -			\$ -			0	0
Total	\$ 92,999,047	\$ 5,622,547	\$ 98,621,593	\$ 6,671,648	\$ 6,278,508	94.1%	\$ 91,949,945	\$ 5,315,787	\$ 86,634,158	94%		\$ 80,150,626	87.2%		1,944	161

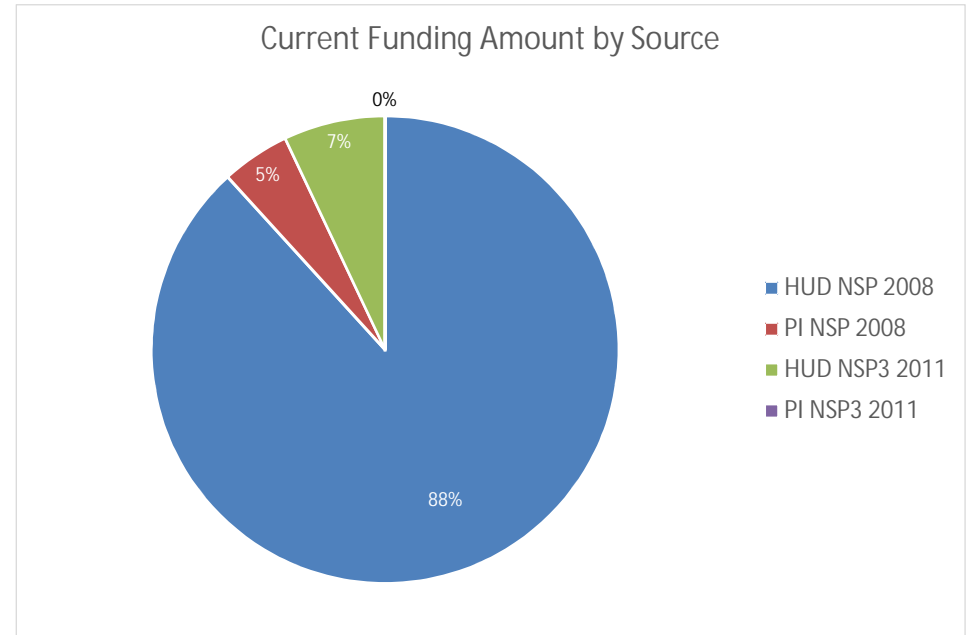
In the 2008 NSP fund sources, the typical method of subtracting TDHCA admin from the Total Cumulative Funds is not currently accurate. The program is awaiting the execution of several amendments with Administrators. As these amendments have not been executed, program totals are not currently

The PI NSP 2008 row shows considerably higher percentage Expended than Contracted. This is due to the nature of Program Income in NSP. The amount Expended/Drawn is an approximate figure. Due to the outstanding contract amendments the actual figure is not available in the contract system.



The bar chart shows the status of NSP by program. The chart shows the progress of the obligations and expenditures for awards to subrecipients. The blue bars show how much funding was awarded to TDHCA for subrecipients under that program. This is essentially the yardstick by which we can measure progress. The red bars show the funds that have been obligated by executed contract. As one might expect, the older program is more fully obligated where the most recent program is moving along but as far. The green bars represent expenditures, the final metric the Snapshot uses to measure progress. NSP1 is over 92% drawn whereas the newer NSP3 is about 80% drawn.

The NSP % Contracted Trendlines have decreased slightly due to a corrected error in the data in the previous report. Previous data erroneously included TDHCA Admin as part of the Funds Contracted.



This pie chart simply shows the distribution of funds for the Neighborhood Stabilization Program across multiple programs. For example, of the roughly \$93M TDHCA is administering, almost 90% comes from the NSP1 program.

These figures will change over time as the NSP and NSP3 programs are eventually closed and the Program Income (PI) programs accrue additional funding.

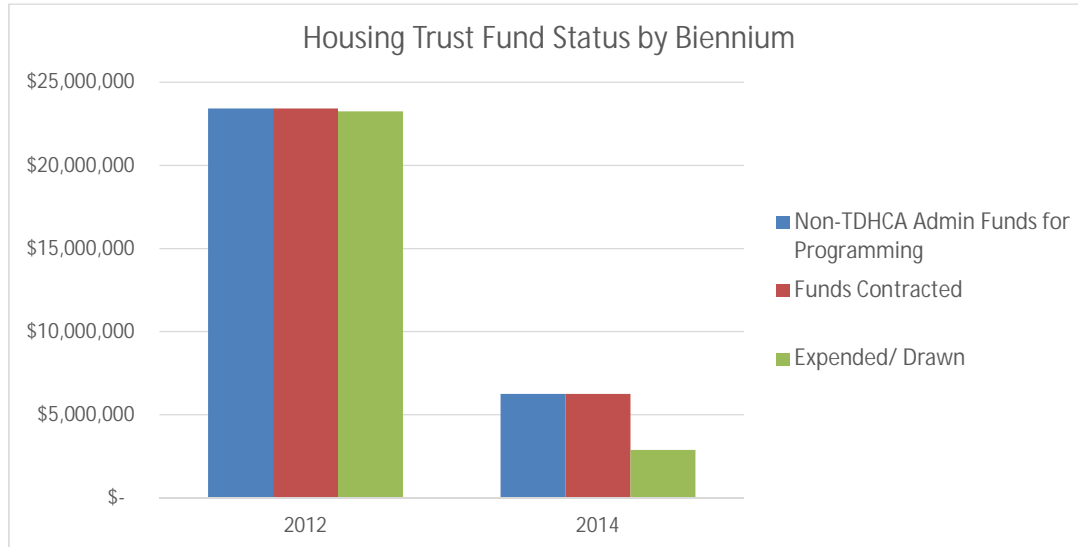
Quarterly Snapshot

Program Area - Housing Trust Fund (HTF)

Biennium	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Fund for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Deadline
				Retained	Expended	% Expended										
2012	\$ 24,091,041	\$ -	\$ 24,091,041	\$ 673,859	\$ 618,439	91.8%	\$ 23,417,182	\$ -	\$ 23,417,182	100%		\$ 23,249,640	99.3%		522	N/A
2014	\$ 3,961,407	\$ 2,827,346	\$ 6,788,752	\$ 531,000	\$ 441,758	83.2%	\$ 6,257,752	\$ -	\$ 6,257,752	100%		\$ 2,892,793	46.2%		109	N/A
Total	\$ 28,052,447	\$ 2,827,346	\$ 30,879,793	\$ 1,204,859	\$ 1,060,197	88.0%	\$ 29,674,934	\$ -	\$ 29,674,934	100%		\$ 26,142,433	88.1%		631	N/A

The trendlines show dips in the % Contracted and % Expended history. This is an effect of both the 2010/2011 biennium being closed as well as the 2014/2015 biennium's funding coming online. These events both reduce the amount of Contracted and Expended funds in the total figure, thus lowering the percentages resulting in the dip.

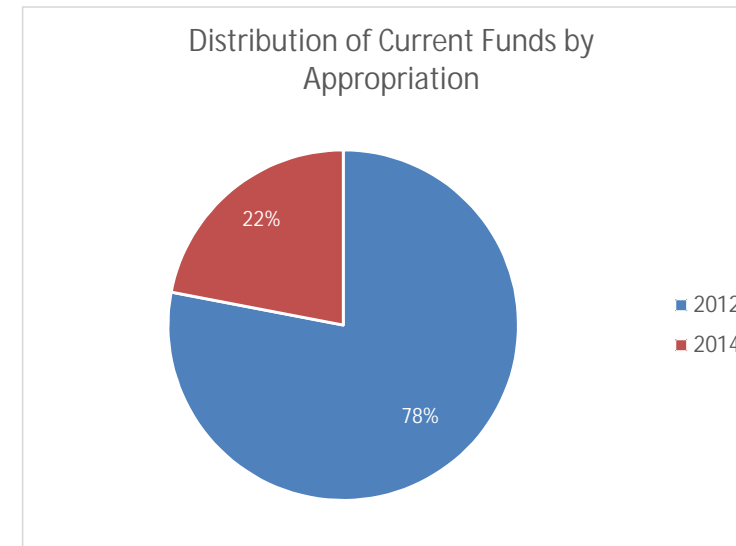
The "Units" field includes all performance for activities closed during those years. The 2012 figure includes "households served" from certain HHSP contracts that received HTF funding during the 2012/2013 biennium.



The bar chart shows the status of the program by biennium. The chart shows the progress of the obligations and expenditures for appropriations in that biennium, not the actual obligations and expenditures that took place during that biennium. For example, the red line for 2012 shows that the entire ~\$24M in that biennium's appropriation has been obligated. Some of that amount may have been obligated in the most recent biennium. Additionally staff may have finished obligating the 2010/11 biennium during 2012, so the amount actually obligated during the biennium may have been different. The above bar chart is a look at the status of a biennium's progress, not the activity that took place during that biennium.

The blue lines show how much funding was available in the biennium. This is essentially the yardstick by which we can measure progress. The red lines show the funds that have been obligated by executed contract or reservation setup agreement. As one might expect, the older biennium is fully obligated where the most recent biennium is far along but not fully obligated. The green line represents expenditures, the final metric the Snapshot uses to measure progress. The 2012 biennium's appropriation is almost expended (92%) while the newest appropriation is about 27% expended.

The PI will never show "Funds Contracted" nor "Expended/Drawn." This is due to the fact that PI is not strictly tied to a year/biennium, so it is portrayed with the newest biennium.



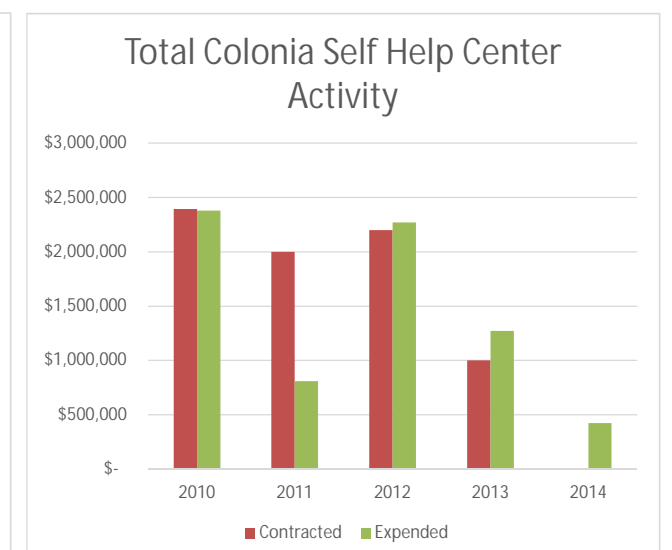
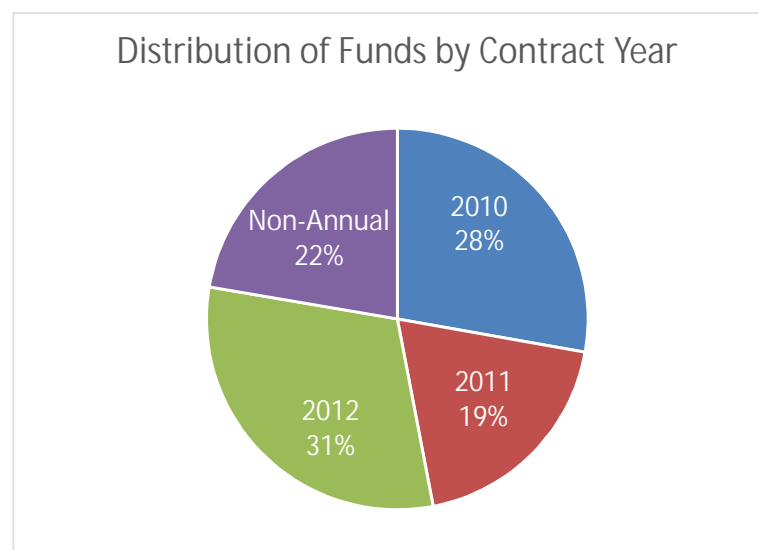
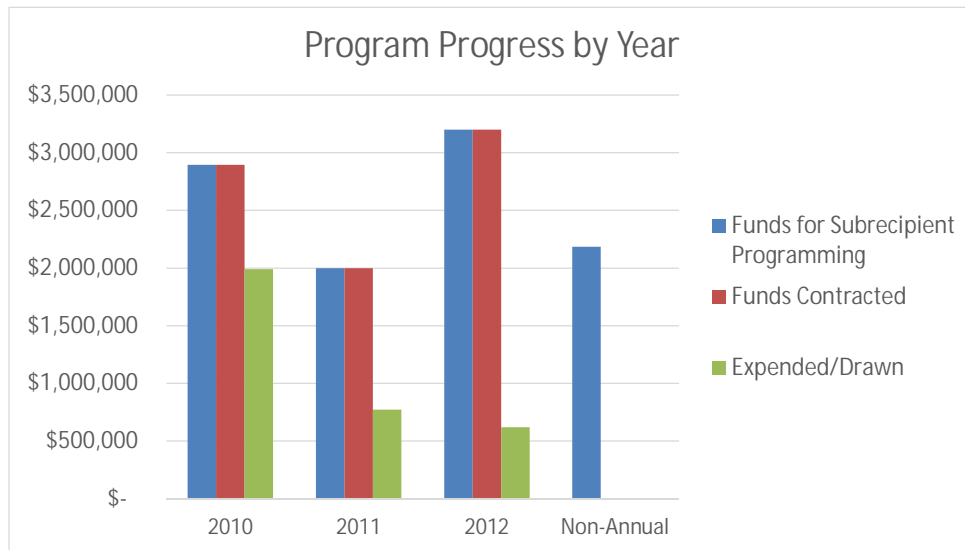
This pie chart simply shows the distribution of funds for the Housing Trust Fund program across biennia. For example, of the roughly \$29M TDHCA is administering, about 80% comes from the 2012 biennium. The 2012 biennium is so much larger than the 2014 biennium because 3 biennia worth of allocations were closed out and moved into 2012 program funds. The actual allocation from the legislature was not \$24M for the 2012/2013 biennium.

Quarterly Snapshot

Program Area - Colonia Self Help Centers

Program	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/Drawn	% Expended	% Expended Trendline	Units	Persons Served
				Retained	Expended	% Expended										
2010	\$ 2,893,828	\$ -	\$ 2,893,828				\$ 2,893,828	\$ -	\$ 2,893,828	100%	←→←→←→	\$ 1,991,628	68.8%	←→←→←→	58	14,505
2011	\$ 2,000,000	\$ -	\$ 2,000,000				\$ 2,000,000	\$ -	\$ 2,000,000	100%	←→←→←→	\$ 772,146	38.6%	←→←→←→	21	5,840
2012	\$ 3,200,000	\$ -	\$ 3,200,000				\$ 3,200,000	\$ -	\$ 3,200,000	100%	←→←→←→	\$ 621,374	19.4%	←→←→←→	77	6,338
Non-Annual	\$ 2,323,220	\$ -	\$ 2,323,220	\$ 139,886	\$ 50,263	35.9%	\$ 2,183,334	\$ 2,183,334	\$ -	0.0%	←→←→←→	\$ -	0.0%	←→←→←→	0	0
Total	\$ 10,417,048	\$ -	\$ 10,417,048	\$ 139,886	\$ 50,263	35.9%	\$ 10,277,162	\$ 2,183,334	\$ 8,093,828	78.8%	←→←→←→	\$ 3,385,148	32.9%	←→←→←→	156	26,683

Due to the timing of program reporting - these figures have not changed since the last Snapshot was produced



In this bar chart we see all funding years that currently have open contracts plus any unobligated funds. You may notice that 2009 saw no executed contracts. This is due to the timing of the funding awards and subrecipient's closing contracts. At the time funding became available, no subrecipients were available to take on additional funds so the contracts were awarded in 2010. Also, 2013 contracts have not yet been executed so those are not represented here either. Please note that the years on the horizontal axis represents activity on contracts executed in those years, not activity in a year. For example, the graph shows lower expenditures (green) in 2012. The program expended almost \$2.3M in 2012, but on contracts executed prior to 2012.

The blue lines show how much funding was available in the contract year. This is essentially the yardstick by which we can measure progress. The red lines show the funds that have been obligated by executed contract. The chart shows that all contract years have fully obligated the funds. The unobligated amount ("Non-Annual") will, by definition, always show no contracted funds. The goal with this column is to move all of these funds into a program year, eventually having no funds in this column. The green bar shows the final goal, which is expenditure. As one would expect, the older contract years show higher levels of expenditure as they've been working longer than the newer contract years.

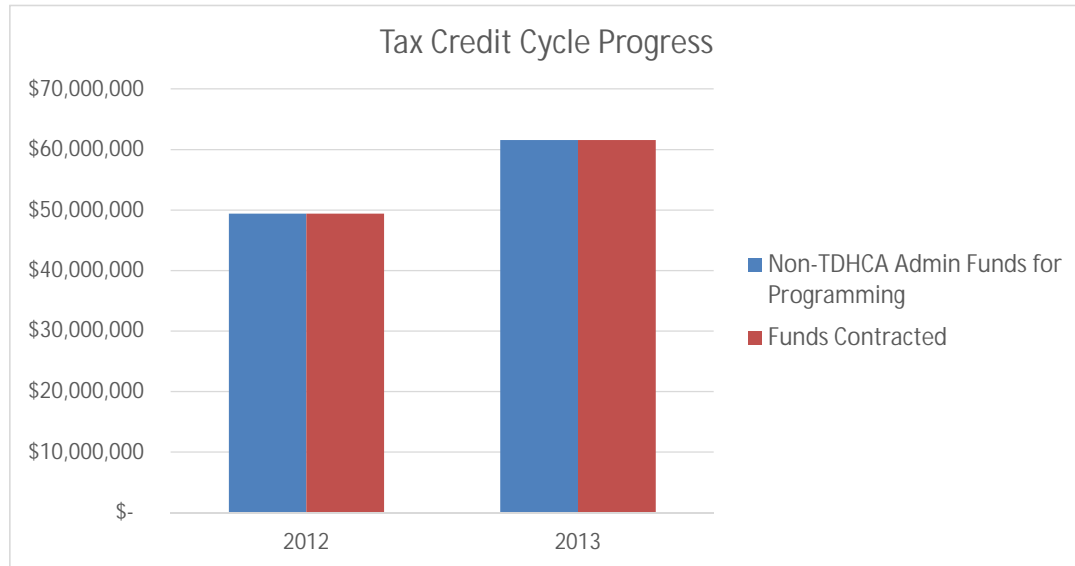
This pie chart simply shows the distribution of funds for the Colonia Self Help Centers across years. For example, of the roughly \$10.5M TDHCA is administering, over 30% comes from 2012. About 22% comes from either Unobligated or Non-Annual funds. The amount of Non-Annual funds (deobligations and admin) is typical just before a new series of awards. Within the next few months, new awards will be made and most of the "Non-annual" row will be moved into a new program year.

In contrast to the previous bar chart, the above chart shows activity during a given year. For example, in 2012 the program obligated approximately \$2M and spent about \$2.3M. Please note that these obligations and expenditures are across multiple years, no contract exceeded their allocation. This chart is focused on the activity of the program, as opposed to the progress of individual contract years.

Quarterly Snapshot

Program Area - 9% Housing Tax Credits (HTC)

Program Year	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
				Retained	Expended	% Expended									
2012	\$ 56,484,298	\$ (7,089,748)	\$ 49,394,550	N/A	N/A	N/A	\$ 49,394,550	\$ -	\$ 49,394,550	100%	←→	N/A	N/A	N/A	10,466
2013	\$ 58,633,207	\$ 2,915,861	\$ 61,549,068	N/A	N/A	N/A	\$ 61,549,068	\$ 1	\$ 61,549,067	100%	←→	N/A	N/A	N/A	0
Program Terms		Fed Authorization	Returned/ Pool/Forwards							Carryover					



The 9% HTC program is unique in that the Snapshot at the Department-level will only show the current year. The funds are considered "contracted" when they have reached "Carryover." The next major programmatic threshold is the deals having 8609's issued. This stage will not be tracked because this stage happens approximately 2 years after the award of tax credits to the developer. By this time the Snapshot will already be focused on a new tax credit cycle. Thus, progress for 9% HTC shows the tax credit award in "Award to Administer" and progresses through the funds being contracted (having reached Carryover).

The "Program Terms" row shows the nomenclature of the program. This row helps to show how the unique aspects of the program fit within the Snapshot.

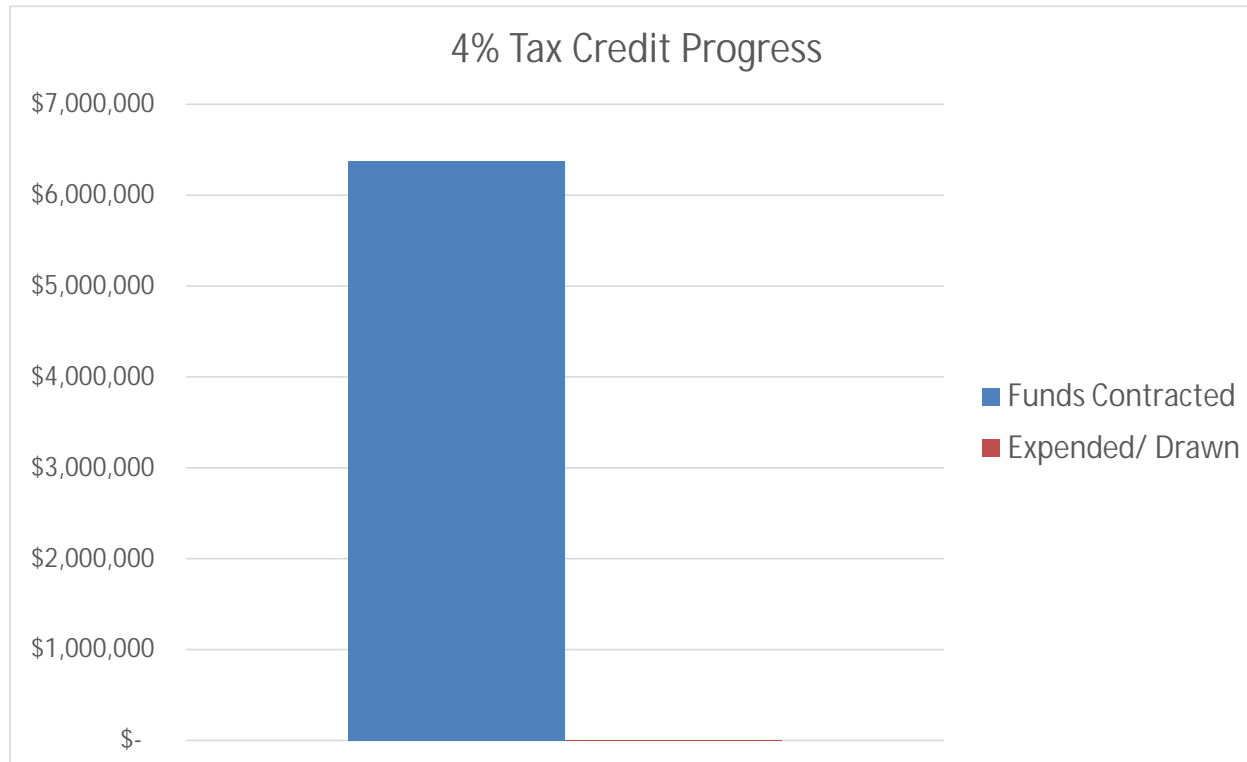
Notice that the Program Income for 2012 shows a negative number. This is possible due to forwards from the previous year. These forwards are an award of tax credits made from the next year's allocation. Thus, any forwards must be subtracted from the total allocation and combined with any Returned Credits or National Pool Credits. The table below shows the breakdown for the 2012 Program Income field.

Credit Type	Increase/ Decrease	Amount
Initial Allocation		\$ 56,484,298
2011 Forward	Decrease	\$ 8,376,635
Returned Credit	Increase	\$ 1,038,604
National Pool	Increase	\$ 248,283
Final 2012 Alloc.		\$ 49,394,550

Quarterly Snapshot

Program Area - 4% Housing Tax Credits (4% HTC)

Program Year	Award to Administer	Program Income	Total Cumulative	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
				Retained	Expended	% Expended									
2013	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$ 6,372,608	100%	↔↔↔↔↔	\$ -	0%	↔↔↔↔↔	2,152
Program Terms								Determination Notice Issued			8609 Issued				



4% HTC deals do not have an award or authorization amount. In contrast to other programs that work to expend a certain amount of funds each cycle, the 4% HTC funds deals as they are proposed and approved. To track progress for this program the Snapshot defines "Funds Contracted" as the amount of funding in deals having had a Determination Notice issued. Progress for this program's Snapshot is defined as the percent of those deals that have a Determination Notice issued that then have 8609's issued. Similar to the 9% tax credit, developers typically take two years or more to complete the development and request 8609's. Thus, expended % are likely to remain low in the Snapshot report.

The "Program Terms" row shows the nomenclature of the program. This row helps to show how the unique aspects of the program fit within the Snapshot.

Quarterly Snapshot

Program Area - Multifamily Bond (MFBond)

Program	Award to Administer	Program Income	Total Cumulative	TDHCA Administrative Funds			Funds for Subrecipient	Funds Unencumber	Funds Contracte	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
				Retained	Expended	% Expended									
MF Bond	\$ -	N/A	\$ -	N/A	N/A	N/A	\$ -	\$ -	\$ -	0%	←→	N/A	N/A	N/A	0
Program Terms	Bond Review Board Designation								Closed Deals						

The MF Bond program does have an amount that in bonds it can issue set by the Bond Review Board. In this way it is more akin to other TDHCA programs. Progress for this program is similar to other programs in that progress is tracked by the amount of funds that are in deals that have closed as a percentage of the Designation authorized by the Bond Review Board.

As you can see from the data above, there are currently no MF Bond deals currently active. This is due to recent market forces that have made it difficult to realize financial viability with MF Bond deals. The visual components of the Program Area Snapshot for this program will be very similar to the other programs as active deals come into the program.

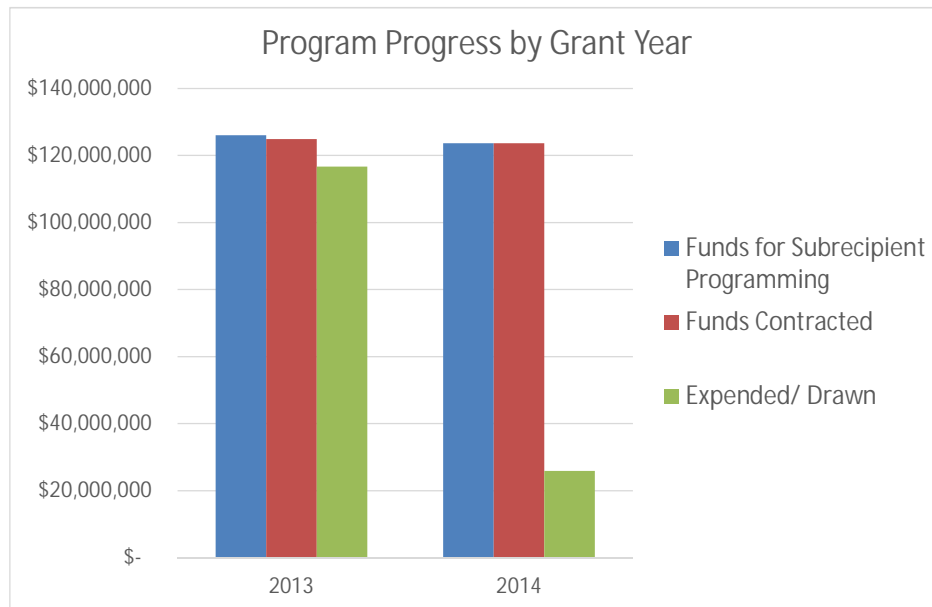
Quarterly Snapshot

Program Area - Low Income Housing Energy Assistance Program (LIHEAP)

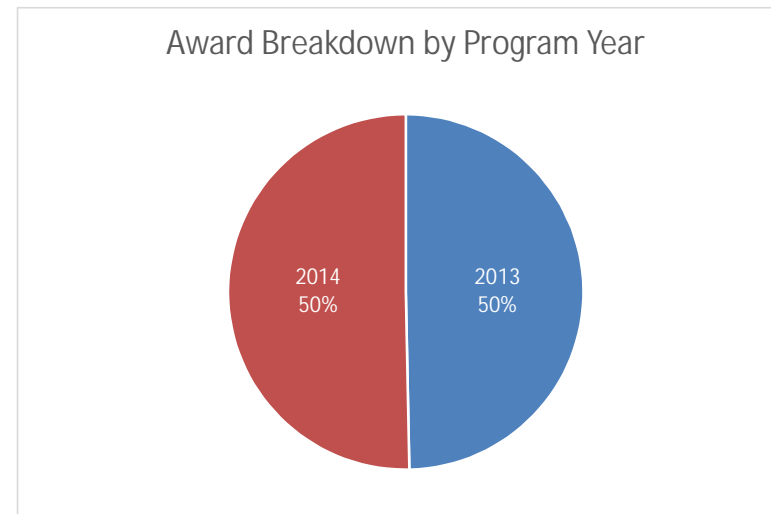
Program	Year	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units	Persons Served
					Retained	Expended	% Expended										
LIHEAP	2013	\$ 127,064,242	N/A	\$ 127,064,242	\$ 1,038,138	\$ 1,038,138	100.0%	\$ 126,026,104	\$ 1,091,570	\$ 25,316,358	99.1%		\$ 21,350,704	92.6%		3,311	
CEAP													\$ 95,337,874				
LIHEAP	2014	\$ 128,686,252	N/A	\$ 128,686,252	\$ 5,053,654	\$ 732,224	14.5%	\$ 123,632,598	\$ (9,804)	\$ 27,161,904	100%		\$ 3,506,098	20.9%		78	
CEAP										\$ 96,480,498			56,333				
LIHEAP	Total	\$ 255,750,494	N/A	\$ 255,750,494	\$ 6,091,792	\$ 1,770,362	29.1%	\$ 249,658,702	\$ 1,081,766	\$ 52,478,262	99.6%		\$ 24,856,802	57.1%		3,389	
CEAP										\$ 196,098,674			252,727				

TDHCA receives a grant for LIHEAP and breaks that single annual award into two programs: Comprehensive Energy Assistance Program (CEAP) and Low Income Housing Energy Assistance Program (LIHEAP). This is why many of the cells are merged in the Snapshot. The funds are not separated until they are Contracted, before that stage the funds are in a single pool.

The "% Contracted" for LIHEAP 2013 decreased slightly from the last report. This is because one subrecipient has relinquished funds and those funds are being absorbed by other subrecipients. The relinquishment has been executed but the contracts to absorb those funds have not. Thus, there is a brief period which shows those funds as "Unencumbered."



The bar charts show the status of the CEAP/LIHEAP programs. The chart shows the progress of the funds as they are initially shown as funds going to subrecipients (blue bar), are obligated in contracts (red bar), and then finally expended (green bar). These charts are typical of TDHCA programs. The lighter bars on top show the LIHEAP progress while the darker portions of the bars are CEAP.



This pie chart shows the breakdown of the active LIHEAP grants (both LIHEAP and CEAP programs) by year. The grant years are very similar with the 2014 grant being just slightly higher than the 2013 grant.

Quarterly Snapshot

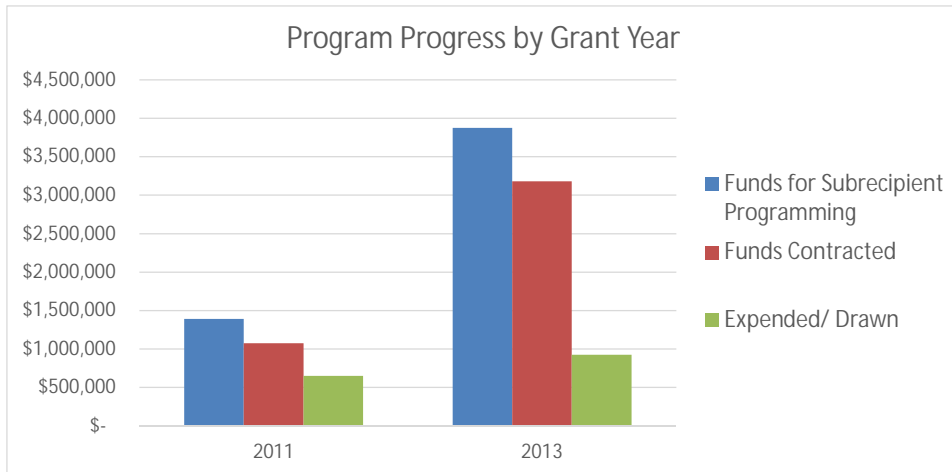
Program Area - Department of Energy Weatherization Assistance Program (DOE-WAP)

Year	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
				Retained	Expended	% Expended									
2011	\$ 1,391,743	N/A	\$ 1,391,743	\$ -	\$ -	N/A	\$ 1,391,743	\$ 315,510	\$ 1,076,233	77.3%	[In Progress]	\$ 651,835	46.8%	[In Progress]	1,986
2013	\$ 4,289,956	N/A	\$ 4,289,956	\$ 413,402.00	\$ 23,715.06	5.7%	\$ 3,876,554	\$ 694,574	\$ 3,181,980	82.1%	[In Progress]	\$ 927,535	23.9%	[In Progress]	261
Total	\$ 5,681,699	N/A	\$ 5,681,699	\$ 413,402.00	\$ 23,715.06	5.7%	\$ 5,268,297	\$ 1,010,084	\$ 4,258,213	80.8%	[In Progress]	\$ 1,579,370	30.0%	[In Progress]	0

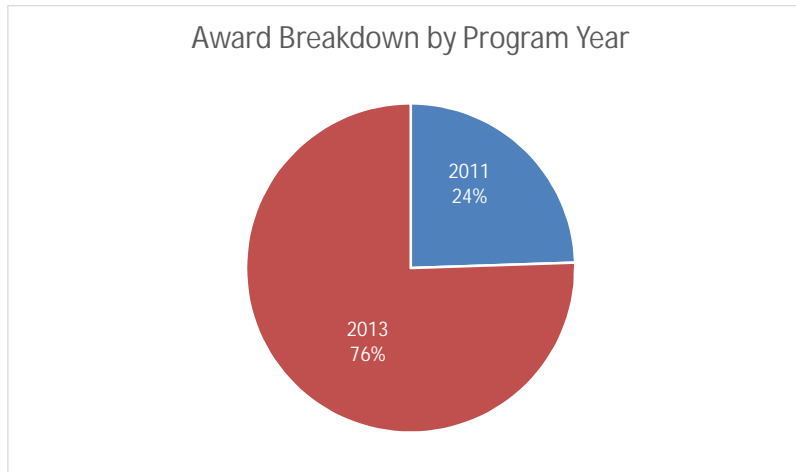
TDHCA did not receive a 2012 DOE-WAP grant as the Federal Department of Energy (DOE) took into account the size of the Recovery Act funds awarded to TDHCA when determining 2012 grant amounts. As TDHCA received one of the largest Recovery Act DOE-WAP awards in the nation, DOE decided to divert 2012 funds to States that received smaller Recovery Act awards.

Both the 2011 and 2013 awards have seen "% Contracted" reductions in the most recent report. This is a result of 2 subrecipients declining their 2011 award and one subrecipient declining the 2013 award. The 2013 funding will be reallocated but the 2011 funding will need to be returned to

Because there are only two data points for each trendline, the trendlines themselves become somewhat nondescript. Currently, all the trendlines show is that the percentages went up over the last quarter. With additional figures in the next Snapshot, the relative degree of change will be clear.



The bar charts show the status of the DOE-WAP programs. The chart shows the progress of the funds as they are initially shown as funds going to subrecipients (blue bar), are obligated in contracts (red bar), and then finally expended (green bar). These charts are typical of TDHCA programs in that the older grants are further along in terms of Funds Contracted and Expended/Drawn than the newer programs.

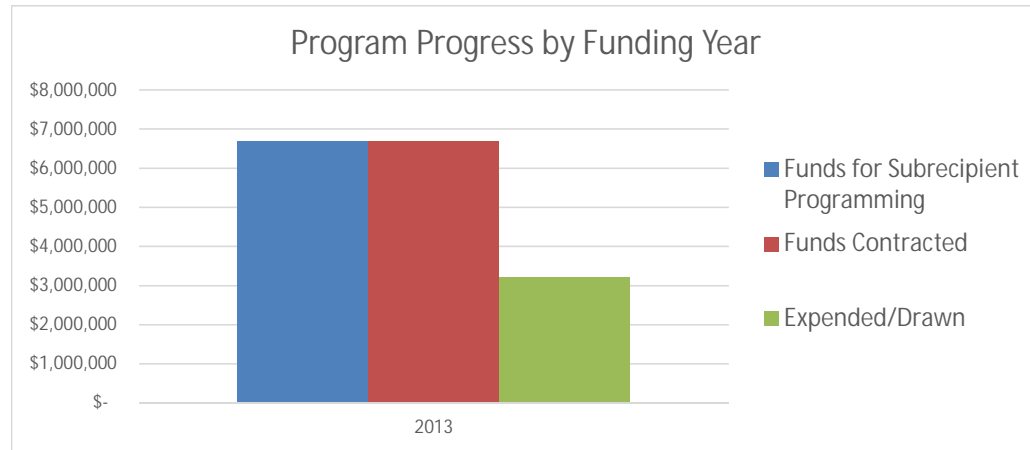


This pie chart shows the breakdown of the active DOE-WAP grants. As the chart shows, the 2011 award makes up less than 25% of the active DOE-WAP grants.

Quarterly Snapshot

Program Area - Emergency Solutions Grant (ESG)

Year	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/Drawn	% Expended	% Expended Trendline	Persons Served
				Retained	Expended	% Expended									
2013	\$ 6,944,311	N/A	\$ 6,944,311	\$ 260,410	\$ 182,616	70.1%	\$ 6,683,901	\$ -	\$ 6,683,901	100.0%	↔↔↔↔↔	\$4,951,773	74.1%	↖↗↗↗↗	19,683

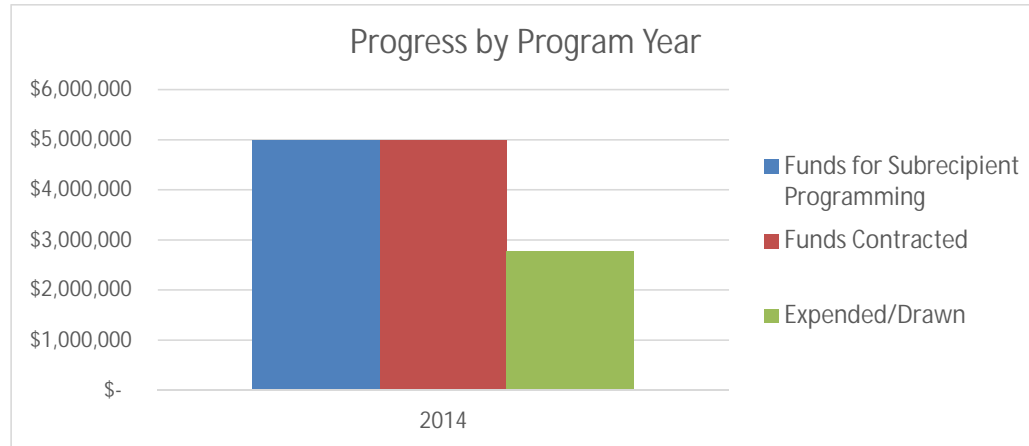


The bar chart shows the progress of the program broken down by program years. The blue bar represents the amount to go to the subrecipients. The red shows the amount under executed contracts whereas the green shows those funds that have been expended.

Quarterly Snapshot

Program Area - Housing and Homeless Services Program (HHSP)

Year	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/Drawn	% Expended	% Expended Trendline	Persons Served
				Retained	Expended	% Expended									
2014	\$ 5,000,000	N/A	\$ 5,000,000	N/A	N/A	N/A	\$ 5,000,000	\$ -	\$ 5,000,000	100%		\$ 2,774,367	55.5%		5,586



The Housing and Homeless Services Program provides funding to the eight largest cities in support of services to homeless individuals and families including services such as case management and housing placement and retention.

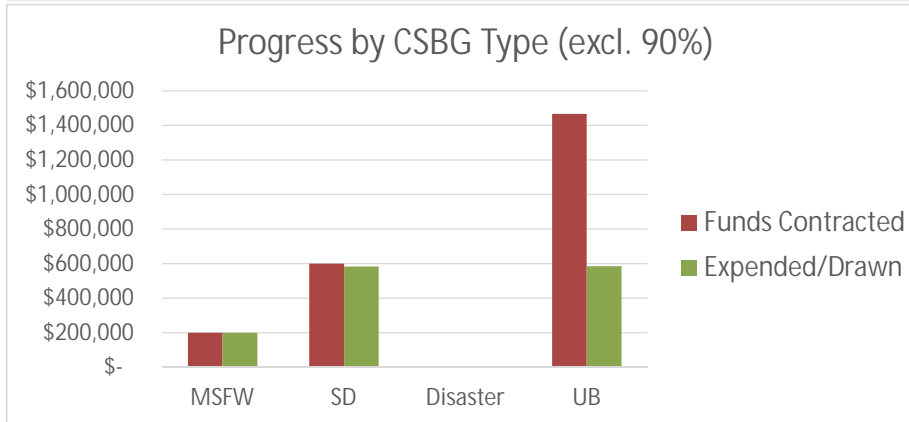
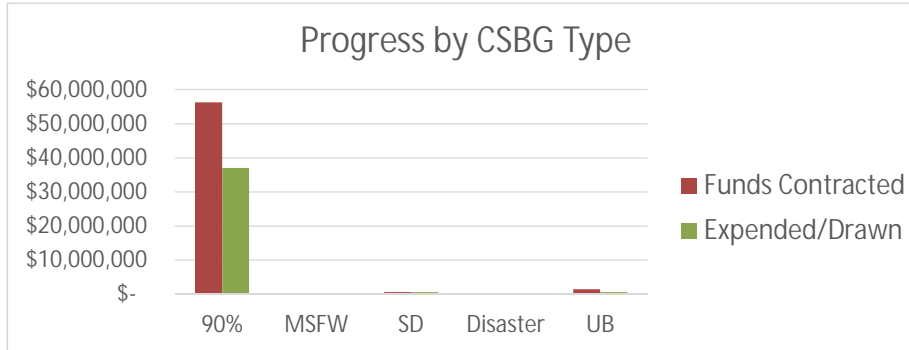
The bar chart shows the progress of the program broken down by program years. The blue bar represents the amount to go to the subrecipients. The red shows the amount under executed contracts whereas the green shows those funds that have been expended.

Quarterly Snapshot

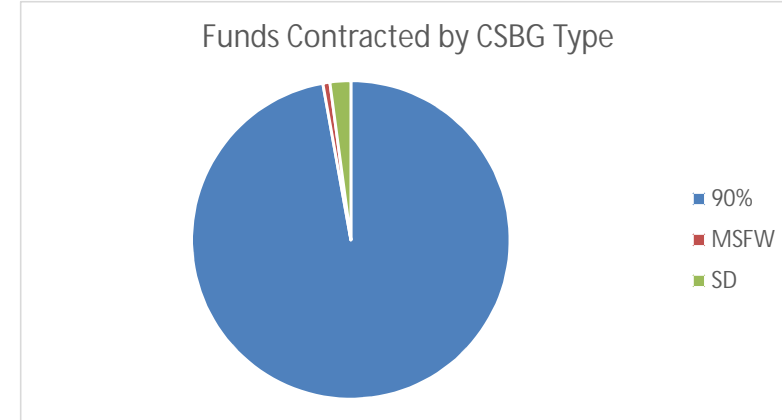
Program Area - Community Services Block Grant (CSBG)

Year	CSBG-Type	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracte	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Persons Served
					Retained	Expended	% Expended									
2013	90%	\$ 30,420,666	N/A	\$ 30,420,666	\$ 676,193	\$ 676,193	100%	\$ 29,744,473	\$ -	\$ 27,477,645	100%		\$ 27,340,809	96.5%		376,081
	MSFW									\$ 200,000			\$ 200,000			237
	SD									\$ 600,000			\$ 584,496			3,560
	UB									\$ 1,466,828			\$ 585,084			
2014	All	\$ 31,980,494	N/A	\$ 31,980,494	\$ 1,898,050	\$ 323,423	17.0%	\$ 30,082,444	\$ 1,300,000	\$ 28,782,444	95.7%		\$ 9,753,619	32.4%		183,090
Total		\$ 62,401,160	N/A	\$ 62,401,160	\$ 2,574,243	\$ 999,616	38.8%	\$ 59,826,917	\$ 1,300,000	\$ 58,526,917	97.8%		\$ 38,464,008	64.3%		562,968

CSBG can be divided into multiple pools of funding. 90% is the amount set aside for Community Action Agencies. MSFW is Migrant/Seasonal Farm Worker and SD is State Discretionary. UB is Unexpended Balance.



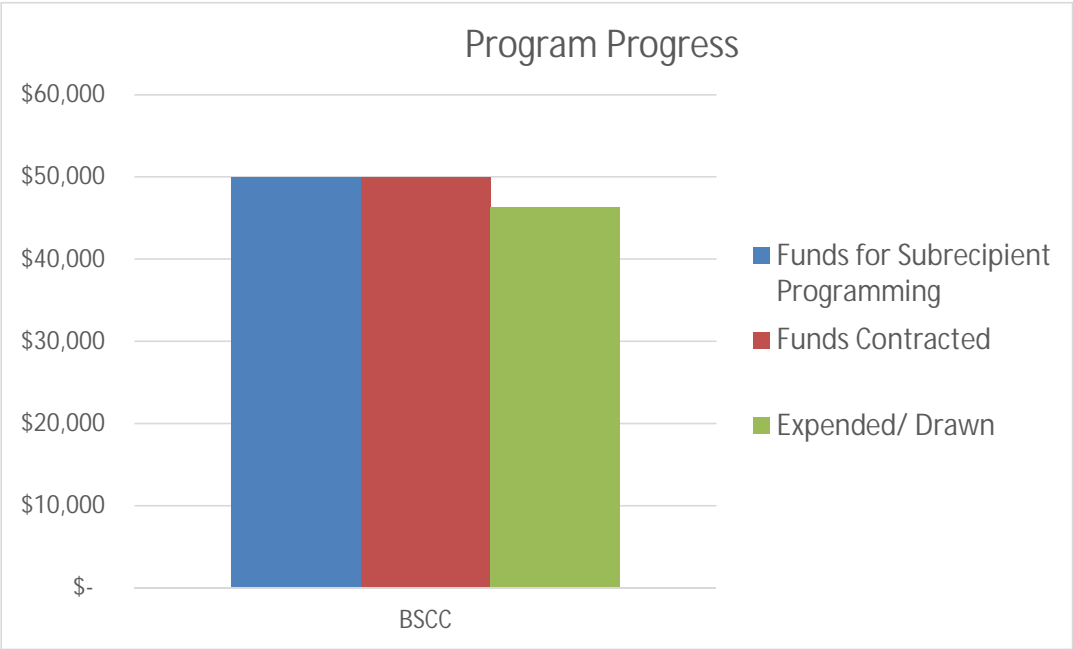
These bar charts show the progress (amount contracted vs. amount expended) for each type of CSBG funding. The red bar shows the amount under executed contracts whereas the green shows those funds that have been expended. As one may expect, the primary funding channel (90%) is further along whereas the others have further to go to fully expend. The bottom chart is separated to better illustrate the non-90% funding channels.



Quarterly Snapshot

Program Area - Balance of State Continuum of Care (BSCC)

Program	Award to Administer	Program Income	Total Cumulative	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumber	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
				Retained	Expended	% Expended									
BSCC	\$ 50,000	N/A	\$ 50,000	N/A	N/A	N/A	\$ 50,000	\$ -	\$ 50,000	100.0%	↔	\$ 46,317	92.6%	↗	N/A

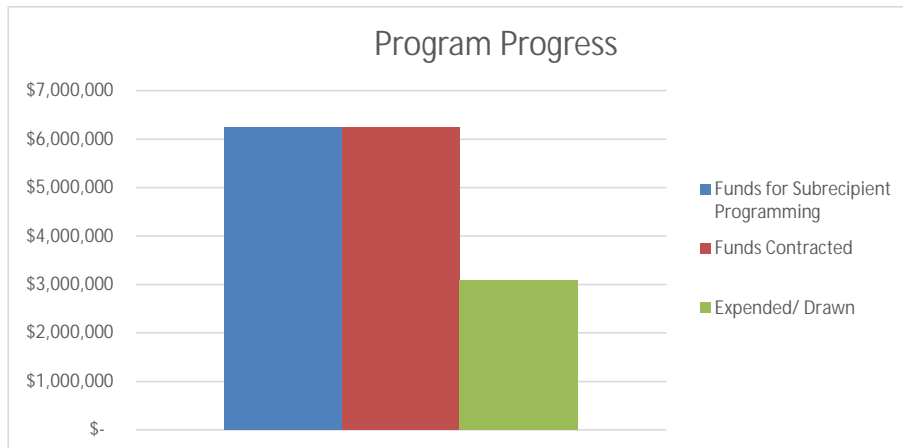


The Balance of State Continuum of Care program is a \$50,000/year contract to the Texas Homeless Network to provide administration support and services in the areas of the State not covered by other Continuum's of Care. As the funding is for administrative expenses, there are no "Units" or "Persons Served" directly from program funds. The funds do allow services to be provided so there is considerable benefit from the funds.

Quarterly Snapshot

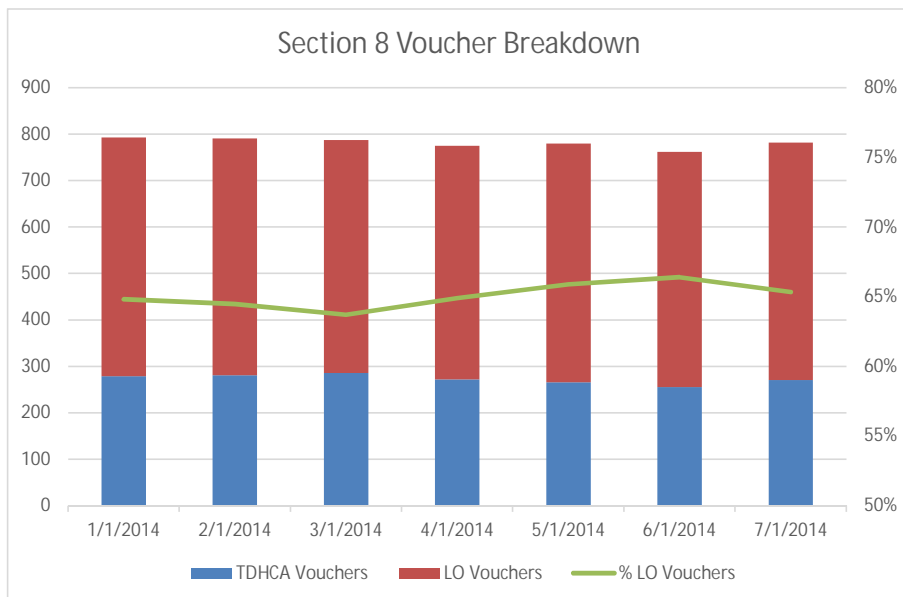
Program Area - Section 8

Program Year	Award to Administer	Program Income	Total Cumulative Funds	TDHCA Administrative Funds			Funds for Subrecipient Programming	Funds Unencumbered	Funds Contracted	% Contracted	% Contracted Trendline	Expended/ Drawn	% Expended	% Expended Trendline	Units
				Retained	Expended	% Expended									
2014	\$ 6,800,972	N/A	\$ 6,800,972	\$ 549,216	\$ 222,664	40.5%	\$ 6,251,756	\$ -	\$ 6,251,756	100%		\$ 3,080,986	49.3%		831

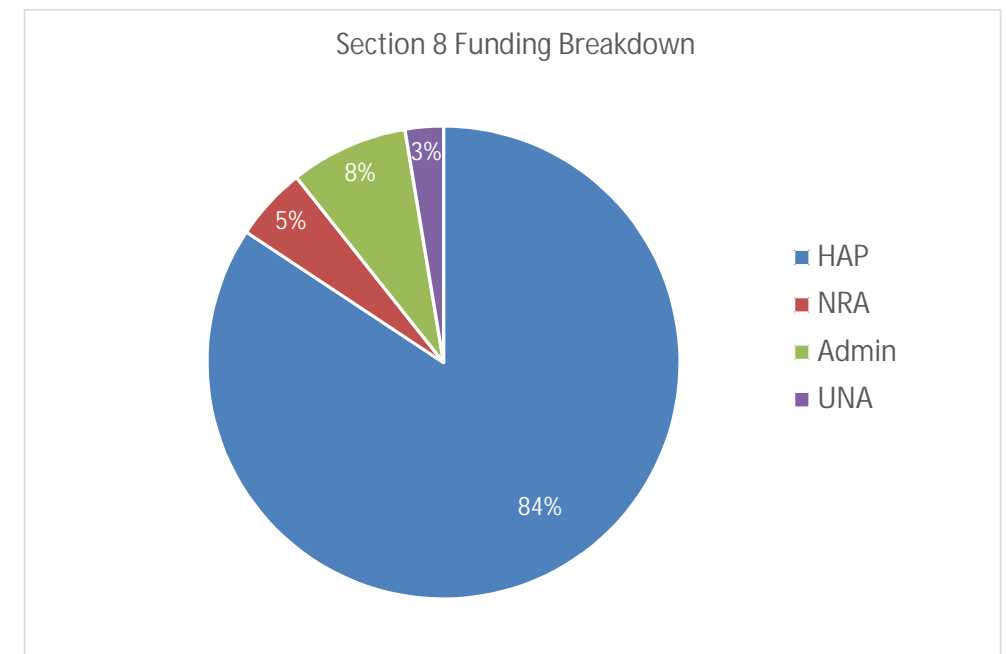


The bar chart shows the progress of the program in fully expending the funds designated for programs (excludes TDHCA admin funding). Due to the unique nature of Section 8, the funds are always considered to be "Contracted." The expended amount, shown in green, is typical for a program only a few months into its annual cycle. This figure will continue to increase through the year until the next cycle begins and the bar resets back to zero.

The "% Expended Trendline" reflects a significant dip in the % Expended near the beginning of the year. This is due to the awarding of new Section 8 funds and the beginning of a new funding cycle. Section 8 has no overlap of funding cycles. On January 1st each year the new cycle starts. As such, the "% Expended" returns to zero. This dip will occur with the first Snapshot of each calendar year. The current report shows no change in percent expended. This is due to the fact that, while funds were expended, the amount of NRA increased. Since both



The combo chart shows how many Section 8 vouchers TDHCA has each month and the proportion of TDHCA vouchers to Local Operator (LO) vouchers. The green bar line shows the percent of the total vouchers that are administered by LOs.



The above pie chart shows the breakdown of the 2014 award. The award comes primarily from Housing Assistance Payments (HAP), which are payments for the rental and utility assistance, and Administrative funds (admin), which are payments to TDHCA to administer the program. The remaining amount comes from unspent balances. The Net Restricted Assets (NRA) are from unspent HAP funds and used for assistance to clients, where the Unrestricted Net Assets (UNA) are from funds for TDHCA administrative activities.

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TDHCA Outreach Activities, July-August 2014

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
Housing and Health Services Coordination Council Meeting	Austin	July 9	Housing Resource Center	Presentation, Participant
Promoting Independence Advisory Committee Meeting	Austin	July 17	Housing Resource Center	Participant
Contract for Deed Conversion Assistance Grants Subrecipient Visits	Del Rio	July 22	Housing Trust Fund	Marketing/Outreach
Public Hearing/Draft State of Texas 2015-2019 Consolidated Plan	Austin	July 23	Housing Resource Center	Public Hearing
Contract for Deed Conversion Asst. Grants Subrecipient Visits	Laredo	July 23	Housing Trust Fund	Marketing/Outreach
Meeting/Texas Interagency Council for the Homeless	Austin	July 28	Executive, Housing Resource Center	Participant
2014 TAAHP Conference	Austin	July 28-29	Board, Executive, Compliance, Multifamily Finance, 811 Program	Panelists, Presentations
Multifamily Rules Roundtable	Austin	Aug 5	Multifamily Finance	Roundtable Hearing
First Thursday Income Eligibility Training	Austin	Aug 7	Compliance	Training
Online Forum/Compliance Monitoring Rules	Austin	Aug 7	Compliance	Administrator
Meeting/State Community Resource Coordination Group	Austin	Aug 7	Housing Resource Center	Participant
Meeting/TDCJ Re-Entry Task Force	Austin	Aug 12	Housing Resource Center	Participant
Roundtable/ HOME 2014 Allocation, Fair Housing & Affirmative Marketing, and SF Rules	Austin	Aug 13	Executive, HOME, Housing Trust Fund, NSP, Office of Colonia Initiatives	Roundtable Hearing
TX Apartment Assoc/ First Thursday Income Eligibility Training	Beaumont	Aug 13	Compliance	Training
Homeowner Rehab, Contract for Deed, and Tenant Based Rental Assistance Subrecipient Visit	El Paso	Aug 13-14	HOME	Training/Technical Assistance
TX Apartment Assoc/ Housing Tax Credit Program Training	Beaumont	Aug 14	Compliance	Training
TDHCA, Affordable Housing Overview	Austin	Aug 14	Board	Presentation
2014 Grand Prairie Homebuyer Fair	Grand Prairie	Aug 16	Homeownership	Exhibitor, Panelist
Online Forum/Single Family Umbrella Rule (Affirmative Marketing and LEP Draft Rule)	Austin	Aug 16	Fair Housing	Administrator
Persons with Disabilities Tenant Based Rental Assistance Subrecipient Visit	Austin	Aug 18	HOME	Training/Technical Assistance
Homeowner Rehab Assistance Subrecipient Visit	Lubbock	Aug 21	HOME	Training/Technical Assistance
Disability Advisory Workgroup	Austin	Aug 26	Executive, Housing Resource Center	Participant
Persons with Disabilities/Tenant Based Rental Assistance, Money Follows the Person, & Tenant Based Rental Assistance Subrecipient Visit	Springtown	Aug 28	HOME	Outreach

Event	Location	Date	Division	Purpose
Persons with Disabilities/Homeowner Rehab Assistance & Homeowner Rehab Assistance Subrecipient Visit	Tyler	Aug 29	HOME	Training/Technical Assistance

Internet Postings of Note, July-August 2014

A list of new or noteworthy documents posted to the Department's web site

2014 Community Services Block Grant Program Eligible Entities — detailing the agencies, contact information, and service areas of those entities eligible to administer the Department's CSBG Program: www.tdhca.state.tx.us/community-affairs/csbg/index.htm

Request for Proposals: Financial Advisory Services — seeking a qualified vendor to assist the Department with its single family homeownership programs and its multifamily mortgage revenue bond new issues and/or refundings (links to the Comptroller's Office web page): http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=112323

Agreed Final Order: Autumn Creek — specifying the details of final agreement relating to compliance findings and administrative penalty levied against current owner of affordable rental property located in Dallas: www.tdhca.state.tx.us/board/agreed-final-orders.htm

HOME Administrative Draw Tracking Workbook — for entities administering the Department's HOME funds and updated to reflect new program rules: www.tdhca.state.tx.us/home-division/forms/home_forms_hra.htm; www.tdhca.state.tx.us/home-division/forms/home_forms_hba.htm, www.tdhca.state.tx.us/home-division/forms/home_forms_tbra.htm

HOME Household Income Certification — for entities administering the Department's HOME funds and updated to reflect new program rules: www.tdhca.state.tx.us/pmcomp/forms.htm

Public Notice of 2014 MCC Program 83 — outlining the Department's intent to issue mortgage credit certificates to qualified mortgagors to assist eligible first time homebuyers: www.tdhca.state.tx.us/bond-finance/index.htm

2014 Housing Tax Credit Award Limits and Estimated Regional Allocation: July 10 — projecting the allocation of the estimated 9% HTC ceiling the Department expects to have available for the 2014 credit cycle: www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

Contact Information for Continuum of Care Leads and HMIS Administrators — listing contact information for CoC Leads and Homeless Management Information System administrators for 13 regional Continuums of Care and the statewide entity Texas Homeless Network: www.tdhca.state.tx.us/community-affairs/esgp/guidance-solutions.htm

2015 CSBG Community Action Plan Requirements — specifying the details required from Community Services Block Grant subrecipients outlining activities planned for 2015: www.tdhca.state.tx.us/community-affairs/csbg/guidance.htm

2014 HOME Multifamily Development Program: Application Log — detailing applicants seeking HOME multifamily financing by file number, proposed property name, city, funding request, and target population: www.tdhca.state.tx.us/multifamily/home/index.htm

2014 1st and 2nd Quarter NSP Quarterly Reports — *providing an analysis of the performance of the Neighborhood Stabilization Program for NSP1 and NSP3 during the first and second quarters of 2014:*
www.tdhca.state.tx.us/nsp/index.htm

2014 Emergency Solutions Grant Program Administrators — *listing the agencies, contact information, and service areas of the entities and their partners administering the Department's ESG Program:*
www.tdhca.state.tx.us/community-affairs/esgp/index.htm

2014 Report on the Performance Measures at TDHCA — *evaluating the performance by the Department on certain key performance measures:*
www.tdhca.state.tx.us/internal-audit.htm

2015 Section 8 PHA Five-Year and Annual Plan for Public Comment — *for entities administering the Section 8 Plan designed to detail its mission, goals, and objectives with an emphasis on funding and need:*
www.tdhca.state.tx.us/section-8/announcements.htm

Competitive Housing Tax Credits Award and Waiting List: July 31 — *detailing staff recommendations regarding applications receiving a credit allocation and those assigned to the waiting list:*
www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

Invitation to Bid: Statewide Crime Data Research — *seeking a qualified entity to research state crime data to assist in the decision making process regarding affordable rental properties (links to the Comptroller's Office web page):*
http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=113070

Legislative Appropriations Request: 2016-17 — *outlining the Department's funding requirements for the upcoming biennium and which includes all sources of funds it expects to have available:*
www.tdhca.state.tx.us/finan.htm

Texas Minimum Construction Standards for Public Comment — *establishing requirements for homes being rehabilitated through the Department's Single Family Programs:*
www.tdhca.state.tx.us/single-family/training/index.htm

Draft 2015 Regional Allocation Formula for Public Comment — *explaining how funding will be distributed among the 13 service regions used by the Department for the purpose of accepting public comment:*
www.tdhca.state.tx.us/housing-center/pubs-drafts.htm

4% Housing Tax Credit/Bond Status Log: August 7 — *detailing applications seeking bond financing either from the Department or local issuer in conjunction with housing tax credits:*
www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm;

TDHCA Proposed Energy Efficiency Rule: New Tab Options — *linking to Minimum Energy Efficiency Requirements for Single Family Construction Activities, Energy Star Certification requirements, and other specifics relating to rule taking effect December 2014:*
www.tdhca.state.tx.us/single-family/TDHCA-Energy-Efficiency-Rules.htm

Proposed New 10TAC§10.611 Rules: Tenant Selection Criteria — *detailing staff draft language addressing the need for written Tenant eligibility requirements that determine an applicant's basic eligibility:*
www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm

2014 HOME Single Family Programs Reservation System NOFA — *notifying entities with a current Reservation System Participation Agreement of availability of HOME Program funds for single-family activities:*
<http://www.tdhca.state.tx.us/home-division/nofas.htm>

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BOARD REPORT ITEM

HOUSING RESOURCE CENTER

SEPTEMBER 4, 2014

REPORT ITEM

Report on the State of Texas Housing and Health Services Coordination Council 2014-2015 Biennial Plan

BACKGROUND

The purpose of the Housing and Health Services Coordination Council (the “Council” or “HHSCC”), as set forth in statute, is to increase state efforts to expand Service-Enriched Housing through increased coordination of housing and health services. This Council is provided administrative assistance, a staff member, and funds from TDHCA; however, the Council and its plan are independent of TDHCA. The Council seeks to improve interagency understanding of housing and services and to increase the number of staff in state housing and health services agencies who are conversant in both housing and health care policies. The Council is directed to deliver a report of its findings and recommendations to the Office of the Governor and the Legislative Budget Board by August 1 of each even-numbered year.

Service-Enriched Housing is defined in Chapter 1, Texas Administrative Code as: integrated, affordable, and accessible housing that provides residents with the opportunity to receive on-site or off-site health-related and other services and supports that foster independence in living and decision-making for individuals with disabilities and persons who are elderly.

2014-2015 Biennial Plan Overview

The 2014-2015 Biennial Plan (“Plan”) as generated by the Council was submitted to the Governor and the Legislative Budget Board on July 24, 2014. This Plan is the third submitted since the inception of the Council in 2009. TDHCA staff conducted two public hearings and posted the document on TDHCA’s website and in the *Texas Register* to obtain input from stakeholders prior to submitting the Plan. In addition, the Plan was shared with the following external agency committees and councils for input:

- The Promoting Independence Advisory Committee;
- The State Independent Living Council;
- The Governor’s Committee for People with Disabilities; and
- The Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders

Importance of Service-Enriched Housing

The vast majority of aging Texans and people with disabilities prefer to receive long-term services and supports in their own homes and communities. Many report that their quality of life improves as they transition from institutions, such as nursing homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities and Related Conditions, to the community.

In addition to improvement in quality of life, some research concludes that supporting people in the community versus institutions is more cost effective for federal, state, and local entities. As Texans live longer, the number of people who need long-term services and supports will likely continue to increase. Texas will benefit from evaluating the benefits of Service-Enriched Housing not only to support quality of life for Texans but to optimize cost effectiveness.

Council Activities

As a result of the creation of the Council in 2009, the state has increased its efforts to expand Service-Enriched Housing through improved coordination including:

- Providing technical assistance to housing entities and relocation contractors to transition people from nursing homes to the community; and
- Providing input to state service agencies when Medicaid waivers are renewed.

Cross-educating housing and services staff by:

- Coordinating a Housing and Services Partnership Academy to provide local communities tools to create safe, affordable, and accessible housing;
- Developing reference guides and training materials; and
- Participating on Inter- and Intra-agency workgroups and advisory councils, *e.g.*, State Independent Living Council, Promoting Independence Advisory Committee, Re-entry Task Force for offenders transitioning to the community, Council for Advising and Planning for the Prevention and Treatment of Mental Health and Substance Use Disorders.

Recommendations

TDHCA (on behalf of the Council) contracted with the Technical Assistance Collaborative (“TAC”) to research Service-Enriched Housing in other states and to make recommendations to the Council.

The Council chose to focus its recommendations for the next biennium on three of TAC’s recommendations which are:

1. Adding resources to support the financing of integrated, affordable housing and services to meet the needs of underserved disability groups and older adults by:
 - A. Encouraging additional U.S. Housing and Urban Development 202 housing financing¹;
 - B. Funding from other sources;
 - C. Expanding Housing Navigators to all Aging and Disability Resource Centers and coordinate with TDHCA to provide housing training;
 - D. Expanding Relocation Contractor services for people with Behavioral Health challenges;
 - E. Increasing funding for Medicaid waiver services, and the program for All-Inclusive Care for the Elderly; and
 - F. Coordinating state agency expansion of housing and services initiatives.

¹ Supportive housing for very low-income persons who are older, including the frail elderly for which HUD provides capital advances to finance the construction, rehabilitation or acquisition, with or without rehabilitation, of structures that will serve and provide rent subsidies for the projects to make them more affordable.

2. Considering developing finance and capacity building strategies to encourage the development of Service-Enriched Housing or supportive housing opportunities in mid-sized cities and rural areas of the state including:
 - A. Replicating the Housing and Services Partnership Academy;
 - B. Continuing the Capacity Building Initiative for Community Living¹;
 - C. Informing local communities about resources available for rural and mid-size cities;
 - D. Educating property managers about people with disabilities;
 - E. Increasing points in the Qualified Allocation Plan (“QAP”) for developers who develop projects in rural and mid-sized cities; and
 - F. Re-establishing TDHCA’s Rural Housing Expansion Program.
3. Adopting a series of incentives within TDHCA’s Low-Income Housing Tax Credit Program to encourage the development of a pipeline of integrated, affordable Service-Enriched Housing opportunities by:
 - A. Researching QAPs from other states to identify best practices;
 - B. Encouraging people with disabilities and advocates to participate in the QAP process;
 - C. Reviewing the possibility of creating points in the QAP for developers, 1) agreeing to provide on-site case management services, 2) providing deeply affordable units at 20% Area Median Family Income, 3) participating in the Section 811 Project Rental Assistance Program, and 4) Offering Service-Enriched Housing; and
 - D. Reviewing possible Texas Department of Criminal Justice housing resources for persons with criminal histories transitioning to the community.

The Council is committed to working over the next biennium to improve coordination, communication, knowledge, policies, and identify barriers to increasing the availability of Service-Enriched Housing for older Texans and people with disabilities.

The State of Texas Housing and Health Services Coordination Council 2014-2015 Biennial Plan may be found at this website link: <http://www.tdhca.state.tx.us/hhsc/index.htm>.

¹ The initiative is a partnership at the federal level that brings together housing and human services agencies on state and local levels who have implemented a number of strategies to address the housing and services needs of people with disabilities and older adults.

ACTION ITEMS

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 11 §§11.1(e), 11.2, 11.3(e), 11.3(f), 11.5, 11.6, 11.7, 11.8(b), 11.9(c)(4), 11.9(c)(5), 11.9(c)(7), 11.9(d)(1), 11.9(d)(4), 11.9(e)(3), 11.9(e)(7) and 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) is authorized to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Texas Government Code §2306.67022, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits; and

WHEREAS, pursuant to Texas Government Code, Chapter 2306.6724, the Board shall adopt a proposed Qualified Allocation Plan no later than September 30;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments to 10 TAC Chapter 11, regarding the Qualified Allocation Plan, together with the preamble presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment;

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed draft Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached to this Board Action Request is the amended 2015 Draft Qualified Allocation Plan (“QAP”) which reflects staff’s recommendations for the Board’s consideration. In getting the 2015 rulemaking process underway, staff disseminated anticipated

changes utilizing various methods. Staff participated in a panel at the TAAHP Conference on July 29, 2014, and discussed preliminary thoughts on proposed changes. At the July 31, 2014, Board meeting, staff gave an oral presentation of proposed changes and sought the Board's guidance with how to proceed with such changes. On August 5, 2014, staff hosted a roundtable discussion with approximately 100 people in attendance to discuss proposed changes and solicit feedback.

After consideration of the input and feedback provided and after evaluating the 2014 application round, staff believes the 2014 QAP served its purpose well, furthering the policies of both statute and the Board effectively. Staff has proposed amendments to specific sections and a more detailed breakdown of the specific changes is included below. Staff believes that in proposing these amendments and keeping all other items in the QAP the same, stakeholders can better formulate plans for future developments instead of trying to anticipate what changes will be made to the QAP. Moreover, staff believes that more time and attention can be spent on the development of the 2015 Uniform Multifamily Rules, particularly on subjects such as Undesirable Site and Area Features and other clean-up items that have historically received less attention due to time and efforts spent on the QAP.

Rule-Making Timeline: Upon Board approval, the draft QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 19th and October 20th and there will be a consolidated public hearing during this time to receive public comment as well. The QAP will be brought before the Board in November for final approval followed by the statutorily mandated submission to the Office of the Governor by November 15. Upon the Governor's approval or approval with modifications, which generally occurs no later than December 1, the adopted QAP will be published in the *Texas Register*.

Summary of Proposed Amendments: This section outlines some of the more substantive amendments proposed. Citation and page references are indicated for ease of reference.

1. **§11.2 – Program Calendar** (*Page 2 of 38*). This section is amended to reflect dates for the 2015 application round and includes a deadline for submission of challenges relating to development sites.
2. **§11.3 – Housing De-concentration Factors** (*Page 6 of 38*). The de-concentration factor was new for the 2014 program year and qualified elderly developments proposed in Collin, Denton, Ellis, Johnson, Hays and Guadalupe counties, along with regions 5, 6 and 8, were ineligible, unless the application was in a rural area. Such restriction was imposed because general population developments were proportionately underserved in these areas. The 2014 QAP indicated that the limitations imposed by this provision would be reassessed in 2015, and staff believes that the results of the 2014 application round brought the portfolio closer to a balance of general population and elderly developments in these areas. Staff will reassess this restriction again in 2016, with the possibility of its returning based on the results of the 2015 application round.

3. **§11.5 – Competitive HTC Set-Asides** (*Page 8 of 38*). Clarifying language has been added to this section regarding the eligibility of an application to compete in a set-aside and the implication on qualifying for pre-application points.
4. **§11.6 – Competitive HTC Allocation Process** (*Page 12 of 38*). A new paragraph in this section was added that addresses how credits that get returned in the current program year from an application that received an award during the three preceding program years will be held apart from all other housing tax credits provided certain criteria are met. Such criteria cannot include requests for waivers and shall include the following: the return of the credits were a result of Force Majeure events, the development owner can prove that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations of the development owner were met, they were properly insured and notified the Department in a timely manner; the event prevents the placement in service requirements from being met; the current year allocation agreement allocates the same amount of credit as was returned; the development is still financially feasible based on the Department's analysis after considering any insurance proceeds related to the event; and that the development owner submits a signed written request for a new carryover agreement in conjunction with the return of the credits.
5. **§11.7 – Tie Breaker Factors** (*Page 13 of 38*). This section has been modified to clarify that recently awarded tax credit developments that do not yet have a LURA in place will be considered an HTC-assisted development for purposes of determining tie breakers.
6. **§11.8 – Pre-Application Requirements** (*Page 14 of 38*). The pre-application threshold criteria has been modified to require the name of the proposed ownership entity and clarifies that proof of consideration of site control and documentation required for identity of interest transactions are only required at the time of full application, not pre-application. As far as notification to neighborhood organizations at the time of pre-application, only those neighborhood organizations that are on record with the state or county as of the beginning of the application acceptance period need to be notified.
7. **§11.9 – Competitive HTC Selection Criteria** – (*Page 21 of 38*). While there were slight changes to dates in some of the scoring items, the Tenant Populations with Special Housing Needs includes more substantive changes. Specifically, it has been modified to allow funding requested from the Department's Section 811 program which is designed to serve persons with special needs. General population and Supportive Housing developments located in certain MSA's of the state may be eligible for the points provided at least 10 units in the development are committed for participation in the program. Moreover, the units committed cannot have any other sources of project based rental or operating assistance and the development must have originally placed in service after 1978. The item provides further guidance that applicants who desire to withdraw their commitment in the program may only do so if authorized by the Board. In addition, should an applicant receive an award they may identify other properties within their own or an affiliate's portfolio to participate in the program and qualify for the points. Aside from this option, for those developments not located within the specific MSA's or otherwise meet the requirements of the 811 program, certain applications may continue to

qualify for points if they set aside 5% of the total units for persons with special needs during the initial 12 months of the lease-up period.

8. **§11.10 – Challenges of Competitive HTC Applications** – *(Page 37 of 38)*. This section addresses the submission of site challenges relating to undesirable site features and undesirable neighborhood characteristics and requires these challenges to be submitted by April 1, 2015. Applicants will be notified within 7 days of the Department's receipt of a challenge instead of within 7 days of the challenge deadline.

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 11, §§11.1(e), 11.2, 11.3(e), 11.3(f), 11.5, 11.6, 11.7, 11.8(b), 11.9(c)(4), 11.9(c)(5), 11.9(c)(7), 11.9(d)(1), 11.9(d)(4), 11.9(e)(3), 11.9(e)(7) and 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. The purpose of the proposed amendments is to implement changes that will improve the 2015 Housing Tax Credit Program. The amended sections relate to updated deadlines associated with the housing tax credit funding, clarifying language regarding the housing tax credit set-asides and the allocation process. The amended sections also include modifications to pre-application threshold requirements and there are proposed amendments to the Tenant Populations with Special Housing Needs scoring item.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be providing updates and clarity with regard to housing tax credits; thereby enhancing the state’s ability to provide decent, safe and sanitary housing administered by the Department. There is no new or additional economic costs, other than those currently in effect, to any individuals required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.**

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.

State of Texas
Qualified Allocation Plan

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Texas Government Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. These rules may need to be applied to facts and circumstances not contemplated at the time of their creation and adoption. When and if such situations arise the Board will use a reasonableness standard in evaluating and addressing Applications for Housing Tax Credits.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, ~~2014~~2013, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Central Time Zone on the day of the deadline.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Deadline	Documentation Required
1/02/2014 01/02/2015	Application Acceptance Period Begins.
01/ 16 13/2015 2014	Pre-Application Final Delivery Date (including pre-clearance and waiver requests).
02/28/2014 02/27/2015	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; <u>Primary Market Area Map</u> Market Analysis Summary ; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).

Deadline	Documentation Required
04/01/ 2015 2014	<p>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter (after opportunity to review materially complete Applications)).</p> <p>Market Analysis Delivery Date pursuant to §10.205 of this title.</p> <p>Site Challenges Delivery Date.</p>
05/01/ 2015 2014	Challenges to Neighborhood Organization Opposition Delivery Date.
05/ 07 01/ 2015 2014	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered “Competitive.”
06/12 3 / 2015 2014	Deadline for public comment to be included in a summary to the Board at a posted meeting.
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/03/2014 11/02/2015	Carryover Documentation Delivery Date.
07/01/ 2016 2015	10 Percent Test Documentation Delivery Date.
12/31/ 2017 2016	Placement in Service.
Five (5) business days after the date on the Deficiency Notice	Administrative Deficiency Response Deadline (unless an extension has been granted).

Deadline	Documentation Required
(without incurring point loss)	

§11.3.Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Texas Government Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Texas Government Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless:

(1) the Development is in a Place that has a population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to

Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

~~(e) **Developments in Certain Sub-Regions and Counties.** In the 20152014 Application Round the following Counties are ineligible for Qualified Elderly Developments: Collin; Denton; Ellis; Johnson; Hays; and Guadalupe, unless the Application is made in a Rural Area. In the 20152014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 20162015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly eligible low income population for that area.~~

~~(f)~~ **Additional Phase.** Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or \$150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

- (A) the Development is located in a Rural Area;
- (B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;
- (C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);
- (D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter; or

(E) the Development is a non-Qualified Elderly Development not located in a QCT that is in an area covered by a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§11.5.Competitive HTC Set-Asides (§2306.111(d)). This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. [In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9\(3\) of this chapter \(related to Pre-Application Participation\).](#)

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (e.g., greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to

Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

- (i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit Commitment deadline;
- (ii) the Applicant seeking tax credits must propose the same number of restricted units (e.g. the Applicant may add market rate units); and
- (iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1))

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6.Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-

regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions;

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTC's during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if all of the requirements of this paragraph are met, be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. 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 sudden and unforeseen 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. Force Majeure events must make construction activity impossible or materially impede its progress for a duration of at least 90 days, whether consecutive or not;

(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.;

(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;

(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 timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(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; and

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTC's.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this subparagraph. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy submitted to the Department in the form of single files as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(~~109~~) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located; ~~and~~

(G) Expected score for each of the scoring items identified in the pre-application materials; and

(H) Proposed name of ownership entity.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of

pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (i) Neighborhood Organizations on record with the state or county [as of the beginning of the Application Acceptance Period](#) whose boundaries include the proposed Development Site;
- (ii) Superintendent of the school district in which the Development Site is located;
- (iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (vi) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (vii) All elected members of the Governing Body of the county in which the Development Site is located; and
- (viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

- (i) The notification must include, at a minimum, all of the information described in subclauses (I) - (VI) of this clause.
 - (I) the Applicant's name, address, an individual contact name and phone number;
 - (II) the Development name, address, city and county;
 - (III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
 - (IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;
 - (V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and
 - (VI) the approximate total number of Units and approximate total number of low-income Units.
- (ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the Units will be for Qualified Elderly and it may not indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside or for Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program. A Development participating in the PSH program and electing points under this subparagraph must have applied for PSH funds by the Full Application Delivery Date, must have a commitment of PSH funds by Commitment, must qualify

for five (5) or seven (7) points under paragraph (4) of this subsection (relating to the Opportunity Index), and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection (relating to Tenant Populations with Special Housing Needs) (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside or Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. A Development participating in the PSH program and electing eleven (11) points under this paragraph must have applied for PSH funds by the Full Application Delivery Date, must have a commitment of PSH funds by Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection, and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) - (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an

elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);

(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(iv) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (v) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary, middle, or high school with a Met Standard rating (For purposes of this clause only, any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

(ii) The Development Site is within one linear mile of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and pre-kindergarten, at a minimum (2 points);

(v) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center (2 points); and/or

(vi) The Development Site is located within one linear mile of a health related facility (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. The applicable school rating will

be the 2013~~4~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2013~~4~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) - (D) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

(A) Applications meeting all of the requirements in clauses (i) – (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department’s Section 811 Project Rental Assistance Demonstration Program (“Section 811 Program”). In order to be eligible for points, Applicants must commit the specified number of units in the proposed Development or be approved by the Department to commit the same number of units in an existing Development in the Applicant’s or an Affiliate’s portfolio that will qualify as Section 811 Program participating units as outlined in the Department’s Section 811 Program guidelines and program requirements. An Application may request a waiver from the Board for a specific requirement of the Section 811 Program on their application. However, a request for a waiver does not guarantee eligibility for points. Participation in the Section 811 Program will require execution of a Section 811 property agreement and other required documents on or before HTC Commitment. Applicants who have applied to participate under the 2014 Section 811 Program NOFA prior to their Application submission and receive an award prior to July 1, 2015 may use units identified in that Section 811 Program application to qualify for points under this paragraph, with the same number of units as would be required for the new Application. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to participate in the Section 811 Program unless authorized by the Board. Should an Applicant receive an award of HTCs, the Department may allow Applicants to substitute alternate units in an existing Development in the Applicant’s or Affiliates’ portfolio, consistent with the Department’s Section 811 Program criteria, to participate in the Section 811 Program and to qualify for these points; such properties require approval by the Department to commit the same number of units in an existing Development in the Applicant’s or an Affiliate’s portfolio that will qualify as Section 811 Program participating units as outlined in the Department’s Section 811 Program guidelines and program requirements. Applicants must commit at least 10 Units for participation in the Section 811 Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 Program guidelines and program requirements limits the Application to fewer than 10 Units. The total number of Units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18% of the total Units (for Development of 50 Units or more) or exceed 25% of the total Units (for Developments with less than 50 Units). In order to be eligible for these points, an Application is required to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) – (iv) of this subparagraph are not met.

(i) The Development must not be a Qualified Elderly Development;

(ii) The Development must not be originally constructed before 1978;

(iii) The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance; and

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Fort Worth MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA.

(B) Applications proposing Developments that do not meet the requirements of subparagraph (A) of this paragraph may qualify for two (2) points for meeting the requirements of this subparagraph. In order to qualify for points, Applicants must agree to set-aside ~~for Developments for which~~ at least 5 percent of the total Units ~~are set aside~~ for Persons with Special Needs. For purposes of this ~~scoring item~~ subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to ~~April 1, 2015~~2014Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

- (i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6710(b)(1)(E)) An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities first award the funds to the city or county for their administration, at least 60 percent of the governing board of the instrumentality consists of city council members from the city in which the Development Site is located (if located in a city) or county commissioners from the county in which the Development Site is located, or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development Site is located (if located within a city) or county in which the Development Site is located. The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than 3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Local Political Subdivision by the Applicant or a Related Party. Should the Local Political Subdivision borrow funds in order to commit funding to the Development, the Applicant or a Related Party to the Applicant can provide collateral or guarantees for the loan only to the Local Political Subdivision. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support to the proposed Development. The Applicant must provide evidence in the Application that an

application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding is expected to occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted.

(A) Option for Development Sites located in the ETJ of a municipality. For an Application with a Development Site located in the ETJ of a municipality, whether located in an unincorporated Place or not, the Applicant may seek Development funding from the municipality or a qualifying instrumentality of the municipality, provided the Applicant uses the population of said municipality as the basis for determining the Application's eligible points under subparagraph (B) of this paragraph. Applicants are encouraged to contact Department staff where an Applicant is uncertain of how to determine the correct Development funding amounts or qualifying Local Political Subdivisions.

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) - (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit or \$15,000 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit or \$10,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit or \$5,000 in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit or \$1,000 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit or \$500 in funding per Low Income Unit.

(C) Two (2) points may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph.

(D) One (1) point may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (C) of this paragraph if the financing to be provided is in the form of a grant or in-kind contribution meeting the requirements of this paragraph or a permanent loan with a minimum term of fifteen (15) years, minimum amortization period of thirty (30) years, and interest rate no higher than 3 percent per annum. An Applicant must certify that they intend to maintain the Development funding for the full term of the funding, barring unanticipated events. For Applicants electing this additional point that have not yet received an award or commitment, the structure of the funds will be reviewed at Commitment for compliance with this provision.

(3) Declared Disaster Area. (§2306.6710(b)(1)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) prior to the beginning of the Application Acceptance Period~~Full Application Delivery Date~~. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Community Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) - (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following eight (8) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g. not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or poor condition and/or performance of public education;

(-g-) the lack of local business providing employment opportunities; or

(-h-) efforts to promote diversity, including multigenerational diversity, economic diversity, etcetera, where it has been identified in the planning process as lacking.

(III) The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county. Staff will review the target areas for presence of the factors identified in subclause (II) of this clause.

(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.

(V) The adopted plan must describe the planned budget and uses of funds to accomplish its purposes within the applicable target area. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the Full Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:

(-a-) the plan was duly adopted with the required public input processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of \$6,000,000 or greater; or

(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$4,000,000; and

(III) Applications may receive (2) points in addition to those under subclause (I) or (II) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (V) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan, and the Application must have a

commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

- (I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;
- (II) be subject to administration in a manner consistent with an approved Fair Housing Activity Statement-Texas (FHA~~ST~~);
- (III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHA~~ST~~), approved by the Texas General Land Office;
- (IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act; and
- (V) be in place prior to the Full Application Final Delivery Date.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to four (4) points for meeting the criteria under subparagraph (B) of this paragraph if located outside of Region 3 (with the exception of being located in an Urban Area); or

(ii) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) - (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) - (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least

one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one half (1/2) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(iii) To qualify under clause (ii) of this subparagraph, the Applicant must provide a letter from a government official with specific knowledge of the project (or from an official with a private utility company, if applicable) which must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.

(A) A high cost development is a Development that meets one of the following conditions:

- (i) the Development is elevator served, meaning it is either a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
- (ii) the Development is more than 75 percent single family design;
- (iii) the Development is Supportive Housing; or
- (iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

- (i) The Building Cost per square foot is less than \$70 per square foot;
- (ii) The Building Cost per square foot is less than \$75 per square foot, and the Development meets the definition of a high cost development;
- (iii) The Hard Cost per square foot is less than \$90 per square foot; or
- (iv) The Hard Cost per square foot is less than \$100 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

- (i) The Building Cost per square foot is less than \$75 per square foot;
- (ii) The Building Cost per square foot is less than \$80 per square foot, and the Development meets the definition of a high cost development;
- (iii) The Hard Cost per square foot is less than \$95 per square foot; or

(iv) The Hard Cost per square foot is less than \$105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost is less than \$90 per square foot; or

(ii) The Hard Cost is less than \$110 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$130 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for ~~sixfour~~ (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and

(G) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 10 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive two (2) points; or

(B) An Application includes a tax credit request amounting to less than or equal to \$7,000 per HTC unit, that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits). At least one existing building that will be part of the

Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. An Application may qualify to receive four (4) points under this provision.

(6) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(7) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or set-aside as estimated by the Department as of December 1, ~~2014~~2013.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10.Challenges of Competitive HTC Applications.

The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard, and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process is reflected in paragraphs (1) - (13) of this section. A matter,

even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) ~~The e~~Challenges to Applications (excluding Site Challenges) must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Challenges related to Undesirable Site Features and Undesirable Neighborhood Characteristics are due no later than the Site Challenges Delivery Date as identified in §11.2 of this chapter (relating to pProgram Calendar for Competitive Housing Tax Credits). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, ~~using that word in all capital letters at the top of the page,~~ and it must state the specific identity of and contact information for the person making the challenge and, if they are acting on behalf of anyone else, on whose behalf they are acting.

(3) Challengers must provide, at the time of filing the challenge, ~~all~~y briefings, documentation, and other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

(4) Challenges to the financial feasibility of the proposed Development are premature unless final underwriting reports on the challenged Application have been posted to the Department's website.

(5) Challenges relating to undesirable ~~area-site~~ features and undesirable neighborhood characteristics as described in §§10.101(a)(3) and (4) of this title (relating to Site and Development Requirements and Restrictions) are due by the Site Challenges Delivery Date and may ~~will not be accepted unless they~~ relate to a failure to disclose characteristics described in §10.101(a)(4)(A) of this title or the presence of other characteristics that may deem the Site ineligible. ~~substantive issues not already disclosed or a material misrepresentation about a disclosed item.~~

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge ~~onto~~ an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) days of receipt of the challenge ~~deadline~~;

(10) Where, upon review by staff, an issue is not clearly resolved, staff may send an Applicant an Administrative Deficiency notice to provide the Applicant with a specific issue in need of clarification and time to address the matter in need of clarification as allowed by the rules related to Administrative Deficiencies;

(11) The Applicant ~~must~~ may provide a response regarding the challenge and any such response must be provided within fourteen (14) days of their receipt of the challenge;

(12) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting; and

(13) Staff determinations regarding all challenges will be reported to the Board.

2b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on proposed repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and a proposed new 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold and procedural requirements relating to applications requesting multifamily funding; and

WHEREAS, changes have been proposed that would improve the efficiency of the funding sources involved;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10 Subchapter A General Information and Definitions, Subchapter B Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G Fee Schedule, Appeals and Other Provisions and proposed new 10 TAC Chapter 10, Subchapters A, B, C and G concerning Uniform Multifamily Rules together with the preambles presented to this meeting, are approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Uniform Multifamily Rules together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached behind this Board Action Request is the proposed 2015 Uniform Multifamily Rule which reflects staff's recommendations for the Board's consideration. This rule establishes the general requirements associated in making an award of multifamily development funding. In getting the 2015 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff participated in a panel at the TAAHP Conference on July 29, 2014, and discussed preliminary thoughts on proposed changes. At the July 31, 2014, Board meeting staff gave an oral presentation of proposed changes and sought the Board's guidance on how to proceed with such changes.

Lastly, on August 5, 2014, staff hosted a roundtable discussion with approximately 100 people in attendance to discuss proposed changes and solicit feedback.

Rule-Making Timeline: Upon Board approval, the draft Uniform Multifamily Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 19th and October 20th and there will also be a consolidated public hearing during this time to garner public comment. The Uniform Multifamily Rules will be brought before the Board in November for final approval and subsequently published in the *Texas Register*.

Subchapters for this Action Request: This Board Action Request includes the subchapters, as noted below, that are part of the 2015 draft Uniform Multifamily Rule. The other subchapters (*e.g.*, Subchapters D, E and F) are found under a separate Board Action Request and include specific changes to those rules.

Subchapter A – Provides general information regarding the Department's multifamily funding and includes an extensive list of definitions specific to multifamily applications.

Subchapter B – Outlines the site and development requirements and restrictions, including but not limited to, floodplain restrictions, proximity to community assets, undesirable site and area features, development size limitations, rehabilitation costs, common and unit amenities, and tenant supportive services.

Subchapter C – Includes procedural requirements for submitting an application, the documentation required as part of the application including forms and templates, criteria that would render an applicant or application ineligible, how applications will be prioritized for review, information regarding board decisions, and the waiver process.

Subchapter G - This section contains information regarding Department fees and other general requirements, including but not limited to, the appeals process, adherence to obligations and the alternative dispute resolution policy.

Summary of Other Proposed Changes to the Uniform Multifamily Rule: This section outlines some of the more significant recommendations by staff outside of the Plan requirements described above. Citation and page references are indicated for ease of reference.

1. **Subchapter A §10.3 Definitions** (*Various Pages in Subchapter A*). The changes to this subchapter include a new definition for award letter and applicant and modifications to the following definitions: Colonia, Commitment of Funds, Control, Managing General Partner, Site Work and Supportive Housing.
2. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Floodplain & Mandatory Community Assets** (*Page 1 of 15 in Subchapter B*). One of the changes in the floodplain section requires all developments to obtain flood insurance. The Mandatory Community Assets have been expanded to include services that would be applicable to supportive housing developments but allows all developments to meet the threshold by claiming proximity to such services. Supportive housing developments in urban areas; however, must be located within a mile of at least one of these new assets.
3. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Undesirable Site Features** (*Page 2 of 15 in Subchapter B*). The undesirable site features have been revised, changing the restriction regarding proximity to a railroad track from 300 ft to 100 ft; proximity to

heavy industrial uses has been expanded to include fuel storage facilities and has a distance threshold of 500 ft. Additional undesirable site features have been added to address sites that contain pipelines that carry highly volatile liquids and hazardous substances, excluding natural gas lines that are used to supply gas to the site or neighborhood and an undesirable feature for sites within 2 miles of nuclear plants and large refineries (*e.g.* those that produce more than 100k barrels of crude oil daily) or large oil field operations has also been added.

4. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Undesirable Area Features** (*Page 3 of 15 in Subchapter B*). The undesirable area features section has been substantively modified to reduce any subjectivity in the manner in which such features would be applicable to a particular site. These features have been renamed undesirable neighborhood characteristics and require applicants to disclose the extent to which any one of three criteria apply to their site. Specifically, the characteristics that could render a site ineligible include sites that are in a census tract with a poverty rate above 35% (or 55% for regions 11 and 13). Two other characteristics that would render a site ineligible include location in a neighborhood with a crime index of 40 or less according to neighborhood scout, and sites whose environmental site assessments indicate any facilities listings within the ASTM-required search distances for specific databases. Should any of these characteristics be disclosed, staff will perform additional due diligence that includes assessments of blight in the neighborhood, general land use patterns, proximity to any of the undesirable neighborhood characteristics (regardless of distance stated therein), median household incomes in the census tract, number of existing affordable rental units and market rate units in the neighborhood, and the extent to which any of the aforementioned characteristics are mitigated. Community revitalization plans, public/private plans to redevelop the neighborhood, mitigation plans for environmental features and statements from an appropriate local elected official addressing how the development will affirmatively further fair housing are all examples of additional documentation the Department could request of the applicant in its review of the site and overall neighborhood. Moreover, should a development site be initially deemed ineligible by staff, in order for the board to consider the site eligible, at least one of the following goals must be achieved: preservation of existing affordable housing units without furthering the concentration of poverty, the improvement of housing opportunities for low income households and protected classes, and affordable housing in areas of significant community investment. The Board may otherwise determine site eligibility if the funding sources requested more closely aligns with the Department’s and state’s goals and are otherwise available.

5. **Subchapter B §10.101 Site and Development Requirements and Restrictions** (*Page 7 of 15 in Subchapter B*). Applications proposing Rehabilitation (including Reconstruction) that are requesting HOME Direct Loan funds from the Department are no longer considered ineligible; however, this section clarifies which building code and property standards such developments are required to meet. The mandatory development amenities section has been modified to reflect that rehabilitation developments are exempt from having to provide exhaust/vent fans in bathrooms and also clarifies that packaged terminal air conditioners meet the requirement for centralized heat/air conditioning for single-room occupancy or efficiency units.

6. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Unit Requirements** (*Page 12 of 15 in Subchapter B*). The thirty year shingle or metal roofing and greater than 30% stucco or masonry on all exterior buildings has been removed from the list of options for unit and development features. Laundry equipment is required to be Energy Star rated.

7. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Tenant Supportive Services** (*Page 14 of 15 in Subchapter B*). Some minor modifications to the existing list of tenant supportive services as well as some new options for services are reflected in this section.
8. **Subchapter C §10.201(2) Filing of Application for Tax-Exempt Bond Developments** (*Page 1 of 26 in Subchapter C*). This section has been modified to reflect that applications that receive a traditional carryforward designation after November 15 will not be accepted until January 2 of the current program year and will be required to satisfy the requirements of the rules in effect at the time the application is submitted to the Department. Other changes to this section reflect submission requirements for Priority 3 bond applications. Specifically, that such application may be submitted to the Department without a Certificate of Reservation provided the application has been induced by the bond issuer and the Reservation is issued within 30 days of the application submission. There is a 15 day extension that may be granted by the Executive Director for good cause if the Reservation is not issued within the required 30 day timeframe.
9. **Subchapter C §10.201(3) Certification of Tax-Exempt Bond Applications with New Docket Numbers** (*Page 3 of 26 in Subchapter C*). This section has been changed to allow consideration for certifications on applications that receive a new docket number from the Bond Review Board from the immediate succeeding program year. Specifically, should a docket number from such program year be issued, the applicant may certify that it will meet all the rules and requirements in effect at the time the new docket number is issued and provided the Department is able to determine that any changes in rules based on the new program year are of a nature that would not necessitate the filing of a new application.
10. **Subchapter C §10.201(7) Administrative Deficiency Process** (*Page 5 of 26 in Subchapter C*). This section has been modified to require administrative deficiency responses to be submitted electronically as a PDF or multiple PDF files. This section also treats applications for direct loan funds similar to tax-exempt bond applications regarding the potential assessment of a late fee for administrative deficiency responses submitted after the deadline.
11. **Subchapter C §10.203 Public Notifications** (*Page 9 of 26 in Subchapter C*). Changes to this section include re-notification of the public notifications if there is a 5% change in density as a result of changes in the size of the development site. This section also adds that neighborhood organizations must be on record with the county or state as of 30 days prior to the full application delivery date and clarifies what it means to be on record with the state and the county.
12. **Subchapter C §10.204(5) Required Documentation for Application Submission** (*Page 14 of 26 in Subchapter C*). The experience requirement in this section has been modified to allow experience certificates issued in the 2014 program year to meet the experience requirement. The financing requirement has been modified to address the documentation to be submitted for applications that involve USDA Section 515 loans. Moreover, for those applications that involve gap financing, evidence must be submitted that indicates an application for such financing has been made which may include a letter from the funding entity confirming receipt of the financing application. The section regarding submission of architectural drawings clarifies that applications proposing rehabilitation (excluding reconstruction) are not required to submit building floor plans. The site control requirements have been clarified to address land donations, specifically that the entity donating the land must provide the appropriate evidence of site control. The proposed changes to the Third Party Reports include a requirement that rehabilitation developments

financed with direct loans from the Department must also submit, in addition to a Property Condition Assessment, a capital needs assessment that estimates the useful life of each major system and includes a comparison between the local building code and the international existing building code. The Site Design and Development Feasibility Report is proposed to be required for reconstruction developments and the plats submitted as part of the report must include evidence from an appropriate local official that it's the most current plat. For those applications proposing noncontiguous single family scattered sites, surveys or plats are not required to be submitted at the time of application; however, as part of the underwriting analysis they may be requested.

8. **Subchapter C §10.207 Waiver of Rules or Pre-clearance for Applications** (*Page 25 of 26 in Subchapter C*). The general waiver section has been modified to encourage the submission of plans by the applicant for mitigation or alternative solutions to the waiver being sought and elaborates on waivers requested that relate to development design and construction elements not specifically required under Texas Government Code, Chapter 2306. In addition, language related to pre-clearance has been deleted since there is no longer a provision in the rule for pre-clearance.
9. **Subchapter G §10.901 Fee Schedule, Appeals and Other Provisions** (*Page 3 of 6 in Subchapter G*). The fee schedule has been modified to reflect the inclusion of a \$500 fee for those applicants that disclose the presence of undesirable neighborhood characteristics that require review by the Department for site eligibility. For those applicants that submit an application for the same site, the application fee will be reduced by the \$500 undesirable neighborhood characteristic disclosure fee. Modifications have also been made to the fees for Right of First Refusal requests and Qualified Contract that are more reflective of actual practice.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter A §§10.1 - 10.4, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to explain the purpose of the uniform multifamily rules, define terms that are used throughout the various subchapters and applicable to multifamily funding from the Department, and provide guidance on critical program dates associated with the multifamily funding the Department administers. The proposed repeal of existing Subchapter A is published concurrently with this rulemaking.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to explain the purpose of the uniform multifamily rules, define terms and provide guidance on program dates. There will not be any new or additional economic cost, other than those currently in effect, to any persons required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

10.1 Purpose

10.2 General

10.3 Definitions

10.4 Program Dates

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter B §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the new section is to provide guidance relating to site and development requirements and restrictions for all development sites for which applications are submitted in applying for multifamily funding through the Department. The proposed repeal of existing §10.101 is published concurrently with this rulemaking.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be to provide guidance relating to site and development requirements and restrictions relating to applications applying for multifamily funding through the Department. There is no new or additional change in economic cost, other than those currently in effect, to any individuals required to comply with the new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new section affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new section affects no other statutes, articles or codes.

§10.101 Site and Development Requirements and Restrictions

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter C §§10.201 - 10.208, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide guidance for application submission, define what would cause an applicant and application to be ineligible for consideration of multifamily funding, and explain processes regarding Board decisions. The proposed repeal of existing Subchapter C is published concurrently with this rulemaking.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to provide additional clarity regarding requirements for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions. There will be no new or additional economic costs, other than those currently in effect, to persons required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.201 Procedural Requirements for Application Submission

§10.202 Ineligible Applicants and Applications

§10.203 Public Notifications

§10.204 Required Documentation for Application Submission

§10.205 Required Third Party Reports

§10.206 Board Decisions

§10.207 Waiver of Rules or Pre-clearance for Applications.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter G §§10.901 - 10.904, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide for fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department. The proposed repeal of existing Subchapter G is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments. While the rule reflects a new fee related to the disclosure of undesirable neighborhood characteristics, should an applicant file an application for the same development the application fee assessed will be reduced by the disclosure fee already paid. Thus, there will be no new or additional economic costs, other than those currently in effect, to persons required to comply with the new sections.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be adequate revenue to cover the cost of monitoring compliance with the program requirements.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that any new economic impact on small or micro-businesses is expected to be minimal, and/or offset by reductions in other fees and would only be incurred if the business engages in actions that are at its option. There is no anticipated difference in cost of compliance between small and large businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code §2306.144, §2306.147, and §2306.6716.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

10.901 Fee Schedule

10.902 Appeals Process

10.903 Adherence to Obligations

10.904 Alternative Dispute Resolution (ADR) Policy

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1.Purpose. This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program, including but not limited to, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This chapter does not apply to any project-based rental or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

§10.2.General.

(a) This chapter may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

- (1) deadlines for filing Applications and other documents;
- (2) any additional submission requirements that may not be explicitly provided for in this chapter;
- (3) any applicable Application set-asides and requirements related thereto;
- (4) award limits per Application or Applicant;
- (5) any federal or state laws or regulations that may supersede the requirements of this chapter; and
- (6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the multifamily rules or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(d) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2013³⁴, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be

disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(e) Public Information Requests. Pursuant to Texas Government Code, §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of Texas Government Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(f) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(g) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Central Time Zone on the day of the deadline.

§10.3.Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code, Chapter 2306, Internal Revenue Code (the "Code"), §42, the HOME Final Rule, and other Department rules, as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(3) **Affiliate**--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) **Affordability Period**--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code, §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent if such timing is deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress prior to February 28, 2014;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) **Applicant**—means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11 or 12 and who may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The organization, qualification to do business (if needed), and transfer of such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11 and 12, as applicable.

(67) Application Acceptance Period--That period of time during which Applications may be submitted to the Department.

[\(8\) Award Letter – A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.](#)

(789) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(8910) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(91011) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(101112) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(111213) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.

(121314) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(131415) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(141516) Certificate of Reservation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(151617) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(161718) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(171819) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Texas Water Code, §17.921; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department, and is an area encompassing no more than two (2) square miles.

~~(181920)~~ Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

~~(192021)~~ Commitment of Funds--Occurs ~~when~~ after the Development is approved by the ~~Department Board~~ and ~~once~~ a Commitment or Award Letter is executed between the Department and ~~a~~ Development Owner ~~or Applicant~~. For Direct Loan Programs, this process is distinct from ~~Federal Commitment~~ "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

~~(202122)~~ Committee--See *Executive Award and Review Advisory Committee*.

~~(212223)~~ Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

~~(222324)~~ Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

~~(232425)~~ Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

~~(242526)~~ Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

~~(252627)~~ Contract--See *Commitment*.

~~(262728)~~ Contractor--See *General Contractor*.

~~(272829)~~ Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a

[particular decision due to recusal, abstention, or absence.](#) Multiple Persons may be deemed to have Control simultaneously.

[\(282930\)](#) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

[\(302931\)](#) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

[\(303132\)](#) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

[\(313233\)](#) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

[\(323334\)](#) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

[\(333435\)](#) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

[\(343536\)](#) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a developer fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer fee. The Developer may or may not be a Related Party or Principal of the Owner.

[\(353637\)](#) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

[\(3876\)](#) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

- (A) site selection and purchase or lease contract negotiation;
- (B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
- (C) coordination and administration of activities, including the filing of applications to secure such financing;
- (D) coordination and administration of governmental permits, and approvals required for construction and operation;
- (E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;

- (F) selection and coordination of the General Contractor and construction contract(s);
- (G) construction oversight;
- (H) other consultative services to and for the Owner;
- (I) guaranties, financial or credit support if a Related Party; and
- (J) any other customary and similar activities determined by the Department to be Developer Services.

(~~3738~~39) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(~~3839~~40) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(~~3940~~41) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(~~4041~~42) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(~~4142~~43) Development Team--All Persons and Affiliates thereof that play a role in the Development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(~~4243~~44) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(~~4344~~45) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(~~4445~~46) Effective Gross Income ("EGI")--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(~~4546~~47) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(~~4647~~48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(474849) Environmental Site Assessment ("ESA")--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(484950) Executive Award and Review Advisory Committee (also referred to as the "Committee")--The Department committee created under Texas Government Code, §2306.1112.

(495051) Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

(505152) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

- (A) the date specified in the Land Use Restriction Agreement; or
- (B) the date which is fifteen (15) years after the close of the Compliance Period.

~~(51) Federal Commitment--A commitment of funding that meets all of the federal requirements for the specific federal funding source being committed. This commitment may be distinct and separate from a Commitment or Commitment of Funds.~~

(5253) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(5354) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

- (A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or
- (B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(5455) General Partner--Any person or entity identified as a general partner in articles of limited partnership for the partnership that is the Development Owner and that has general liability for the partnership or that has Control with respect to any such general partner. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(5556) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

- (576) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.
- (587) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.
- (598) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA"), demand from other sources, and Potential Demand from a Secondary Market Area ("SMA") to the extent that SMA demand does not exceed 25 percent of Gross Demand.
- (6059) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.
- (610) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.
- (624) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.
- (632) HTC Property--See *HTC Development*.
- (643) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.
- (654) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under Texas Government Code, Chapter 2161 by the State of Texas.
- (665) Housing Contract System ("HCS")--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.
- (676) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).
- (687) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.
- (698) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.
- (7069) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.
- (710) Integrated Disbursement and Information System ("IDIS")--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

- (724) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)
- (732) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.
- (743) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (54) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.
- (754) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.
- (765) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.
- (776) Market Rent--The achievable rent at the subject Property for a unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.
- (787) Market Study--See *Market Analysis*.
- (798) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.
- (8079) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.
- (819) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.
- (824) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.
- (832) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

- (843) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.
- (854) Notice of Funding Availability (“NOFA”)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.
- (865) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.
- (876) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.
- (887) One Year Period (“1YP”)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.
- (898) Owner--See *Development Owner*.
- (909) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.
- (919) Persons with Disabilities--With respect to an individual, means that such person has:
- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.
- (924) Physical Needs Assessment--See *Property Condition Assessment*.
- (932) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas know as census designated places. The Department may provide a list of Places for reference.
- (943) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.
- (954) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.
- (965) Primary Market (“PMA”)--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.
- (976) Primary Market Area--See *Primary Market*.

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

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

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

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

(998) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(10099) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(1010) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(1024) Qualified Contract ("QC")--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(1032) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(1043) Qualified Contract Request ("Request")--A request containing all information and items required by the Department relating to a Qualified Contract.

(1054) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of "housing for older persons" under the federal Fair Housing Act. The age restrictions associated with or character of such a Development are sometimes referred to as "Qualified Elderly".

(1065) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(1076) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(1087) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(1098) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.

(1109) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(1119) Related Party--As defined in Texas Government Code, §2306.6702.

(1121) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(1132) Report--See *Credit Underwriting Analysis Report*.

(1143) Request--See *Qualified Contract Request*.

(1154) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(1165) Right of First Refusal--An Agreement to provide a right to purchase the Property to a nonprofit or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(1176) Rural Area--

(A) A Place that is located:

- (i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or
- (ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter (relating to Required Documentation for Application Submission).

(1187) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(1198) Secondary Market Area--See *Secondary Market*.

(12019) Single Room Occupancy ("SRO")--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(1210) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(1221) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, ~~and~~ underground utilities, and site amenities.

(1232) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

(1243) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(1254) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally ~~require~~ include established funding sources outside of project cash flow that require that certain populations be served and/or certain services provided. These funding sources are outside of project cash flow, and ~~The developments~~ are proposed and expected to be ~~debt-free~~ of foreclosable debt or have ~~no foreclosable or noncash flow~~ debt that is subject to cash flow repayment. A Supportive Housing Development financed with tax-exempt bonds unless the development is a Tax Exempt Bond Development with a project based rental assistance contract ~~that assures a contract rent~~ for a majority

of the Units, ~~in which case the Development is~~ may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(1265) Target Population--The designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(1276) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(1287) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(1298) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(13029) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer or General Contractor; or

(C) anyone receiving any portion of the administration, contractor or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(1310) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(1324) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

- (1332) Underwriter--The author(s) of the Credit Underwriting Analysis Report.
- (1343) Uniform Physical Condition Standards (“UPCS”)--As developed by the Real Estate Assessment Center of HUD.
- (1354) Unit--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.
- (1365) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.
- (1376) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.
- (1387) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (116)(A)(ii) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.
- (1398) U.S. Department of Agriculture (“USDA”)--Texas Rural Development Office (TRDO) serving the State of Texas.
- (14039) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.
- (1419) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).
- (1421) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population fail to account fully for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's

sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4.Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than ~~December 13, 2013~~ [December 12, 2014](#), Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than ~~December 27, 2013~~ [December 19, 2014](#), Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

~~(8) Unless specifically stated otherwise in the Department rules, if an item is due on a specific day or a period expires on a specific day, the applicable period ends at 5:00 p.m., local Austin time on such day.~~

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) **Site Requirements and Restrictions.** The purpose of this section is to identify specific [requirements and restrictions](#) related to a Development Site seeking multifamily funding or assistance from the Department.

(1) **Floodplain.** [All Developments must be able to obtain flood insurance.](#) New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the state or local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.

(2) **Mandatory Community Assets.** Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) community assets [listed in subparagraphs \(A\) – \(Y\) of this paragraph. Supportive Housing Developments located in an Urban Area must be located within a one mile radius of at least one of the community assets listed in subparagraphs \(T\) – \(Y\) of this paragraph.](#) Only one community asset of each type listed ~~in subparagraphs (A) – (T) of this paragraph~~ will count towards the number of assets required. A map must be included identifying the Development Site and the location of [each of](#) the community assets by name. All assets must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

- (A) full service grocery store;
- (B) pharmacy;
- (C) convenience store/mini-market;
- (D) department or retail merchandise store;
- (E) bank/credit union;
- (F) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);
- (G) indoor public recreation facilities, such as, community centers, and libraries accessible to the general public;
- (H) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;
- (I) medical office (physician, dentistry, optometry) or hospital/medical clinic;
- (J) public schools (only eligible for Developments that are not Qualified Elderly Developments);
- (K) senior center accessible to the general public;
- (L) religious institutions;
- (M) community, civic or service organizations, such as Kiwanis or Rotary Club;

- (N) child care center (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);
- (O) post office;
- (P) city hall;
- (Q) county courthouse;
- (R) fire station;
- (S) police station; ~~or~~
- (T) designated public transportation stop at which public transportation (not including "on demand" transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation or transportation provided directly or indirectly by the Development Owner do not meet this requirement;
- (U) Centers for treatment of alcohol and/or drug dependency;
- (V) Centers for treatment of PTSD and other significant psychiatric or psychological conditions;
- (W) Centers providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments;
- (X) Clinics providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means; or
- (Y) Other assistive services designed to support the households in which one or more household members have disabilities.

(3) Undesirable Site Features. Development Sites within the applicable distance of any of ~~with~~ the undesirable features identified in subparagraphs (A) - ~~(H)~~ of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include 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. ~~For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site.~~ The distances are to be measured from the nearest boundary of the Development Site to the ~~boundary of the~~ undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph ~~(H)~~ of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

- (A) Development Sites located ~~adjacent to or~~ within 300 feet of junkyards;
- (B) Development Sites located ~~adjacent to or~~ within ~~3~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;
- (C) Development Sites located ~~adjacent to or~~ within ~~300~~500 feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities, refinery blast zones, etc.;
- (D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants, large refineries (e.g. oil refineries producing more than 100,000 barrels of crude oil daily), or large oil field operations;
- ~~(E)~~ Development Sites located ~~adjacent to or~~ within 300 feet of a solid waste or sanitary landfills;

~~(FE)~~ Development Sites in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;

~~(GF)~~ Development Sites in which the buildings are located within the accident zones or clear zones for commercial or military airports;

~~(HG)~~ Development Sites located ~~adjacent to or~~ within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002;

~~(IH)~~ Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids, hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to the Development Site or neighborhood; or

~~(IHH)~~ Any other Site deemed unacceptable, which would include, without limitation, those ~~containing with exposure to~~ an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(4) Undesirable ~~Area Neighborhood Characteristics~~ Features.

~~(A)~~ If the Development Site ~~has any of the characteristics described is located within 1,000 feet of any of the undesirable area features~~ in subparagraphs ~~(AB) –(H)~~ of this paragraph, the Applicant must disclose the presence of such ~~feature characteristics~~ to the Department. ~~The standard to be applied in making a determination under this paragraph is whether a confluence of undesirable area features are of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria). The presence of such feature must be d~~ Disclosure of undesirable characteristics must be made at the time the Application is submitted to the Department. An Applicant may choose to disclose the presence of such ~~feature characteristics~~ at the time the pre-application (if applicable) is submitted to the Department or after inducement (for Tax-Exempt Bond Developments) but must be accompanied by the Undesirable Neighborhood Characteristic Disclosure Fee pursuant to §10.901(21) of this chapter (relating to Fee Schedule) if requesting pre-clearance. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and which will include, where applicable, a review as described in subparagraph (C) of this paragraph. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules or Pre-clearance for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. The assessment of the Development Site and neighborhood will be presented to the Board in a report, with a recommendation with respect to the eligibility of the Development Site. Should the Board uphold staff's recommendation or make a determination that a Development Site is ineligible based on staff's report, the termination of the Application resulting from such Board action is not subject to appeal. In order for the Development Site to be found eligible by the Board, despite

the existence of undesirable neighborhood characteristics, the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions, that will not result in a further concentration of poverty and the Application includes 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;

(ii) Improvement of housing opportunities for low income households and members of protected classes in areas that do not have high concentrations of existing affordable housing; or

(iii) Provision of affordable housing in areas where there has been significant recent community investment and evidence of new private sector investment; and

(iv) The Board may consider whether or not funding sources requested for the Development Site would otherwise be available for activities that would more closely align with the Department's and state's goals.

~~Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of Site ineligibility and termination of the Application cannot be appealed.~~

~~(AB) – A history of significant or recurring flooding;~~ The existence of any one of the three undesirable neighborhood characteristics in clauses (i) – (iii) of this subparagraph must be disclosed by the Applicant and will prompt further review as outlined in subparagraph (C) of this paragraph:

(i) The Development Site is located within a census tract that that has a poverty rate above 35 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract that has a crime index of 40 or less, according to neighborhoodscout.com;

(iii) The Environmental Site Assessment for the Development Site indicates any facilities listings within the ASTM-required search distances from the approximate site boundaries on any one of the following databases:

(I) U.S. Environmental Protection Agency ("USEPA") National Priority List ("NPL"); Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS");

(II) Federal Engineering and/or Institutional Controls Registries ("EC"); Resource Conservation and Recovery Act ("RCRA") facilities associated with treatment, storage, and disposal of hazardous materials that are undergoing corrective action – ("RCRA CORRACTS"); or

(III) RCRA Generators/Handlers of hazardous waste.

~~(BC) Significant presence of blighted structures, blighted being the visible and physical decline of a property or properties due to a combination of economic downturns, residents and businesses leaving the area, and the cost of maintaining the quality of older structures~~Should any one of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, staff will conduct a further Development Site and neighborhood review which will include assessments of those items identified in clauses (i) – (viii) of this paragraph.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of blight in the neighborhood, evidenced by boarded up or abandoned residential and/or commercial businesses and/or the visible physical decline of property or properties;

(iii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iv) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3).

(v) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the neighborhood, including comment on concentration based on neighborhood size;

(vi) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vii) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy; and

(viii) An assessment of the number and/or strength of mitigating factors for otherwise undesirable neighborhood characteristics, including but not limited to community revitalization plans, demographic data that suggests increasing socio-economic diversity, crime statistics evidencing trends that crime rates are decreasing, new construction in the area, and any other evidence of public and/or private investment in the neighborhood.

~~(CD) Fire hazards that could impact the fire insurance premiums for the proposed Development;~~During or after staff's review of the Development Site, the Department may request additional information from the Applicant. This information is not required to be submitted with the initial disclosure but must be made available at the Department's request. Information regarding mitigation of undesirable characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. For instance, a plan to clean up an environmental hazard is an appropriate response to disclosure of a facility listed in the environmental site assessment, while a management plan and/or efforts of the local police department are appropriate to address issues of crime. Mitigation of undesirable characteristics should also include timelines that evidence a reasonable expectation that the issue(s) being addressed will be resolved or at least improved by the

time the proposed Development is placed in service. Information likely to be requested may include but is not limited to those items in clauses (i) – (iv) of this subparagraph.:

(i) Community revitalization plans (whether or not submitted for points under §11.9(d)(7) of this title);

(ii) Evidence of public and/or private plans to develop or redevelop in the neighborhood, whether residential or commercial;

(iii) Mitigation plans for any adverse environmental features; and/or

(iv) Statements from appropriate local elected officials regarding how the development will accomplish objectives in meeting obligations to affirmatively further fair housing and will address the goals set forth in the Analysis of Impediments and Consolidated Plan(s) of the local government and/or the state.

~~(D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports;~~

~~(E) A hazardous waste site or a continuing source of localized hazardous emissions, whether corrected or not;~~

~~(F) Heavy industrial use;~~

~~(G) Active railways (other than commuter trains); or~~

~~(H) Landing strips or heliports.~~

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

(iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or

(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision; ~~or~~

~~(vii) An Application proposing Rehabilitation (including Reconstruction) is not eligible for HOME Direct Loan funds from the Department.~~

(B) Ineligibility of Qualified Elderly Developments.

(i) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

(ii) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance. The following minimum Rehabilitation amounts must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable:

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$19,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum Rehabilitation will involve at least \$15,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work; ~~or~~

(C) For all other Developments, the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work; ~~or~~

[\(D\) Rehabilitation Developments financed with Direct Loans provided through the HOME program \(or any other program subject to 24 CFR 92\) that triggers the rehabilitation requirements of 24 CFR 92 will be required to meet all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code; and the standards listed in the September 19, 2014 Texas Register for Multifamily Activities in the HOME program \(or other program subject to 24 CFR 92\).](#)

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs ~~(D)~~ - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. These amenities must be at no charge to the tenants. Tenants must be provided written notice of the elections made by the Development Owner.

- (A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;
- (B) Laundry Connections;
- (C) ~~Blinds or window coverings for all windows~~ Exhaust/vent fans (vented to the outside) in the bathrooms;
- (D) Screens on all operable windows;
- (E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);
- (F) Energy-Star rated refrigerator;
- (G) Oven/Range;
- (H) ~~Exhaust/vent fans (vented to the outside) in bathrooms~~ Blinds or window coverings for all windows;
- (I) At least one Energy-Star rated ceiling fan per Unit;
- (J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;
- (K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);
- (L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units ~~in Supportive Housing Developments~~ only); and
- (M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

- (i) Developments with 16 to 40 Units must qualify for four (4) points;
- (ii) Developments with 41 to 76 Units must qualify for seven (7) points;
- (iii) Developments with 77 to 99 Units must qualify for ten (10) points;
- (iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;
- (v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
- (vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-

contiguous single family sites, will have the test applied based on the number of Units per individual site.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

- (i) Full perimeter fencing (2 points);
- (ii) Controlled gate access (2 points);
- (iii) Gazebo w/sitting area (1 point);
- (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
- (vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);
- (vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);
- (viii) Swimming pool (3 points);
- (ix) Splash pad/water feature play area (1 point);
- (x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);
- (xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);
- (xii) Furnished Community room (2 points);
- (xiii) Library with an accessible sitting area (separate from the community room) (1 point);
- (xiv) Enclosed community sun porch or covered community porch/patio (1 point);
- (xv) Service coordinator office in addition to leasing offices (1 point);
- (xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);
- (xvii) Health Screening Room (1 point);
- (xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (xix) Horseshoe pit; putting green; shuffleboard court; video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
- (xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or

- (xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;
- (xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
- (xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);
- (xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);
- (xxvii) Common area Wi-Fi (1 point);
- (xxviii) Twenty-four hour live monitored camera/security system in each building (3 points);
- (xxix) Secured bicycle parking (1 point);
- (xxx) Rooftop viewing deck (2 points); or

(xxxi) **Green Building Features.** Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and National Green Building Standard (NAHB) Green. A Development may qualify for no more than four (4) points total under this clause.

(I) **Limited Green Amenities** (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the nine (9) items listed under items (-a-) - (-l-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;

(-b-) native trees and plants installed that reduce irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;

(-c-) water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads, and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

- (-g-) healthy finish materials including the use of paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;
- (-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;
- (-i-) recycling service provided throughout the Compliance Period;
- (-j-) for Rehabilitation ~~d~~Developments or ~~d~~Developments with 41 units or less, construction waste management system provided by contractor that meets LEEDs minimum standards;
- (-k-) for Rehabilitation ~~d~~Developments or ~~d~~Developments with 41 units or less, clothes dryers vented to the outside;
- (-l-) for ~~d~~Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products.

(II) **Enterprise Green Communities** (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(III) **LEED** (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(IV) **National Green Building Standard (NAHB Green)** (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values.

Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points. Applications not funded with Housing Tax Credits (e.g. Direct Loan Applications) must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

- (i) Covered entries (0.5 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
- (iii) Microwave ovens (0.5 point);
- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);
- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) [Energy-Star qualified](#) laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (1.5 points);
- ~~(viii) Thirty (30) year shingle or metal roofing (0.5 point);~~
- ~~(ix) Covered patios or covered balconies (0.5 point);~~
- (ix) Covered parking (including garages) of at least one covered space per Unit (1.5 points);
- ~~(x) Greater than 30% percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);~~
- (xi) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);
- (xii) 14 SEER HVAC (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);
- ~~(xiii) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point); and~~
- (xiv) Desk or computer nook (0.5 point).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough ~~amenities~~ [services](#) to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services

identified on the list must be provided. The same service may not be used for more than one scoring item.

- (A) joint use library center, as evidenced by a written agreement with the local school district (2 points);
- (B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.) (2 points);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
- (D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-ROM or online course is not acceptable (1 point);
- (H) annual health fair (1 point);
- (I) quarterly health and nutritional courses (1 point);
- (J) organized ~~team sports programs or~~ youth programs offered by the Development (1 point);
- (K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);
- (L) Notary ~~Public~~ Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (M) weekly exercise classes (2 points);
- (N) twice monthly arts, crafts, and other recreational activities such as Book Clubs and creative writing classes (2 points);
- (O) annual income tax preparation (offered by an income tax prep service) (1 point);
- (P) monthly transportation to community/social events such as ~~lawful gaming sites~~, mall trips, community theatre, bowling, organized tours, etc. (1 point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
- (R) specific ~~and pre-approved~~ case ~~management worker~~ services offered through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);
- (S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points); ~~and~~
- (T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);
- (U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);
- (V) external partnerships for provision of weekly AA or NA meetings at the Development Site (2 points);

- [\(W\) contracted onsite occupational or physical therapy services for seniors and Persons with Disabilities \(2 points\):](#)
[\(X\) a full-time resident services coordinator with a dedicated office space at the development \(2 points\):](#)
[and](#)
[\(Y\) a resident-run pea patch or community garden \(1 point\).](#)

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), as specified under 24 C.F.R. Part 8, Subpart C, and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements).

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are ~~two stories or single family design and are~~ normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each ~~U~~unit type [of otherwise exempt units](#) (*i.e.*, one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as Substantial Alteration, in accordance with §1.205 of this title.

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-clearance for Applications.

§10.201.Procedural Requirements for Application Submission. The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time, and cannot be waived except where authorized, and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed, and that digital media is fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete Application to the Department. Each copy must be in a single file and individually bookmarked in the order ~~as~~ required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) ~~outside of~~ the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications for Tax-Exempt Bond Developments will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications ~~that receive a Certificate of Reservation from the Texas Bond Review Board (TBRB) on or before November 15 of the prior program year~~ will be required to satisfy the requirements of the ~~prior year~~ Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. ~~Applications that receive a Certificate a Reservation from the TBRB on or after January 2 of the current program year will be required to satisfy the requirements of the~~

~~current program year QAP and Uniform Multifamily Rules.~~ Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. ~~Those An Applications designated as Priority 3 must will not be accepted until after the issuer has induced the bonds and submit Parts 1—4 within fourteen (14) calendar days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the issuer is~~ subject to the following additional timeframes:

~~(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Executive Director may, for good cause, approve an extension for up to an additional fifteen (15) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;~~

~~(ii) The remaining parts of the Application and any other substantive outstanding documentation, in Department staff's determination and regardless of TBRB Priority designation, must be submitted to the Department at least seventy five (75) calendar days prior to the Board meeting at which the decision to issue a Determination Notice would be made, unless Department staff completes its evaluation in sufficient time for Board consideration. Applicants should be aware that changes to an Application (e.g. submission of new financing term sheets) subsequent to submission may delay completion of Department staff's review or underwriting of the Application and presentation to the Board for consideration of a Determination Notice. The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;~~

~~(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice.~~

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration The Applicant ~~in such a situation~~ would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) ~~and - (CB)~~ of this paragraph:

~~(A) the new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB.~~ The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer issues) or TBRB priority status including the effect on the inclusive capture rate. ~~Note that -~~ The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number. ~~In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration;~~ or

~~(B) if there are changes to the Application as referenced in subparagraph (A) of this paragraph, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of a reissuance of the Determination Notice.~~

(BC) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the following requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Department shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and
- (ii) For all other Developments, the date the Application is received by the Department; and
- (iii) Notwithstanding the foregoing, after July 31, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with

statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round will take longer to process due to the statutory constraints on the award and allocation of competitive tax credits.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. [Responses are required to be submitted electronically as a PDF or multiple PDF files.](#) A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then an Administrative Deficiency Notice Late Fee of \$500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice may be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may [or may](#) not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond [or Direct Loan](#) Developments during

periods when private activity bond volume cap ~~or Direct Loan funds are~~ is undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. If such ineligibility is determined by staff to exist, then prior to termination the Department may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed in this section include those requirements in §42 of the ~~Internal Revenue~~ Code, Texas Government Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in ~~the HUD's System for Award Management (SAM) List of Parties Excluded from Federal Procurement or Non-Procurement Programs;~~ (§2306.05046721(c)(2))

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has breached a contract with a public agency, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) has been found by the Board to be ineligible because of material uncured noncompliance reflected in the Applicant's compliance history to the extent and where allowed by law or as assessed in accordance with §1.5 of this title (relating to Previous Participation Reviews);

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous contracts or commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Party is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of this chapter and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title;

(L) was the owner or Affiliate of the owner of a Department HOME-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or HOME funds repaid;

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. If, not later than thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) - (v) of this subparagraph shall be considered:

- (i) the amount of resources in a development and the amount of the benefit received from the development;
- (ii) the legal and practical ability to address issues that may have precipitated the termination or propose termination of the relationship;
- (iii) the role of the person in causing or materially contributing to any problems with the success of the development;
- (iv) the person's compliance history, including compliance history on other developments; and
- (v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves that would likely have the effect of fomenting opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the challenge process described in §11.10 of this title (relating to Challenges of Competitive HTC Applications). An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Texas Government Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Texas Government Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; or (§2306.6703(a)(1))

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

§10.203.Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be

submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent or a 5 percent change in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the date the Full Application Delivery Date whose boundaries include the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located;
- and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (vi) of this subparagraph.

- (i) the Applicant's name, address, individual contact name, and phone number;
- (ii) the Development name, address, city and county;
- (iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;
- (iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
- (v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, townhomes, high-rise etc.); and
- (vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the Units will be for Qualified Elderly, and it may not imply or indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§10.204.Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, as provided in the Application, must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Texas Government Code, Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Texas Government Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(2) Certification of Principal. This form, as provided in the Application, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Texas Government Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, HOME or CDBG funds. For an Application with a Development Site that is:

- (i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;
- (ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:
 - (I) a resolution from the Governing Body of that municipality; and
 - (II) a resolution from the Governing Body of the county; or
- (iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

- (i) Notice has been provided to the Governing Body in accordance with Texas Government Code, §2306.67071(a) and subparagraph (A) of this paragraph;
- (ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
- (iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Texas Government Code, §2306.67071(b) and subparagraph (B) of this paragraph; and

(iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban. Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

- (i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;
- (ii) AIA Document G704--Certificate of Substantial Completion;
- (iii) AIA Document G702--Application and Certificate for Payment;
- (iv) Certificate of Occupancy;
- (v) IRS Form 8609, (only one per development is required);
- (vi) HUD Form 9822;
- (vii) Development agreements;
- (viii) Partnership agreements; or
- (ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner's, General Partner, partner (or if Applicant is to be a limited liability company, the managing member), or Developer or their Principals has^{ve} the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

~~(i) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application.~~

~~(#C)~~ Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

~~(iii)~~(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

~~(iv)~~(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance; ~~or~~

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors, if known;

(VI) include the principal amount of the loan; and

(VII) include and address any other terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming receipt of the loan transfer application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity

[confirming receipt of an application or](#) a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a history of fundraising to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- (iv) anticipated developer fees paid during construction; and
- (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances). Where the Applicant uses any method that requires Department review, such review must have been requested prior to submission of the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing HOME funds, at least 90 percent of the Units restricted in connection with the HOME program must be available to families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

- (I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;
- (II) the two (2) most recent consecutive annual operating statement summaries;
- (III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or
- (IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) A site plan which:

- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
- (ii) identifies all residential and common buildings;
- (iii) clearly delineates the flood plain boundary lines and shows all easements;
- (iv) if applicable, indicates possible placement of detention/retention pond(s); and
- (v) indicates the location of the parking spaces;

(B) Building floor plans must be submitted for each building type. [Applications for Rehabilitation \(excluding Reconstruction\) are not required to submit building floor plans unless the floor plan changes.](#) Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each building type and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that does not expressly preclude an ability to assign the Site Control to the Development Owner or another party. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. [In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses \(i\) - \(iii\) of this subparagraph or other documentation acceptable to the Department.](#)

- (i) a recorded warranty deed with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or
- (ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or
- (iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change, that a zoning application was received by the political subdivision, and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) Owner's rights to reconstruct in the event of damage; and
- (iv) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure.

(A) **Organizational Charts.** A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) **Previous Participation.** Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities, other government instrumentalities and publicly traded corporations are required to submit documentation for the entities involved, individual board members, and executive directors. Any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee is also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The Previous Participation and Background Certification Form will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) **Competitive HTC Applications.** Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

- (i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;
- (ii) The Nonprofit Participation exhibit as provided in the Application, [including a list of the names and contact information for all board members, directors, and officers](#);
- (iii) A Third Party legal opinion stating:
 - (I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;
 - (II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;

- (III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;
- (IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;
- (V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;
- (iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and
- (v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:
 - (I) in this state, if the Development is located in a Rural Area; or
 - (II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4), then they must disclose in the Application the basis of their nonprofit status.

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), Market Analysis, and the Site Design and Development Feasibility Report must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), the Site Design and Development Feasibility Report, and the ~~Market Analysis Summary~~ [Primary Market Area map \(with definition based on census tracts, zip codes or census place in electronic format\)](#) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis ~~and Market Analysis Summary.~~ This report, [The Market Analysis](#), required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis. ~~The Market Analysis Summary is required for Competitive HTC Applications only and must include a Primary Market Area (PMA) map file (in electronic form if available), how the PMA is defined, and basic demographic information.~~

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter. [All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council.](#)

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

(5) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction [or Reconstruction](#) Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development ([include website links but](#) do not attach [copies of](#) ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). ~~The s~~[Surveys or plat](#) may not be older than twelve (12) months from the beginning of the Application Acceptance Period. [Plats must include evidence from an appropriate local official that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.](#)

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§10.206.Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed

Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207. Waiver of Rules ~~or Pre-clearance~~ for Applications.

(a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules or Pre-clearance for Applications), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests will not be accepted between submission of the Application and any award for the Application. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. Waiver requests that are limited to Development design and construction elements not specifically required in Texas Government Code, Chapter 2306 must meet the requirements of paragraph (A) of this subsection. All other waiver requests must meet the requirements of paragraph (B) of this subsection.

(A) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Rehabilitation (excluding Reconstruction or Adaptive Reuse) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director, the Deputy Executive Director with oversight of multifamily programs, and Deputy Executive Director with oversight of asset management find that the Applicant has established good cause for the waiver. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered under this paragraph.

(B) The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program. ~~Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative~~

~~solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Application materials. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved.~~

~~**(b) General Pre-clearance Process.** Pre-clearance may be requested for issues related to Undesirable Area Features pursuant to §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions). An Applicant may request pre-clearance in writing at or prior to the submission of the pre-application (if applicable) or the Application. Pre-clearance requests will not be accepted after submission of the Application. Requests for pre-clearance should include sufficient documentation for the Board to make a fully informed determination, and must be submitted to the Department in the format required in the Application materials. Where appropriate, the Applicant is encouraged to submit with the requested pre-clearance any plans for mitigation or alternative solutions. Any pre-clearance, if granted, shall apply solely to the Application and should not be construed to apply in other situations that may appear similar.~~

(b) Waivers and/or Pre-Clearance Granted by the Executive Director. The Executive Director may waive requirements ~~or grant pre-clearance~~ as provided in this rule. Even if this rule grants the Executive Director authority to waive ~~or pre-clear~~ a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver ~~or pre-clear any item~~ to the extent such requirement is mandated by statute. Denial of a waiver ~~and/or pre-clearance~~ by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(d) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters B, C, E, and G of this chapter except no waiver shall be granted to provide forward commitments or if the requested waiver is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules.

Subchapter G – Fee Schedule, Appeals and other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be \$30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be \$20 per Unit based on the number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application. Pursuant to Texas Government Code, §2306.147(b), the Department is required to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department, and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review

completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission), if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of \$500 for each business day the deficiency remains unresolved.

(7) Challenge Processing Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$500 for challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of \$750 must be submitted. Building inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the ~~applicable~~ original deadline must be accompanied by an extension fee of \$2,500. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, ~~or for Developments that involve U.S. Department of Agriculture (USDA) as a lender~~ if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests ~~for approval of the satisfaction of the~~ ~~to offer a property for sale under a~~ Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee ~~in an amount equal to the lesser of \$3,000, or one fourth (1/4) of 1 percent of the Qualified Contract Price determined by the Certified Public Accountant.~~

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$500.

(18) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC and HOME Developments Only.) Upon receipt of the cost certification for HTC or HTC and HOME Developments, or upon the completion of the ~~18~~ 24-month development period and the beginning of the repayment period for HOME only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit and \$34 per HOME designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For HOME only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC

properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(21) Undesirable Neighborhood Characteristic Disclosure Fee. Applicants that disclose the presence of undesirable neighborhood characteristics pursuant to §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions) must submit a \$500 fee for Department review of such characteristics. Subsequent to paying the Undesirable Neighborhood Characteristics Disclosure Fee, if an ~~For~~ Applicant ~~that~~ submits an Application for the same Development Site, the Application Fee assessed pursuant to paragraph (3) of this section shall be reduced by \$500.

(22) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and HOME programs will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902.Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

- (1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-clearance for Applications), pre-application threshold criteria, underwriting criteria;
- (2) The scoring of the Application under the applicable selection criteria;
- (3) A recommendation as to the amount of Department funding to be allocated to the Application;
- (4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;
- (5) Denial of a change to a Commitment or Determination Notice;
- (6) Denial of a change to a loan agreement;
- (7) Denial of a change to a LURA;
- (8) Any Department decision that results in the erroneous termination of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere

to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions. The purpose of the repeal is to allow for the replacement of the existing sections with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of existing Subchapter A with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.1. Purpose.

§10.2. General.

§10.3. Definitions.

§10.4. Program Dates.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the repeal is to allow for the replacement of the section with a new section that encompasses restrictions and requirements for all development sites for which applications are submitted in applying for multifamily funding through the Department. Proposed new §10.101 is published concurrently with this proposed repeal.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of the existing section with a new section that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.101. Site and Development Requirements and Restrictions.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter C §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules. The purpose of the repeal is to allow for the replacement of the existing sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. Proposed new §§10.201 - 10.207 are being published concurrently with this rulemaking.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of the sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. There is no new or additional economic cost to any persons required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.201. Procedural Requirements for Application Submission.

§10.202. Ineligible Applicants and Applications.

§10.203. Public Notifications.

§10.204. Required Documentation for Application Submission.

§10.205. Required Third Party Reports.

§10.206. Board Decisions.

§10.207. Waiver of Rules for Applications.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions. The purpose of the repeal is to allow for the adoption of new Subchapter G to provide for updated guidance relating to fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of existing Subchapter G with a new Subchapter G that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code §2306.144, §2306.147, and §2306.6716.

§The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.901. Fee Schedule.

§10.902. Appeals Process.

§10.903. Adherence to Obligations.

§10.904. Alternative Dispute Resolution (ADR) Policy.

2c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and a proposed new 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules and directing its publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (“Department”) is authorized to issue multifamily housing revenue bonds for the State of Texas; and

WHEREAS, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to an issuance of bonds;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of the current 10 TAC Chapter 12 and the proposed new 10 TAC Chapter 12, regarding the Multifamily Housing Revenue Bond Rules, together with the preamble presented to this meeting, and hereby approved for publication in the *Texas Register* for public comment;

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed draft Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached to this Board Action Request is the 2015 Draft Multifamily Housing Revenue Bond Rules (“Bond Rules”) which reflect staff’s recommendations for the Board’s consideration. Changes to the draft rule make the Bond Rules consistent with the proposed changes to the 2015 Draft Uniform Multifamily Rules and Qualified Allocation Plan (“QAP”), as applicable. To the extent there are changes made by the Board to these aforementioned rules that would coincide with the Bond program, the Uniform Multifamily Rules and QAP would take precedence over the 2015 Bond Rules as applicable.

Rule-Making Timeline: Upon Board approval, the draft Bond Rules will be posted to the Department’s website and published in the *Texas Register*. Public comment will be accepted between September 19th and October 20th and there will be a consolidated public hearing during this time to receive public

comment. The Bond Rules will be brought before the Board in December for final approval and will be subsequently published in the *Texas Register*.

Summary of Proposed Changes to the Bond Rules: This section outlines some of the more significant recommendations by staff and staff notes that other changes identified in the Bond Rules are being made for consistency with those changes proposed in Chapter 10 relating to the Uniform Multifamily Rules. Citation and page references are indicated for ease of reference.

1. **§12.7 – Full Application Process** (*page 8 of 12*). The changes to this section include removing the requirement that an applicant select an Investment Banking Firm from the approved list on the Department's website.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 12, §§12.1 - 12.10, concerning the 2015 Multifamily Housing Revenue Bond Rules. The purpose of the proposed new rule is to implement changes that will improve the 2015 Private Activity Bond Program. The Multifamily Housing Revenue Bond Rules outline the threshold and scoring related requirements associated with private activity bond funding from the Department. The proposed repeal of existing Chapter 12 is published concurrently with this rulemaking.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be the adoption of new rules for multifamily housing revenue bonds; providing updates and greater clarity and thereby enhancing the state’s ability to provide decent, safe and sanitary housing administered by the Department. There is no new or additional economic cost, other than those currently in effect, to any individuals required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 20, 2014.**

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

The proposed new sections affect no other code, article, or statute.

§12.1. General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds (“Bonds”) by the Texas Department of Housing and Community Affairs (~~the~~ “Department”). The Department is authorized to issue such Bonds pursuant to Texas Government Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Texas Government Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (~~the~~ “Code”), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) and Chapter 10 of this title (relating to Uniform Multifamily Rules) for the current program year. In general, the Applicant will be required to satisfy the requirements of the Qualified Allocation Plan (“QAP”) and Uniform Multifamily Rules in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board. If the applicable QAP or Uniform Multifamily Rules contradict rules set forth in this chapter, the applicable QAP or Uniform Multifamily Rules will take precedence over the rules in this chapter. The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs associated with the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis.

(e) Waivers. Requests for waivers of program rules or pre-clearance relating to Undesirable Neighborhood Characteristics~~Area-Features~~ pursuant to §10.101(a)(4) of this title (relating to

Site and Development Requirements and Restrictions) must be made in accordance with §10.207 of this title (relating to Waiver of Rules or Pre-clearance for Applications).

§12.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 10 of this title (relating to Uniform Multifamily Rules).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(A), promulgated under the Securities Act of 1935, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Texas Government Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

§12.3. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

(b) Investment Letters. Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investor letter in a form acceptable to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investor letter in a form acceptable to the Department.

§12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can get a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call. Prior to the submission of a pre-application, it is important that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as prescribed by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility and documentation submission requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(c) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Texas Government Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Texas Government Code, §2306.359. In the event two or more pre-applications receive the same score, the Department will use the following tie breaker factors in the order they are presented to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(1) Applications that meet any of the criteria under §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria).

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. [Developments awarded Housing Tax Credits but do not have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this subparagraph.](#) The linear measurement will be performed from the closest boundary to closest boundary.

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application and proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Because each Development is unique, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is presented to the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (10) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

- (1) Submission of the multifamily bond pre-application in the form prescribed by the Department;
- (2) Completed Bond Review Board Residential Rental Attachment for the current program year;
- (3) Site Control, evidenced by the documentation required under §10.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(10) of this title at the time of Application;
- (4) Zoning evidenced by the documentation required under §10.204(11) of this title;
- (5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;
- (6) Current market information (must support affordable rents);
- (7) Local area map that shows the location of the Development Site and the location of at least six (6) community assets within a one mile radius (two miles if in a Rural Area). Only one community asset of each type will count towards the number of assets required. The mandatory community assets [and specific requirements](#) are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);
- (8) Organization Chart showing the structure of the Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable;

(9) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(10) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.5705(9))). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent or a 5 percent change in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

§12.6. Pre-Application Scoring Criteria.

The section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Texas Government Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of units rents capped at 60 percent AMGI; or

(ii) Set aside 15 percent of units rent capped at 30 percent AMGI and the remaining 85 percent of units rent capped at 60 percent AMGI; or

(iii) Set aside 100 percent of units rent capped at 60 percent AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80 percent of the Units capped at 60 percent AMGI. (7 points)

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate units can be included under this priority. (5 points)

(2) Cost of the Development by Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs as represented in the Development Cost Schedule provided in the pre-application. This calculation does not include indirect construction costs. Pre-

applications that do not exceed \$95 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation will automatically receive (1 point).

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) five-hundred-fifty (550) square feet for an Efficiency Unit;

(B) six-hundred-fifty (650) square feet for a one Bedroom Unit;

(C) eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the Affordability Period for a Development to a total of thirty-five (35) years.

(5) Unit and Development Features. A minimum of (7 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The amenities selected at pre-application may change at Application so long as the overall point structure remains the same. The points selected at pre-application and/or Application and corresponding list of amenities will be required to be identified in the LURA and the points selected must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to receive points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in §10.101(b)(5) of this title. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from the Green Building Features as identified in §10.101(b)(5)(C)(xxxi) of this title. The amenities must be for the benefit of all tenants and made available throughout normal business hours. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the threshold requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Some amenities may be restricted to a specific Target Population. An amenity can only receive points once; therefore combined functions (a library which is part of a community room) can only receive points under one category. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and will have to identify in the LURA which amenities are at each individual site.

(A) Developments with 16 to 40 Units must qualify for (4 points);

(B) Developments with 41 to 76 Units must qualify for (7 points);

- (C) Developments with 77 to 99 Units must qualify for (10 points);
- (D) Developments with 100 to 149 Units must qualify for (14 points);
- (E) Developments with 150 to 199 Units must qualify for (18 points); or
- (F) Developments with 200 or more Units must qualify for (22 points).

(7) Tenant Supportive Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(8) Underserved Area. An Application may qualify to receive up to (2 points) for general population Developments located in a Colonia, Economically Distressed Area, or Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 and must be received ten (10) business days prior to the date of the Board meeting at which the pre-application will be considered. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, letters that do not specifically refer to the Development or do not explicitly state support will receive (zero (0) points). A letter that does not directly express support but expresses it indirectly by inference (i.e., a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) All elected members of the Governing Body of the county in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and
(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two (2) years or for which there has been a rent restriction requirement in the past ten (10) years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) If at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster area under Texas Government Code, §418.014. This includes federal, state, and Governor declared disaster areas.

§12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §10.201 of this title (relating to Procedural Requirements for Application Submission).

~~(b) Bond Trustee and Investment Banking Firm Selection. The Applicant must select a Bond Trustee from the approved list on the Department's website and must also select from the approved list on the Department's website, an investment banking firm to serve as senior managing underwriter, co-managing underwriter or placement agent, as applicable.~~

~~(b)~~ (e) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and ~~return~~withdraw the Certificate of Reservation ~~from~~to the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) in addition to Texas Government Code, Chapter 1372, ~~and the proposed Development must meet~~ the applicable requirements of Texas Government Code, Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

~~(c)~~ (d) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay costs, the Department's bond counsel shall draft Bond documents.

(de) Public Hearings. For every Bond issuance, the Department will hold a public hearing in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, ~~and~~ maximum rents and income restrictions. If the proposed Development is Rehabilitation then the presentation should include the proposed scope of work that is planned for the Development. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

(ef) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Staff Appeals Process) and §1.8 of this title (relating to Board Appeals Process). To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Texas Government Code, Chapter 1372.

(fg) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be submitted to the Department.

§12.8. Refunding Application Process.

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay costs, the Department's bond counsel will draft the required Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval

and must meet the requirements pursuant to §12.7(de) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §10.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9. Regulatory and Land Use Restrictions.

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development;

(2) the end of the remaining term of the existing federal government assistance pursuant to Texas Government Code, §2306.185; or

(3) the period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph:

(A) at least 20 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50 percent of the area median income; or

(B) at least 40 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60 percent of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Texas Government Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

§12.10. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,500 (payable to Bracewell & Giuliani, the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (BRB) pursuant to Texas Government Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees to the BRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications the application fee shall be \$10,000 or \$30/unit, whichever is greater). Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as part of a portfolio such application fees may be reduced on a case by case basis at the discretion of the Executive Director.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds is equal to 50 basis points (0.005) of the issued principal amount of the Bonds. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds and a Bond compliance fee equal to \$25/unit (such compliance fee shall be applied to the third year following closing).

(d) Application and Issuance Fees for Refunding Applications. For refunding Applications the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in

which case the fee will be \$5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) Administration Fee. The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount on its date of calculation and is paid as long as the Bonds are outstanding.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to \$25/Unit.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 12, §§12.1 - 12.10, concerning the 2014 Multifamily Housing Revenue Bond Rules. The purpose of the repeal is to allow for the proposal and adoption of new sections. The proposed new Chapter 12, concerning the 2015 Multifamily Housing Revenue Bond Rules is published concurrently with this proposed repeal in this issue of the *Texas Register*.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the adoption of new rules for multifamily housing revenue bonds; providing updates and greater clarity, and enhancing the state’s ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 20, 2014.**

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

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

§12.1. General.

§12.2. Definitions.

§12.3. Bond Rating and Investment Letter.

§12.4. Pre-Application Process and Evaluation.

§12.5. Pre-Application Threshold Requirements.

§12.6. Pre-Application Scoring Criteria.

§12.7. Full Application Process.

§12.8. Refunding Application Process.

§12.9. Regulatory and Land Use Restrictions.

§12.10.Fees.

3a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register* the 2014-1 HOME Multifamily Development Program Notice of Funding Availability.

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (“the Department”) has executed the Fiscal Year 2014 Grant Agreement with the U.S. Department of Housing and Urban Development (HUD), which provides access to 2014 HOME Investment Partnership Program funds;

WHEREAS, staff has identified a total of \$16,800,000 in HOME funds, that is available to be made available for the HOME Multifamily Development Program;

WHEREAS, staff proposes these funds be made available for award to multifamily applications under a 2014-1 HOME Multifamily Development (MFD) Program Notice of Funding Availability (NOFA);

WHEREAS, twenty five (25) applications for HOME funds were submitted in conjunction with Competitive (9%) Housing Tax Credit requests in accordance with a Board policy adopted at the January 2014 board meeting and these will be considered for awards of funds under this NOFA;

NOW, therefore, it is hereby

RESOLVED, the 2014 HOME Multifamily Development Program NOFA is hereby approved, in the form presented to this meeting, for publication in the *Texas Register*; provided however, that staff may make non-substantive technical corrections as deemed necessary.

BACKGROUND

Since a grant agreement from HUD for FY 2014 was not anticipated to be executed until summer 2014, the Board passed a resolution on January 23, 2014 allowing 9% Housing Tax Credit (“HTC”) applicants to request HOME funds in coordination with their HTC applications, insofar as the applicants understood the risks, parameters, and guidelines associated with requesting HOME funds prior to TDHCA receiving its 2014 allocation of HOME funds and the subsequent publication of a HOME MFD NOFA. In accordance with the Board resolution, applications received under the resolution will be deemed to have been received under this NOFA for funds made available under this NOFA.

Staff received 25 Competitive HTC applications with requests for Department HOME funds under the above referenced January 2014 policy. Of those 25 9% HTC applications, 9 have received Housing Tax Credit Awards and remain active for potential HOME awards under this NOFA, provided funding remains available after the regional allocation period ends. Another 14 HOME and tax credit layered applications remain eligible but did not receive an award of tax credits. These applications, however, could potentially be eligible for a HOME award if they receive a tax credit award from the tax credit waiting list. Two applications were terminated and are no longer eligible for a HOME award.

The 2014 HOME MFD NOFA will make available funding for the General and the Community Housing Development Organization (“CHDO”) Set-Asides with 23 applications already pending.

	Total Available	Applications Pending	Requested Funds for Applications Pending
General	\$9,500,000	22	\$19,080,000
CHDO	\$7,300,000	1	\$1,000,000

The funding made available under each set-aside will first be allocated according to the Regional Allocation Formula (“RAF”) until October 20, 2014. After October 20, 2014, any funding not allocated according to the RAF will collapse and be made available statewide, except in local HOME Participating Jurisdictions as restricted in Texas Government Code, Chapter 2306. During the initial period of regional allocation, any applications requesting funds not exceeding the amounts made available within a sub-region will take priority over all other allocations, including the 23 pending requests. After the collapse, the 23 pending applications will be prioritized for award as described in the January 2014 policy; funds will then be made available on a first-come first-serve basis to any new applications received.

Additionally, after October 20, 2014, \$2,000,000 from the General Set-Aside will be made available only to applications layered with Noncompetitive (4%) HTCs and \$7,300,000 will be available to all applicants that qualify under the CHDO Set-Aside.

Since the amount of funds available under the NOFA was not known at the time of the Board resolution in January, staff limited HOME funds requests to \$1,000,000 per applicant, for applications layered with 9% HTCs. Now that the available amounts are known, staff is recommending the maximum request for applications layered with 4% HTCs be \$2,000,000 under the General Set-Aside and \$4,000,000 for the CHDO Set-Aside. This change is reflected in the attached NOFA. These higher award limits are recommended by staff in response to typical gap financing needs for 4% HTC applicants and to encourage more applications in the CHDO Set-Aside.

Staff has incorporated salient updates to the HOME Final Rule (24 CFR Part 92) in the NOFA to make applicants aware of new program requirements in effect for 2014 awards. In general, the updates will have the greatest impact on CHDO applicants.



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY
AFFAIRS HOME INVESTMENT PARTNERSHIPS PROGRAM**

**MULTIFAMILY DEVELOPMENT PROGRAM
2014-1 NOTICE OF FUNDING AVAILABILITY (NOFA)**

- 1) **Summary.** The Texas Department of Housing and Community Affairs (the “Department”) announces the availability of up to **\$16,800,000** in funding from the HOME Investment Partnerships Program for the development of affordable multifamily rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 10 (2014 Uniform Multifamily Rules) in effect at the time Application is submitted, the Federal HOME regulations governing the HOME program found at 24 CFR Part 92 (HOME Final Rule), and Chapter 2306 of the Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Section 104(d) of Housing and Community Development Act of 1974, Davis-Bacon Act for labor standards, 24 CFR §§84.42 and 85.36 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Where the 2014 Uniform Multifamily Rules are in conflict with the revised Federal HOME Final Rule, the Federal HOME regulations shall govern. HUD funded assistance connected to construction, rehab, demolition, or other public construction must also comply with HUD Section 3 requirements (24 CFR Part 135); Section 3 requires HUD funded housing and community development activities to give, to the greatest extent feasible (and consistent with existing Federal, State and local laws and regulations) job training, employment, contracting and other economic opportunities to Section 3 residents and business concerns. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.
- 2) **Allocation of HOME Funds.**
 - a) These funds are made available through the Department’s allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been reserved for Multifamily Development activities involving acquisition or refinance and new construction or acquisition or refinance and rehabilitation of affordable housing. The funds made available under this NOFA are subject to the following set-asides:
 - i. **CHDO Set-Aside.** Approximately **\$7,300,000** in funds are set-aside for eligible Community Housing Development Organizations (CHDOs) meeting the requirements of 24 CFR §92.2 and this NOFA. Of the funds available under the CHDO Set-Aside, **\$3,600,000** is available under the 2014 allocation

and **\$3,700,000** is remaining under the 2013 allocation. Funds under the CHDO Set-Aside are subject to the Regional Allocation Formula (RAF) and are not available for developments located within other HOME Participating Jurisdictions.

- ii. **General Set-Aside.** Approximately **\$9,500,000** in funds shall be available to all other Applications proposing Multifamily Development that meet the requirements of this NOFA, the HOME Program Rule, and Federal HOME regulations. Funds under the General Set-Aside are subject to the Regional Allocation Formula (RAF) and are not available for developments located within other HOME Participating Jurisdictions.
 - (1) Under the General Set-Aside, **\$2,000,000** is reserved for applications layered with 4% housing tax credits. The balance will be available to applications layered with 9% housing tax credits. Upon expiration of this NOFA, all General Set-Aside funds that remain available may be awarded for any application received prior to December 1, 2014, regardless of whether or not the application is layered with 4% housing tax credits.
- b) An Applicant may have only one active Application per Development at a time and may only apply under one set-aside at a time. Additionally, the following processes will be followed for the review and award of Applications:
 - (1) Once all funds from the CHDO Set-Aside have been awarded, all pending Applications remaining in this set-aside will be considered for funds under the General Set-Aside;
 - (2) The Department may require completion of the CHDO Certification process for Applications that originally applied under the CHDO Set-Aside but are receiving funds from the General Set-Aside in order to meet the Department's future obligations to award funds for CHDO activities.
 - (3) For applications layered with 4% housing tax credits, the HOME application terminates with the expiration of the certificate of bond reservation for non-traditional carry-forward and the next pending Application remaining in the General Set-Aside will be considered for funds.
- c) This NOFA will be conducted as an open Application cycle and funding will be available on a first-come, first-served basis. All funds under the CHDO or General Set-Asides are subject to the Regional Allocation Formula (RAF). Should any funds remain after awarding all eligible applications under the RAF, the funds will collapse statewide at 5:00 p.m. on October 20, 2014 and become available to award to all other eligible applications regardless of region. The RAF tables for each set-aside can be accessed at www.tdhca.state.tx.us. Pursuant to the January 23, 2014 Board resolution, HOME applications received in conjunction with the 2014 9% Housing Tax Credit Application Round are deemed to have been received under this NOFA. Applications submitted during the regional allocation period that do not request more than available within the applicable sub-region will have the first priority. The 2014 HOME and 9 percent tax credit layered applications that were awarded commitments of 9 percent Housing Tax Credits will be given top priority after the regional allocation collapse. Any Applications for HOME funds that are also layered with 9% Housing Tax Credits (from any program year) will not be accepted until the RAF ends on October 20, 2014.

- d) Based on the availability of funds, Applications for the statewide open Application cycle will be accepted until 5:00 p.m. on December 1, 2014. The request for project funds may not be less than \$200,000, regardless of the set-aside under which an application is being submitted, and may not exceed the maximum on a per application basis as shown in Table 1:

Table 1

	Layered with 9% Tax Credits	Not Layered with 9% Tax Credits
CHDO	\$1,000,000	\$4,000,000
General	\$1,000,000	\$2,000,000

- e) Each CHDO that is awarded HOME funds may also be eligible to receive a grant of up to \$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.

3) Implementation of the Revised HOME Final Rule.

- a) If owners choose to adopt and follow a written tenant selection policy that limits eligibility or gives a preference to a particular segment of the population as permitted in the written agreement, the limitation or preference must not violate nondiscrimination requirements in 24 CFR §92.350. Since funding from other Federal programs that may limit eligibility to a particular segment of the population may not be known at the time of application, the applicant will be required to state whether or not a preference will be used for tenant selection prior to closing.
- b) Owners must use the HUD Utility Schedule Model for utility allowances. The utility allowances will be calculated by the Department on an annual basis and provided to the Owner with a deadline for implementation.
- c) Housing must be occupied by eligible tenants within six months following completion of construction.
- d) Repayment of HOME funds will be required:
- (1) For any housing unit that has not been rented to eligible tenants within 18 months of construction completion.
 - (2) If the project is not completed within 4 years of the date funds were committed.
- e) If a CHDO is created or sponsored by a for-profit entity, the officers and employees of the for-profit entity may not be officers or employees of the CHDO.
- f) If a CHDO is acting as a developer or sponsor, the CHDO must have paid employees with housing development experience who will work on the HOME-assisted project. For its first year of funding as a CHDO, the CHDO may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization.
- g) If a CHDO is acting as an owner, it must demonstrate the capacity to act as owner of a project including:
- i) The ability to hire and oversee the developer that rehabilitates or constructs the housing.

- ii) The ability to hire or contract with an experienced project manager to oversee all aspects of the development.
 - iii) The ability to own and operate rental housing for the duration of the federal affordability period.
- 4) **Site and Development Restrictions.** Developments must meet the requirements at 10 TAC §10, Subchapter B, as applicable.
- 5) **Public Notification Requirements.** All Applicants must comply with public notification requirements in 10 TAC §10.203.
- 6) **Application and Threshold Criteria.** An Application must be compliant with all applicable requirements in 10 TAC §10, Subchapter C. Each Application will be evaluated by the Real Estate Analysis division in accordance with 10 TAC §10, Subchapter D. In addition, an Application must be consistent with the Direct Loan requirements in 10 TAC §10.307.
 - a) **Affirmative Marketing.** Documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act. Applicants will be required to use HUD form 935.2a to meet these requirements.
 - b) **CHDO Certification.** Requirements under this subsection must only be met for Applications considered for an award of funds from the CHDO Set-Aside. CHDO Certification will be awarded in accordance with the rules and procedures as set forth by 10 TAC §23.80, Application Procedures for Certification of Community Housing Development Organization (CHDO).
 - i) CHDO Certification Applications must be submitted with each application for Multifamily Development funds.
 - ii) CHDO Certification Applications must meet the requirements of 10 TAC §23.80 at the time of Application submission.
- 1) **Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post Award requirements in 10 TAC §10, Subchapter E, as well as the Compliance Monitoring requirements in 10 TAC §10, Subchapter F. Applicants who receive an award of HOME funds must submit all required environmental clearance documentation to environmental@tdhca.state.tx.us within 60 days of a fully executed HOME Loan Commitment.
- 2) **Application Submission**
 - a) All Applications submitted under this NOFA must be received on or before **5:00 p.m. December 1, 2014**. The Department will accept Applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date the NOFA Summary is published in the *Texas Register* until the deadline date. For questions regarding this NOFA, please contact Andrew Sinnott, Multifamily Loan Program Specialist, at andrew.sinnott@tdhca.state.tx.us.
 - b) In accordance with the January 23, 2014 Board resolution, 9% Housing Tax Credit Applications that requested HOME funds are deemed to have been received under this NOFA.

- c) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs. Applicants layered with tax-exempt bonds must have submitted an application to the Bond Review Board prior to submitting an application for HOME funds.
- d) All Applications must be submitted, and provide all documentation, as described in this NOFA and associated Application materials.
- e) Applicants must submit the Application materials as detailed in the Multifamily Programs Procedures Manual (MPPM) in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the MPPM in effect at the time the Application is submitted.
- f) The Application consists of several parts as described in the MPPM. A complete Application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete Applications or improperly compiled Applications will not be accepted. Applicants must submit the Application materials as detailed in the MPPM in effect at the time the Application is submitted.
- g) Third Party Reports. Applications that have not submitted third party reports due to a later deadline under the housing tax credit program may be held as incomplete Applications until the housing tax credit deadline for submission of third party reports. Such Applications will not be considered complete Applications and shall not be assigned a "Received Date" until the third party reports are received.
- h) All Application materials including manuals, NOFAs, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of the HOME Final Rule. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.
- i) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$1,000.00 per Application. Payment must be in the form of a check, cashier's check, or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. TDHCA Application fees are not reimbursable costs under the HOME Program.
- j) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department

strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

k) Applications must be sent via overnight delivery, or delivered by hand to:

**Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Misael Arroyo
221 East 11th Street
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Misael Arroyo
Post Office Box 13941
Austin, TX 78711-3941**

3b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action Regarding Reinstatement of a Determination Notice for Housing Tax Credits with another Issuer

RECOMMENDED ACTION

WHEREAS, the Board previously approved a Determination Notice for the William Cannon Apartments at its meeting on April 10, 2014;

WHEREAS, due to a change in the organizational structure and delays in receiving approval from the bond issuer (Travis County Housing Finance Corporation) the Applicant was unable to close on the bonds by August 8, 2014, the deadline as required by the Board in the Determination Notice and a condition of the award;

WHEREAS, the applicant has requested a new deadline of October 1, 2014, in order to close on the financing associated with the development; and

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the reinstatement of the Determination Notice with the conditions that closing occur by October 1, 2014, and that the terms and financing structure not change prior to closing;

NOW, therefore, it is hereby

RESOLVED, that the reinstatement of the Determination Notice of \$1,354,382 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 William Cannon Apartments is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that provided the Applicant has not closed on the bond financing by October 1, 2014, or if the underwritten financing structure or terms change prior to closing, this Determination Notice will be rescinded without further action by the Board.

BACKGROUND

General Information: William Cannon Apartments, located in Austin, Travis County, involves the new construction of 252 total residential units, of which 4 units will be rent and income restricted at 50% of AMFI and the remaining 248 units will be rent and income restricted at 60% of AMFI. The development

will serve the general population and is currently zoned appropriately. The application was originally approved by the Board on April 10, 2014.

Changes to the Application: Since the time of the award, there was a change in the composition of the general partner. Specifically, this includes the departure of Craig Alter, previously the Executive Director and Vice President of Strategic Housing Finance Corporation, the 100% member of the General Partner. One of the other delays that resulted in the inability to close by the original August 8, 2014, deadline involved finalizing some bond documents between the issuer, trustee and lender, for the benefit of the lender, that were needed in order to address additional security provisions for the construction risk borne by the lender.

Organizational Structure/Previous Participation Review: The Borrower is Pedcor Investments-2012-CXXI, L.P. The General Partner is SHFCTC William Cannon, LLC, which includes Strategic Housing Finance Corporation of Travis County and is comprised of the following individuals: Sarah Dale Anderson, Ofelia Elizondo, Magdalena Blanco, Richard Moya, Melvin Wrenn, and Willie Anderson. The Department's Executive Award and Review Advisory Committee ("EARAC") met on August 25, 2014, and considered the previous participation review documentation relating to the organizational structure noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. There was no dissenting vote cast relating to the review, and EARAC determined that the compliance issues do not warrant denial or conditions.

Census Demographics: The development is to be located at 2112 and 2014 William Cannon Drive in Austin. Demographics for the census tract (0024.19) include the AMFI of \$29,768; the total population is 3,890; the minority population is 77.76%; the poverty rate is 24.30%; there are 16 owner-occupied units and 1,893 renter units. (Census information is from FFIEC Geocoding for 2014.)

Public Comment: As part of the application at the time of the award, the Department received a letter of support from Margaret J. Gomez, Travis County Commissioner, and no letters of opposition were received.

3c

14404 – Park at the Cliff

This item has been pulled from the agenda

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 4, 2014

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

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Lakes of El Dorado Apartments was submitted to the Department on June 23, 2014;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board (“BRB”) expires on November 16, 2014;

WHEREAS, the proposed issuer of the bonds for the Development is the City of McKinney Housing Finance 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 \$545,690 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for the Lakes of El Dorado Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Lakes of El Dorado Apartments consists of the rehabilitation and acquisition of 220 existing units targeted to a general population in McKinney, Collin County which is currently zoned appropriately. The Certificate of Reservation from the BRB was issued under the Priority 3 designation which does not have a prescribed restriction on the percentage of Area Median Family Income (“AMFI”) units that must be served. Two hundred nineteen (219) of the units will be rent and income restricted at 60% of AMFI and there will be 1 employee occupied unit.

The development was previously awarded an allocation of competitive Housing Tax Credits in 1993. The initial Tax Credit Compliance Period expired on December 31, 2010. There is an Extended Use Restriction Agreement in place on the property until December 31, 2025 which has a Right of First Refusal requirement. On August 5, 2014 the Department issued a letter confirming the Development

successfully met the Right of First Refusal requirement and is therefore eligible to be sold and purchased.

The current ownership structure includes Southstar Realty Corporation as the managing general partner with 70% ownership interest, Colonial Equities own 25% interest and Outreach Housing Corporation, a non-profit corporation, owns 5% ownership interest in the general partner. An ownership transfer for the aforementioned ownership structure was submitted to the Department that requested the 5% general partner interest of Outreach Housing Corporation be transferred to Rainbow Housing Assistance Corporation, a non-profit corporation. The sole purpose of this ownership transfer to Rainbow is to preserve the acquisition credits that are currently available with the existing partnership structure. This request is still under review by staff.

Organizational Structure and Compliance: The Borrower is Norstar Lakes of El Dorado, LLC, and the General Partner is Norstar Lakes of El Dorado, MM, LLC, comprised of Norstar Investment USA, Inc, of which Neil Brown and Gary Silver are equal principals and Black Locust, LLC, of which Richard L. Higgins is the sole member. The previous participation review pursuant to 10 TAC §1.5 did not identify any compliance or asset management issues that warrants a recommendation of denial or additional conditions on the award.

Census Demographics: The development is located at 1400 Eldorado Parkway in McKinney. Demographics for the census tract (0308.01) include an AMFI of \$45,039; the total population is 3,923; the minority population is 45.63%; the poverty rate is 17.34%; there are 316 owner-occupied units and 1,210 renter units. (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
SEPTEMBER 4, 2014

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

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Fountains of Rosemeade was submitted to the Department on June 23, 2014;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board (“BRB”) expires on November 16, 2014;

WHEREAS, the proposed issuer of the bonds for the Development is the Dallas Housing Finance 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 \$836,038 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for the Fountains of Rosemeade is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Fountains of Rosemeade consists of the acquisition and rehabilitation of 382 existing units targeted to a general population in Dallas, Denton County which is currently zoned appropriately. The Certificate of Reservation from the BRB was issued under the Priority 3 designation which does not have a prescribed restriction on the percentage of Area Median Family Income (“AMFI”) units that must be served. Three hundred seventy-nine (379) of the units will be rent and income restricted at 60% of AMFI and there will be 3 employee occupied units.

The development was previously awarded an allocation of competitive Housing Tax Credits in 1993. The initial Tax Credit Compliance Period expired on December 31, 2010 and there is an Extended Use Restriction Agreement in place on the property until December 31, 2025.

The current ownership structure includes Southstar Realty Corporation as the managing general partner with 70% ownership interest, Colonial Equities own 25% interest and Outreach Housing Corporation, a non-profit corporation, owns 5% ownership interest in the general partner. An ownership transfer for the aforementioned ownership structure was submitted to the Department that requested the 5% general partner interest of Outreach Housing Corporation be transferred to Rainbow Housing Assistance Corporation, a non-profit corporation. The sole purpose of this ownership transfer to Rainbow is to preserve the acquisition credits that are currently available with the existing partnership structure. This request is still under review by staff.

Organizational Structure and Compliance: The proposed Borrower is Norstar Fountains of Rosemeade, LLC, and the Managing Member is Norstar Fountains of Rosemeade, MM, LLC, comprised of Norstar Investment USA, Inc, of which Neil Brown and Gary Silver are equal principals and Black Locust, LLC, of which Richard L. Higgins is the sole member. The previous participation review pursuant to 10 TAC §1.5 did not identify any compliance or asset management issues that warrants a recommendation of denial or additional conditions on the award.

Census Demographics: The development is located at 3440 E. Rosemeade Parkway in Carrollton. Demographics for the census tract (0216.16) include an AMFI of \$60,905; the total population is 4,441; the minority population is 59.31%; the poverty rate is 11.70%; there are 838 owner-occupied units and 984 renter units. (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
SEPTEMBER 4, 2014

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

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Ash Lane Apartments was submitted to the Department on June 23, 2014;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board (“BRB”) expires on November 16, 2014;

WHEREAS, the proposed issuer of the bonds for the Development is the Tarrant County Housing Finance 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 \$584,499 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for the Ash Lane Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The Ash Lane Apartments consists of the rehabilitation and acquisition of 250 existing units targeted to a general population in Euless, Tarrant County which is currently zoned appropriately. The Certificate of Reservation from the BRB was issued under the Priority 3 designation which does not have a prescribed restriction on the percentage of Area Median Family Income (“AMFI”) units that must be served. All of the 250 units will be rent and income restricted at 60% of AMFI.

The development was previously awarded an allocation of competitive Housing Tax Credits in 1993. The initial Tax Credit Compliance Period expired on December 31, 2009. There is an Extended Use Restriction Agreement in place on the property until December 31, 2024 which has a Right of First Refusal requirement. On August 5, 2014 the Department issued a letter confirming the Development successfully met the Right of First Refusal requirement and is therefore eligible to be sold and purchased.

The current ownership structure includes Southstar Realty Corporation as the managing general partner with 70% ownership interest, Colonial Equities own 25% interest and Outreach Housing Corporation, a non-profit corporation, owns 5% ownership interest in the general partner. An ownership transfer for the aforementioned ownership structure was submitted to the Department that requested the 5% general partner interest of Outreach Housing Corporation be transferred to Rainbow Housing Assistance Corporation, a non-profit corporation. The sole purpose of this ownership transfer to Rainbow is to preserve the acquisition credits that are currently available with the existing partnership structure. This request is still under review by staff.

Organizational Structure and Compliance: The Borrower is Norstar Ash Park, LLC, and the Managing Member is Norstar Ash Park, MM, LLC, comprised of Norstar Investment USA, Inc, of which Neil Brown and Gary Silver are equal principals and Black Locust, LLC, of which Richard L. Higgins is the sole member. The previous participation review pursuant to 10 TAC §1.5 did not identify any compliance or asset management issues that warrants a recommendation of denial or additional conditions on the award.

Census Demographics: The development is located at 601 East Ash Lane in Euless. Demographics for the census tract (1135.18) include AMFI of \$53,119; the total population is 5,258; the minority population is 50.40%; the poverty rate is 7.44%; there are 14 owner-occupied units and 2,808 renter units. (Census information is from FFIEC Geocoding for 2014.)

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

3d

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 4, 2014

Presentation, Discussion, and Possible Action on Inducement Resolution No. 15-001 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority - 2014 Waiting List for Good Samaritan Towers

RECOMMENDED ACTION

WHEREAS, the Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department; and

WHEREAS, the inducement allows staff to submit an application to the Bond Review Board (“BRB”) to await a Certificate of Reservation;

NOW, therefore, it is hereby

RESOLVED, that Inducement Resolution 15-001 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2014 Private Activity Bond Program for Good Samaritan Towers (#14605) is hereby approved in the form presented to this meeting.

BACKGROUND

The BRB administers the state’s annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department’s Rules and underwrite the transaction in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing and the complete application including a transcript from the hearing will then be presented before the Board for a decision on the issuance of the bonds as well as the determination of housing tax credits.

Each year, the State of Texas is notified of the cap on the amount of private activity tax exempt revenue bonds that may be issued within the state. Approximately \$581 million is set aside for multifamily until August 15th for the 2014 program year which includes the TDHCA set aside of approximately \$116 million. Inducement Resolution 15-001 reserves approximately \$7 million in state volume cap.

Good Samaritan Towers (#14605)

General Information: The existing development is located at 7750 Lilac Way in El Paso, El Paso County. The application proposes the acquisition and rehabilitation of 100 total units serving the elderly population. This transaction is proposed to be Priority 3 consisting of low income units that will be rent and income restricted at 60% of the Area Median Family Income (AMFI).

Census Demographics: Demographics for the census tract (0041.05) include an AMFI of \$25,945; the total population is 3,799; the minority population is 96.97%; the poverty rate is 40.91%; there are 555 owner occupied units and 815 renter units. (Census information from FFIEC Geocoding 2014).

Public Comment: The Department received letters of support from Senator Jose Rodriguez and Representative Naomi Gonzalez, and no letters of opposition have been received.

RESOLUTION NO. 15-001

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENTS; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental developments (the “Developments”) more fully described in Exhibit A attached hereto. The ownership of the Developments as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the “Owners”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Developments and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Developments from the proceeds of tax-exempt and taxable obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Developments listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable obligations for purposes of paying the costs of the Developments described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Developments one or more Applications for Allocation of Private Activity Bonds (the “Application”) with the Texas Bond Review Board (the “Bond Review Board”) with respect to the tax-exempt Bonds to qualify for the Bond Review Board’s Allocation Program in connection with the Bond Review Board’s authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the “Board”) has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Developments on the terms and conditions hereinafter set forth; NOW, THEREFORE,

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

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the “Bonds”) in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department’s credit underwriters for financial feasibility; (ii) review by the Department’s staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the “Attorney General”); (v) satisfaction of the Board that the respective Development meets the Department’s public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto (“Costs of the Developments”) from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in

connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Developments will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Developments, which Developments will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Developments. The Costs of the Developments may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Developments. Without limiting the generality of the foregoing, the Costs of the Developments shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Developments, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Developments, the placing of the Developments in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature.

Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell & Giuliani LLP or other nationally recognized bond counsel acceptable to the Department (“Bond Counsel”), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Developments’ necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Developments may be undertaken by any company or partnership that is a “related person” to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department’s official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as Authorized Representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Director of Multifamily Finance and Fair Housing of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Developments and Owners. The Board finds that:

- (a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Developments is a public purpose and will provide a public benefit;
and
- (e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Developments will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 4th day of September, 2014.

[SEAL]

By: _____
Chair, Governing Board

ATTEST:

Secretary to the Governing Board

Signature Page to Inducement Resolution

EXHIBIT “A”

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Good Samaritan Towers	Lilac Way Good Samaritan Housing, Limited Partnership	General Partner: Lilac Way Good Samaritan Housing GP, Inc	\$7,000,000
Costs: Acquisition and rehabilitation of a 100-unit affordable, multifamily, senior development located at 7750 Lilac Way, El Paso, El Paso County, Texas 79915.			

14605

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JOSÉ RODRÍGUEZ

STATE SENATOR

SENATE DISTRICT 29

EL PASO, CULBERSON, HUDSPETH, PRESIDIO & JEFF DAVIS COUNTIES

July 31, 2014

Mrs. Teresa Morales
Multifamily Division Manager
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711

RE: Good Samaritan Towers, 7750 Lilac Way, El Paso, TX 79915

Dear Mrs. Morales:

I write this letter in support for the Good Samaritan Towers, which is located in State Senate District 29.

Good Samaritan Towers is an existing 100-unit project that was originally built in 1980 and serves low income seniors. The Good Samaritan Society is submitting a bond/4% application to TDHCA to finance the rehabilitation of the project, which will increase the residents' standard of living and continue to keep it affordable for the residents.

As the State Senator for this area, I encourage your support for an award and commitment. This community is in great need of affordable housing, and your immediate attention and support is appreciated.

I appreciate your service to the agency and the State of Texas. If may be of further assistance, please do not hesitate to contact my Chief of Staff, Sushma Smith, at (512) 463-0129.

Sincerely,

José Rodríguez

08-04-13P96934-ARNV

COMMITTEES

JURISPRUDENCE, VICE CHAIR ★ CRIMINAL JUSTICE ★ GOVERNMENT ORGANIZATION
VETERAN AFFAIRS & MILITARY INSTALLATIONS

STATE OF TEXAS
HOUSE OF REPRESENTATIVES



NAOMI R. GONZALEZ
DISTRICT 76

July 23, 2014

Ms. Teresa Morales
Multifamily Division Manager
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711

*Re: Good Samaritan Towers
7750 Lilac Way, El Paso, El Paso County, TX 79915*

Dear Mrs. Morales,

I received the Public Notification for Good Samaritan Towers, located at the above address in El Paso and in Texas State House District 76, which I represent.

I am pleased to lend my support to this Development which will serve the constituents in my District.

Sincerely,

A handwritten signature in cursive script that reads "Naomi R. Gonzalez".

Representative Naomi R. Gonzalez

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**To Be Posted
three days
prior to the meeting**

EXECUTIVE SESSION