BOARD MEETING OF MARCH 12, 2015

J. Paul Oxer, Chair

Juan Muñoz, Vice-Chair
Leslie Bingham Escareño, Member
T. Tolbert Chisum, Member
Tom Gann, Member
J. B. Goodwin, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

A G E N D A
9:30 AM
March 12, 2015

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

CALL TO ORDER
ROLL CALL — **J. Paul Oxer, Chairman**
CERTIFICATION OF QUORUM

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

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

Recognition of Eric Pike, Director of the Texas Homeownership Program, upon his retirement.

CONSENT AGENDA

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

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

LEGAL

a) Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Orders concerning related properties: El Patrimonio Apartments (HTC 00010 / CMTS 30), Island Palms Apartments (HTC 95034 / CMTS 1341), Vida Que Canta Apartments (HTC 05092 / CMTS 4257), La Estancia Apartments (HTC 01031 / CMTS 274), and La Herencia Apartments (HTC 97047 / CMTS 1697) — **Jeff Pender**, Deputy General Counsel

b) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Southeast Texas Community Development Corporation (HOME 537606 / CMTS 2680)

c) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Bread of Life, Inc (Emergency Shelter Grants Contract # 42110001270)

COMMUNITY AFFAIRS

d) Presentation, Discussion, and Possible Action on Approval of the Draft Federal Fiscal Year ("FFY") 2015 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan for Public Comment — **Michael DeYoung**, Director of Community Affairs

ASSET MANAGEMENT

e) Presentation, Discussion, and Possible Action regarding Housing Tax Credit Application Amendments — **Raquel Morales**, Director of Asset Management

11202	Hunter's Chase	Rockdale
12065	La Ventana	Abilene
14150	Eagles Rest	San Antonio

HOME PROGRAM

f) Presentation, Discussion, and Possible Action regarding an amendment to HOME CHDO Single Family Development Contract Number 1001522 for the development of eight single family homes by Architecture for Charity of Texas located in Los Fresnos, Cameron County — **Jennifer Molinari**, Director of HOME Program

RULES

g) Presentation, Discussion, and Possible Action regarding adoption of the final 2015 State of Texas Low Income Housing Plan and Annual Report, and an order adopting amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication in the *Texas Register* — **Elizabeth Yevich**, Director of Housing Resource Center

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) TDHCA Outreach Activities - February 2015 — **Michael Lyttle**, Chief of External Affairs

b) Status Report on the Section 811 PRA Program — **Brooke Boston**, Deputy Executive Director

c) Report on the National Housing Trust Fund — **Brooke Boston**, Deputy Executive Director

d) Report from the Deputy Executive Director for Single Family, Community Affairs and Metrics — **Brooke Boston**, Deputy Executive Director

e) Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers — **Raquel Morales**, Director of Asset Management

ITEM 3: OTHER REPORT ITEMS, INCLUDING POSSIBLE ACTION WITH RESPECT THERETO:

a) Presentation, Discussion, and Possible Action withdrawing proposed amendments to 10 TAC §1.5, Previous Participation — **Patricia Murphy**, Chief of Compliance

b) Update and Possible Action Regarding Status of Urban League of Greater Dallas submittal of required single audit

ACTION ITEMS

ITEM 4: COMMUNITY AFFAIRS

a) Presentation, Discussion, and Possible Action regarding Denial of Program Year 2015 Low Income Home Energy Assistance Program ("LIHEAP"), and PY 2014 and 2015 Department of Energy Weatherization Assistance Program ("DOE-WAP") Awards to Cameron and Willacy Counties Community Projects, Inc. and for LIHEAP the Commencement of the 30-day Notification Period required by §2105.203 of the Texas Government Code — **Michael DeYoung**, Director of Community Affairs

b) Presentation, Discussion, and Possible Action to Authorize the Procurement of a Single Audit Firm for performance of an Audit for Cameron and Willacy Counties Community Projects, Inc. ("CWCCP")

ITEM 5: MULTIFAMILY FINANCE

a) Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under any of the Department's Program Rules

Jean Latsha
Director of Multifamily Finance

15053 911 Glenoak Apartments Corpus Christi

b) Presentation, Discussion, and Possible Action on a Request for the Reissuance of Competitive (9%) Housing Tax Credits to Royal Gardens Mineral Wells (#12074), including any necessary waivers

ITEM 6: REAL ESTATE ANALYSIS

Presentation, Discussion, and Possible Action on the proposed amendments to 10 TAC Chapter 10 §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4) concerning Underwriting and Loan Policy and directing their publication for public comment in the *Texas Register*

Tom Gouris
DED of Asset Analysis and Management

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 Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.
2. Pursuant to Tex. Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
   a) The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., filed in federal district court, Northern District of Texas, and pending before the Supreme Court of the United States.
   b) McCardell v. HUD et al.
3. Pursuant to Tex. Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't. Code, Chapter 551:
   a) Any posted agenda item
4. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or-
5. Pursuant to Tex. Gov't. Code, §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

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

ADJOURN

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

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

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512- 475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

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

CONSENT AGENDA

1a

BOARD ACTION REQUEST

LEGAL DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Orders concerning related properties: El Patrimonio Apartments (HTC 00010 / CMTS 30), Island Palms Apartments (HTC 95034 / CMTS 1341), Vida Que Canta Apartments (HTC 05092 / CMTS 4257), La Estancia Apartments (HTC 01031 / CMTS 274), and La Herencia Apartments (HTC 97047 / CMTS 1697)

RECOMMENDED ACTION

WHEREAS, El Patrimonio Apartments, owned by El Patrimonio Apartments, L.P., Island Palms Apartments, owned by Valley Island Palms, L.P., Vida Que Canta Apartments, owned by Vida que Canta Apartments, L.P., La Estancia Apartments, owned by La Estancia Apartments, L.P., and La Herencia Apartments, owned by La Herencia Apartments, L.P., have a history of uncorrected compliance findings relating to the applicable land use restriction agreements and the associated statutory and rule requirements;

WHEREAS, on February 24, 2015, owner's representatives met with the Enforcement Committee and agreed, subject to Board approval, to enter into five Agreed Final Orders, each assessing an administrative penalty of $200.00, to be fully forgiven if all violations are resolved on or before April 13, 2015;

WHEREAS, unresolved compliance violations at El Patrimonio Apartments relate to rent refunds of under $10.00 due to each of 25 tenants;

WHEREAS, unresolved compliance violations at Island Palms Apartments relate to failure to provide Fair Housing Disclosure Notices for four units, and a miscalculated utility allowance that remains unresolved due to a possible misunderstanding regarding whether or not residents are charged for natural gas water heating;

WHEREAS, unresolved compliance violations at Vida que Canta Apartments relate to failure to provide Tenant Amenities and Services Notices to three units;

WHEREAS, unresolved compliance violations at La Estancia Apartments relate to failure to provide Fair Housing Disclosure Notices for two units;

WHEREAS, unresolved compliance violations at La Herencia Apartments relate to failure to provide Fair Housing Disclosure Notices for two units; 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 five Agreed Final Orders, each assessing an administrative penalty of $200.00, subject to forgiveness as outlined above for noncompliance at El Patrimonio Apartments (HTC 00010 / CMTS 30), Island Palms Apartments (HTC 95034 / CMTS 1341), Vida Que Canta Apartments (HTC 05092 / CMTS 4257), La Estancia Apartments (HTC 01031 / CMTS 274), and La Herencia Apartments (HTC 97047 / CMTS 1697), substantially in the forms presented at this meeting, and authorizing any non-substantive technical corrections, are hereby adopted as the orders of this Board.

BACKGROUND

Each of the properties listed below are low income apartment complexes that are subject to Land Use Restriction Agreements ("LURAs") signed in consideration for annual allocations of housing tax credits in order to build and operate the properties. Each property is ultimately controlled by P. Rowan Smith.

Property	Owner	Annual HTC Allocation	Award Year	LURA expires	# Units	Location
El Patrimonio Apartments	El Patrimonio Apartments, L.P.	$962,746	2000	12/31/2014	192 units, 75% restricted	McAllen, Hidalgo County
Island Palms Apartments	Valley Island Palms, L.P.	$1,193,996	1995	12/31/2026	250 units, 100% restricted	Edinburg, Hidalgo County
Vida Que Canta Apartments	Vida que Canta Apartments, L.P.	$953,820	2005	12/31/2046	160 units, 100% restricted	Mission, Hidalgo County
La Estancia Apartments	La Estancia Apartments, L.P.	$659,128	2001	12/31/2041	128 units, 75% restricted	Weslaco, Hidalgo County
La Herencia Apartments	La Herencia Apartments, L.P.	$861,263	1997	12/31/2039	160 units, 100% restricted	Mercedes, Hidalgo County

When file monitoring reviews were performed for the above referenced properties on July 12, 2012, October 31, 2013, April 15, 2014, and April 24, 2013, respectively, multiple violations were identified. The following violations remain unresolved as of the date of this Board Item:

1. El Patrimonio Apartments – Failure to comply with additional rent and occupancy restrictions requiring 44 units at the 50% rent limits. Property is required to issue rent refunds of under $10.00 to each of 25 tenants. Refunds are underway and partial evidence has been received.

2. Island Palms Apartments –

    a. Failure to provide Fair Housing Disclosure Notices for 4 units;

    b. Miscalculated utility allowance that remains unresolved due to a possible misunderstanding regarding whether or not residents are charged for natural gas water heating.

3. Vida que Canta Apartments – Failure to provide Tenant Amenities and Services Notices to 3 units.

4. La Estancia Apartments – Failure to provide Fair Housing Disclosure Notices for 2 units.

5. La Herencia Apartments – Failure to provide Fair Housing Disclosure Notices for 2 units.

Owner representatives met with the Enforcement Committee on February 24, 2015, and agreed to sign one Agreed Final Order per property, with each calling for a $200.00 administrative penalty that is to be fully forgiven if all compliance violations listed above are resolved on or before April 13, 2015.

Consistent with direction from the Department's Enforcement Committee, a fully forgivable administrative penalty in the amount of $200.00 is recommended for each property listed above, for a total administrative penalty of $1,000.00.

ENFORCEMENT ACTION AGAINST EL PATRIMONIO APARTMENTS, LP WITH RESPECT TO EL PATRIMONIO APARTMENTS (HTC FILE # 00010 / CMTS # 30)	§ § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th[th] day of March, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **EL PATRIMONIO APARTMENTS, LP,** a Texas limited partnership ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. 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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 2000, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $962,746.00 to build and operate El Patrimonio Apartments ("Property") (HTC file No. 00010/ CMTS No. 30 / LDLD No. 474).

3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective September 30, 2001, and filed of record at Document Number 1025782 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").

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

Compliance Violations[1]*:*

5. An on-site monitoring review was conducted on July 12, 2012, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a December 4, 2012, corrective action deadline was set. The following violations were not corrected before the corrective action deadline and remain unresolved at the time of this order:

   a. Respondent failed to meet additional rent and occupancy restrictions, a violation of Appendix A of the LURA, which requires at least 44 units to be occupied by tenants at or below 50% of the Area Median Gross Income ("AMGI"), with rents at or below the allowable tax credit rents at the 50% AMGI level. El Patrimonio Apartments has a total of 192 units, 44 of which are required to meet the 50% AMGI restriction. Respondent failed to maintain that minimum requirement and only 19 of the required 44 units were restricted to the 50% rent limits at the time of the monitoring review. 25 units were overcharged rents as the result of a miscalculation, a violation of gross rent limitations at 10 TEX. ADMIN. CODE §60.120 and current 10 TEX. ADMIN. CODE §10.622, requiring the overcharged rents to be refunded – not credited – back to the households at Attachment 1.

[Remainder of page intentionally blank]

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

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated Appendix A of the LURA and 10 TEX. ADMIN. CODE §60.120 in 2012 by failing to meet additional rent and occupancy restrictions.

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 $200.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $200.00, 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 April 13, 2015.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, 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 $200.00 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 11th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

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

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

THE STATE OF TEXAS §
§
COUNTY OF _____§

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

(Seal)

_____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

(Seal)

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____§

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

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

RESPONDENT:

EL PATRIMONIO APARTMENTS, LP,
a Texas limited partnership

EL PATRIMONIO APARTMENTS I, L.L.C.,
a Texas limited liability corporation, its general partner

By: _____

Name: _____

Title: _____

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

_____
Signature of Notary Public

_____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

Required rent refund amounts

El Patrimonio Apartments
CMTS ID: 30
50% Rent Test

Unit #	MI Date	HH Name	date of noncompliance	Bdrm	USR %	TRP	UA	Total Rent	50% limit 12/2011	$ over?	total refund (April-December 2012)	50% limit 12/2012	over after 12/2012?
21	07/16/2004	Rubio	4/1/2012	2	50	480	101	581	580	1	9	597	-16
24	04/20/2011	Cruz	4/1/2012	2	50	480	101	581	580	1	9	597	-16
33	11/04/2005	Longoria	4/1/2012	2	50	480	101	581	580	1	9	597	-16
41	11/05/2009	Chavez	4/1/2012	2	50	480	101	581	580	1	9	597	-16
44	12/09/2011	Salinas	4/1/2012	2	50	480	101	581	580	1	9	597	-16
51	11/21/2008	Hernandez	4/1/2012	2	50	480	101	581	580	1	9	597	-16
82	03/28/2005	Silva	4/1/2012	2	50	480	101	581	580	1	9	597	-16
91	10/15/2009	Aguirre	4/1/2012	2	50	480	101	581	580	1	9	597	-16
94	09/23/2008	Rivera	4/1/2012	2	50	480	101	581	580	1	9	597	-16
203	03/15/2011	Salgado	4/1/2012	2	50	480	101	581	580	1	9	597	-16
233	10/17/2011	Olivarez	4/1/2012	2	50	480	101	581	580	1	9	597	-16
251	03/24/2011	Hernandez	4/1/2012	2	50	480	101	581	580	1	9	597	-16
254	09/15/2011	Quiroga	4/1/2012	2	50	480	101	581	580	1	9	597	-16
262	01/20/2012	Silva	4/1/2012	2	50	480	101	581	580	1	9	597	-16
263	03/13/2012	VANEZ	4/1/2012	2	50	480	101	581	580	1	9	597	-16
332	11/28/2011	Carpio	4/1/2012	2	50	480	101	581	580	1	9	597	-16
333	06/09/2010	Zavala	4/1/2012	2	50	480	101	581	580	1	9	597	-16
334	08/23/2011	Zuniga	4/1/2012	2	50	480	101	581	580	1	9	597	-16
431	09/15/2008	Garcia	4/1/2012	2	50	480	101	581	580	1	9	597	-16
432	08/14/2007	Salazar	4/1/2012	2	50	480	101	581	580	1	9	597	-16
433	04/16/2012	PICCONE	4/16/2012	2	50	480	101	581	580	1	9	597	-16
434	11/30/2007	Castro	4/1/2012	2	50	480	101	581	580	1	9	597	-16
443	10/12/2011	Salinas	4/1/2012	2	50	480	101	581	580	1	9	597	-16
451	12/08/2011	Zuniga	4/1/2012	2	50	480	101	581	580	1	9	597	-16
463	10/07/2011	Guerrero	4/1/2012	2	50	480	101	581	580	1	9	597	-16
471	02/04/2010	Moreira	4/1/2012	2	50	480	101	581	580	1	9	597	-16

Attachment 2

1/7/2015 letter with refund instructions

(see attached)

If a household is due a rent refund and can be located, follow the instructions in the attached letter in accordance with the requirements at 10 Tex. Admin. Code §10.622.

If a household is due a rent refund and is not able to be located, you have two options:

1. Follow instructions in the attached letter in accordance with requirements at 10 Tex. Admin. Code §10.622, and submit evidence of the opened trust account; or
2. In the event that bank fees for the required trust account(s) will exceed the amount of the required refund, the Executive Director for TDHCA has approved suspending the trust fund requirement in accordance with his authority at 10 Tex. Admin. Code §10.626. Instead, you proposed and the Executive Director of TDHCA approved maintaining a reserve in the property's operating account to cover these amounts due to tenants, then remitting the funds to the Texas Comptroller of Public Accounts after the 4 year claim period has expired. If you choose this option:
    a. Submit evidence of the established reserve in your operating account via CMTS on or before the deadline indicated above;
    b. Continue to maintain the operating reserve for four years from the date that the funds are set aside;
    c. Maintain records of the operating reserve on site for future compliance monitoring visits;
    d. Maintain records regarding any tenants who claim funds from the operating reserves, including cancelled checks;
    e. Maintain records regarding any funds remitted to the Texas Comptroller of Public Accounts once the 4 year claim period has expired.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
www.tdhca.state.tx.us

Rick Perry
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
Juan S. Muñoz, PhD, *Vice Chair*
Leslie Bingham-Escareño
T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

January 7, 2015

Writer's direct phone # (512) 475 -4603
Email: cody.campbell@tdhca.state.tx.us

Rowan Smith
El Patrimonio Apartments, LP
Houston, Texas
Rowan@texasreg.com

RE: El Patrimonio Apartments CMTS ID: 30

Dear Mr. Smith:

The Texas Department of Housing and Community Affairs (Department) has received documentation addressing the noncompliance identified during the monitoring review conducted at El Patrimonio Apartments on July 12, 2012.

The documents submitted do not correct the following findings:

- **Failure to comply with additional rent and occupancy restrictions:** The property is required to maintain 44 units restricted at the 50% rent limit. During the on-site review, the Department was only able to identify 19 units which met this requirement. On December 3, 2014, the Department sent the owner a list of units which were required to be refunded overcharged rent in order to correct this noncompliance. On December 30, 2014, the owner submitted tenant ledgers demonstrating that the required tenants had been credited the amount of the rent overcharged; however, this is insufficient to correct the noncompliance. Under the current rules, it is a requirement that the total amount rent overcharged be refunded (not credited) back to each affected household. To correct, submit documentation that each household on the attached spreadsheet has been refunded the total refund reflected. An example of acceptable documentation would be copies of cancelled checks in the amount of the overcharge. If the household listed has moved out, the amount of rent overcharges must still be refunded to the household. If the household is not able to be located, a trust account must be established and must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

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

The Department's Enforcement Committee has been provided an update on the uncorrected noncompliance issue associated with the onsite monitoring review. Please see 10TAC§2.302 for a listing of specific penalty amounts.

If you have any questions, please contact Cody Campbell toll free in Texas at (800) 643-8204, directly at (512) 475-4603 or email: cody.campbell@tdhca.state.tx.us.

Sincerely,

CCM

Digitally signed by Cody Campbell
Date: 2015.01.07 13:10:16 -06'00'

Cody Campbell
Compliance Monitor

ccc
cc: Ysella Kaseman

ENFORCEMENT ACTION AGAINST VALLEY ISLAND PALMS, LP WITH RESPECT TO ISLAND PALMS APARTMENTS (HTC FILE # 95034 / CMTS # 1341)	§ § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of March, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **VALLEY ISLAND PALMS, LP,** a Texas limited partnership ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. 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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 1995, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $1,193,996.00 to build and operate Island Palms Apartments ("Property") (HTC file No. 95034 / CMTS No. 1341 / LDLD No. 217).

3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective May 29, 1997, and filed of record at Document Number 644516 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").

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

Compliance Violations[1]*:*

5. An on-site monitoring review was conducted on October 31, 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 March 17, 2014, corrective action deadline was set. The following violations were not corrected before the corrective action deadline and remain outstanding at the time of this order:

   a. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TEX. ADMIN. CODE §10.607 (Utility Allowances), which requires all developments to establish a utility allowance. At the time of the monitoring review, the utility allowance from the local public housing authority that was being used by the Property did not have an effective date and had not been implemented. Partial corrective documentation was received; however, an incorrect calculation was used for the two bedroom allowance. Additional corrective documentation was received to address the two bedroom allowance, but the documentation indicated that tenants were not responsible for paying natural gas water heating. Any change to utilities paid by the tenant must be submitted to the Department for approval prior to implementation and no request was received. Respondent has since indicated verbally that this was an error and tenants are not responsible for paying natural gas water heating but must submit documentation. The finding remains unresolved.

   b. Respondent failed to provide the Fair Housing Disclosure Notice for units 71, 223, 424, and 604, a violation of 10 TEX. ADMIN. CODE § 10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. Corrective documentation was received, but the forms were not completed within the appropriate signature periods and the findings remain unresolved.

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

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TEX. ADMIN. CODE §10.607 in 2013, by failing to properly calculate a utility allowance.

5. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 71, 223, 424, and 604.

6. 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.

7. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

8. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code 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.

9. An administrative penalty of $200.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $200.00, 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 April 13, 2015.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, 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 $200.00 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 11th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

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

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

THE STATE OF TEXAS §
§
COUNTY OF _____ §

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

(Seal)

_____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

(Seal)

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____§

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

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

RESPONDENT:

VALLEY ISLAND PALMS, LP, a Texas limited partnership

VALLEY ISLAND PALMS I, L.L.C., a Texas limited liability corporation, its general partner

P ROWAN SMITH JR TRUST, its member

By: _____

Name: _____

Title: _____

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

_____

Signature of Notary Public

_____

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

File Monitoring Instructions

Upload the following corrective documentation to CMTS by following the instructions at this link: http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf. Once uploaded, email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to indicate that documentation is ready for review.

1. Utility allowance finding: Revised utility allowance calculations for one, two, and three bedroom units were received, but the calculations indicated that tenants are now responsible for paying natural gas water heating. The Department does not have record of a request to change the utilities paid for by the tenant as required per 10 TEX. ADMIN. CODE §10.614(b).

During the Enforcement Committee Informal Conference on February 24, 2015, Respondent stated verbally that this was a mistake. According to Respondent, the Property pays natural gas water heating and does not pass the cost along to residents.

If the utility allowance submission that included natural gas water heating was a mistake and tenants are not responsible for paying this cost, submit a letter explaining the error and requesting that TDHCA reconsider the finding. Also include a correctly calculated utility allowance omitting natural gas water heating, along with a revised Unit Status Report reflecting the correct allowance.

If the utility allowance submission that included natural gas water heating was not a mistake and tenants are responsible for paying this cost, submit a request for tenants to now be responsible for natural gas water heating. For instructions and necessary documentation needed to obtain approval, please visit the Department's utility allowance page here: http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm. Please note that if the public housing authority has updated the utility allowance schedule, the most current version must be used within ninety days it was made available to the public.

2. Fair Housing Disclosure Notice Finding for Units 71, 223, 424, and 604:

An amendment to 10 TEX. ADMIN. CODE §10.613 has condensed the Fair Housing Disclosure Notice and the Tenant Services and Amenities Notice into a single document called the Tenant Rights and Resources Guide, available online at: http://www.tdhca.state.tx.us/pmcomp/forms.htm along with an Acknowledgement form that must be signed by residents.

Complete the guide, then post a laminated copy in the office.

Provide a copy to the tenants in units 424 and 604, then have them sign the Acknowledgment. Submit a copy of the completed guide and Acknowledgements for units 424 and 604.

The Unit Status Report indicates that the households that were present in units 71 and 223 at the time of the 10/31/2013 file monitoring review have since moved out; therefore, the finding is uncorrectable for these units. Please include the move-out date in your response and acknowledge that the finding is uncorrectable.

ENFORCEMENT ACTION AGAINST LA ESTANCIA APARTMENTS, L.P. WITH RESPECT TO LA ESTANCIA APARTMENTS (HTC FILE # 01031 / CMTS # 274)	§ § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of March, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **LA ESTANCIA APARTMENTS, L.P.,** a Texas limited partnership ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. 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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 2001, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $659,128.00 to build and operate La Estancia Apartments ("Property") (HTC file No. 01031 / CMTS No. 274 / LDLD No. 479).

3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 2, 2002, and filed of record at Document Number 1150500 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").

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

Compliance Violations[1]*:*

5. An on-site monitoring review was conducted on April 24, 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 an August 13, 2013, corrective action deadline was set. The following violations were not corrected before the corrective action deadline and remain outstanding at the time of this order:

   a. Respondent failed to provide the Fair Housing Disclosure Notice for units 74 and 274, a violation of 10 TEX. ADMIN. CODE § 10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. Corrective documentation was received, but the forms were not completed within the appropriate signature periods and the findings remain unresolved.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

[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.

4. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 74 and 274.

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 $200.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $200.00, 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 April 13, 2015.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, 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 $200.00 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 11th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

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

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

THE STATE OF TEXAS §
§
COUNTY OF _____ §

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

(Seal)

_____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

(Seal)

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____§

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

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

RESPONDENT:

LA ESTANCIA APARTMENTS, L.P., a Texas limited partnership

LA ESTANCIA APARTMENTS I, L.L.C.,
a Texas limited liability corporation, its general partner

BOZRAH INTERNATIONAL MINISTRIES, INC., its 100% shareholder

By: _____

Name: P. Rowan Smith

Title: Manager

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

_____
Signature of Notary Public

_____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

File Monitoring Instructions

Upload the following corrective documentation to CMTS by following the instructions at this link: http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf. Once uploaded, email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to indicate that documentation is ready for review.

Fair Housing Disclosure Notice Finding for Units 74 and 274:

An amendment to 10 TEX. ADMIN. CODE §10.613 has condensed the Fair Housing Disclosure Notice and the Tenant Services and Amenities Notice into a single document called the Tenant Rights and Resources Guide, available online at: http://www.tdhca.state.tx.us/pmcomp/forms.htm along with an Acknowledgement form that must be signed by residents.

Complete the guide, then post a laminated copy in the office.

Provide a copy to the tenants in units 74 and 274, then have them sign the Acknowledgment. Submit a copy of the completed guide and Acknowledgements.

If a household in one of these units has since moved out, please include the move-out date in your response and acknowledge that the finding is uncorrectable.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
LA HERENCIA APARTMENTS, LP	§	TEXAS DEPARTMENT OF
WITH RESPECT TO LA HERENCIA	§	HOUSING AND
(HTC FILE # 97047 / CMTS # 1697)	§	COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of March, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **LA HERENCIA APARTMENTS, LP,** a Texas limited partnership ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. 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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 1997, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $861,263.00 to build and operate La Herencia ("Property") (HTC file No. 97047 / CMTS No. 1697 / LDLD No. 535).

3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 9, 1998, and filed of record at Document Number 735216 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").

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

Compliance Violations[1]*:*

5. An on-site monitoring review was conducted on April 24, 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 an August 1, 2013, corrective action deadline was set. The following violations were not corrected before the corrective action deadline and remain outstanding at the time of this order:

   a. Respondent failed to provide the Fair Housing Disclosure Notice for units 154 and 362, a violation of 10 TEX. ADMIN. CODE § 10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. Corrective documentation was received, but the forms were not completed within the appropriate signature periods and the findings remain unresolved.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

[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.

4. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 154 and 362.

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 $200.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $200.00, 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 April 13, 2015.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, 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 $200.00 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 11th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

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

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

THE STATE OF TEXAS §
§
COUNTY OF _____§

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

(Seal)

_____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

(Seal)

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____§

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

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

RESPONDENT:

LA HERENCIA APARTMENTS, LP, a Texas limited partnership

LA HERENCIA APARTMENTS I, L.L.C., a Texas limited liability corporation, its general partner

By: _____

Name: P. Rowan Smith

Title: Member

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

_____
Signature of Notary Public

_____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____
My Commission Expires: _____

Attachment 1

File Monitoring Instructions

Upload the following corrective documentation to CMTS by following the instructions at this link: http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf. Once uploaded, email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to indicate that documentation is ready for review.

Fair Housing Disclosure Notice Finding for Units 154 and 362:

An amendment to 10 TEX. ADMIN. CODE §10.613 has condensed the Fair Housing Disclosure Notice and the Tenant Services and Amenities Notice into a single document called the Tenant Rights and Resources Guide, available online at: http://www.tdhca.state.tx.us/pmcomp/forms.htm along with an Acknowledgement form that must be signed by residents.

The Unit Status Report indicates that the households that were present in units 154 and 362 at the time of the 4/25/2013 file monitoring review have since moved out; therefore, the finding is uncorrectable for either unit. Please include the move-out date in your response and acknowledge that the findings are uncorrectable.

ENFORCEMENT ACTION AGAINST VIDA QUE CANTA APARTMENTS, L.P. WITH RESPECT TO VIDA QUE CANTA APARTMENTS (HTC FILE # 05092 / CMTS # 4257)	§ § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of March, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **VIDA QUE CANTA APARTMENTS, L.P.,** a Texas limited partnership ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. 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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 2005, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $953,820.00 to build and operate Vida Que Canta Apartments ("Property") (HTC file No. 05092 / CMTS No. 4257 / LDLD No. 322).

3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 12, 2006, and filed of record at Document Number 1712424 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").

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

Compliance Violations[1]*:*

5. An on-site monitoring review was conducted on April 15, 2014, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an August 17, 2014, corrective action deadline was set. The following violations were not corrected before the corrective action deadline and remain outstanding at the time of this order:
    a. Respondent failed to provide the Tenant Amenities and Supportive Services Notice for units 118, 417, and 518, a violation of 10 TEX. ADMIN. CODE § 10.613 (Lease Requirements), which requires all developments to provide to each household, at the time of execution of an initial lease and whenever there is a subsequent change in common amenities, unit amenities, or required services, a notice describing those amenities and services. Forms were submitted for the three units on January 31, 2015, but there were problems with the signature dates and the findings remain unresolved.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

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

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2014, by failing to execute the Tenant Amenities and Supportive Services Notice for units 118, 417, and 518.

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 $200.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $200.00, 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 April 13, 2015.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, 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 $200.00 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 11th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

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

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

THE STATE OF TEXAS §
§
COUNTY OF _____ §

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

(Seal)

_____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

(Seal)

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____§

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

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

RESPONDENT:

VIDA QUE CANTA APARTMENTS, L.P., a Texas limited partnership

VIDA QUE CANTA APARTMENTS I, L.L.C., a Texas limited liability corporation, its general partner

BOZRAH INTERNATIONAL MINISTRIES, INC., its 100% shareholder

By: _____

Name: P. Rowan Smith

Title: Manager

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

_____
Signature of Notary Public

_____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

File Monitoring Instructions

Upload the following corrective documentation to CMTS by following the instructions at this link: http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf. Once uploaded, email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to indicate that documentation is ready for review.

Tenant Amenities and Supportive Services Notice Findings for units 118, 417, and 518:

An amendment to 10 TEX. ADMIN. CODE §10.613 has condensed the Fair Housing Disclosure Notice and the Tenant Amenities and Supportive Services Notice into a single document called the Tenant Rights and Resources Guide, available online at: http://www.tdhca.state.tx.us/pmcomp/forms.htm along with an Acknowledgement form that must be signed by residents.

Complete the guide, then post a laminated copy in the office.

Provide a copy to the households in units 118, 417, and 518, then have them sign the Acknowledgment. Submit a copy of the completed guide and Acknowledgements. If a household in one of these units has since moved out, please include the move-out date in your response and acknowledge that the finding is uncorrectable.

1b

BOARD ACTION REQUEST

LEGAL DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Southeast Texas Community Development Corporation (HOME 537606 / CMTS 2680)

RECOMMENDED ACTION

WHEREAS, Southeast Texas Community Development Corporation, Inc. has a history of uncorrected compliance issues relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on February 24, 2015, the owner's representative met with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order, assessing an administrative penalty of $1,000.00, to be fully forgiven if all violations are resolved on or before April 13, 2015;

WHEREAS, unresolved compliance violations subject to this enforcement action include two gross rent violations, three tenant income certification violations, and one household income limit 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 an administrative penalty of $1,000.00 subject to forgiveness as outlined above for noncompliance by Southeast Texas Community Development Corporation, Inc., substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, are hereby adopted as the order of this Board.

BACKGROUND

Southeast Community Development Corporation, Inc. directly owns nine scattered-site low income rental units comprised of three single family homes, four duplexes and two fourplexes, located in Port Arthur, Jefferson County. The units are subject to a HOME LURA signed in 2000 in consideration for a HOME loan in the amount of $650,274.00 to build and operate the properties.

According to the owner representative, the property went through serious financial difficulties between 2005 and 2008 as a result of hurricanes Rita and Ike. The area surrounding the properties suffered damage during the hurricanes and demand for units in the area decreased as a result of abandoned properties and increased crime, with the property at one time showing a 47% occupancy rate. Owner defaulted on its superior mortgage lien to Compass Bank and the subordinate mortgage lien to TDHCA, however, circumstances have improved. Owner has since cured the Compass Bank default and has been making regular monthly payments to TDHCA for about a year, though the TDHCA delinquency remains unaddressed.

The property has been referred for an administrative penalty previously but violations were resolved and the prior referral was closed informally after receiving training and technical support from the Compliance Division and Legal Division. The property has been referred again and unresolved violations include two gross rent violations, three tenant income certification violations, and one household income limit violation.

Owner representative met with the Enforcement Committee on February 25, 2015, and agreed to sign an Agreed Final Order calling for a $1,000.00 administrative penalty that is to be fully forgiven if all compliance violations listed above are resolved on or before April 20, 2015.

Consistent with direction from the Department's Enforcement Committee, a fully forgivable administrative penalty in the amount of $1,000.00 is recommended.

ENFORCEMENT ACTION AGAINST SOUTHEAST TEXAS COMMUNITY DEVELOPMENT CORPORATION, INC. (HOME FILE # 537606 / CMTS # 2680)	§ § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of March, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **SOUTHEAST TEXAS COMMUNITY DEVELOPMENT CORPORATION, INC.,** a Texas nonprofit corporation ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. 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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 1998, Respondent was awarded an allocation of HOME funds by the Board, in the amount of $650,274.00 to build and operate Southeast Texas Community Development ("Property") (HOME file No. 537606 / CMTS No. 2680 / LDLD No. 96).

3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective September 15, 2000, and filed of record at Document Number 2000042415 of the Official Public Records of Real Property of Jefferson County, Texas ("Records").

4. Respondent is a 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 Violations[1]*:*

1. An on-site monitoring review was conducted on November 21, 2013, to determine whether Respondent was complying with file monitoring requirements, including requirements to lease units to low income households and maintain records demonstrating eligibility. A prior monitoring review conducted on September 10, 2012, had identified violations that were not fully resolved because of unit vacancies, and the November 21, 2013, onsite review was conducted to fulfill two purposes: A) to verify correction of past noncompliance and B) to monitor a new set of units for compliance. Notifications of noncompliance were sent and an April 23, 2014, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:

    a. Respondent overcharged gross rents for units 2838B, 2848A, and 2848B, a violation of 10 TEX. ADMIN. CODE § 10.618 (Special Rules Regarding Rents and Rent Limit Violations), which indicates that the amount of rent paid by a household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit published by the Department. The finding for unit 2848B was corrected on February 9, 2015, 292 days past the deadline, after intervention by the Enforcement Committee. The rest remain unresolved.

    b. Respondent failed to provide Tenant Income Certification and documentation for units 2848B, 737A, 808A, 808D, 2547A, 2547B, 2741A, 2838B and 2929A, a a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation and Certification of Annual Income), which requires developments to certify and document household income using the TDHCA Income Certification form. The finding for units 737A, 808D, 2547A, 2547B, 2741A, and 2838B were corrected on February 9, 2015, 292 days past the deadline, after intervention by the Enforcement Committee. The rest remain unresolved.

[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.

c. Respondent failed to provide the Fair Housing Disclosure Notice for units 549A, 549B, 2848A, 2929C, and 2929D, a violation of 10 TEX. ADMIN. CODE § 10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. The findings were corrected on February 9, 2015, 292 days past the deadline, after intervention by the Enforcement Committee.

d. Respondent failed to ensure that the household in unit 808A qualified for occupancy, a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. The finding remains unresolved.

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

   a. Gross rent violations described in finding of fact ("FOF") #1a for units 2838B and 2848A;

   b. Tenant Income Certification violations described in FOF #1b for units 2848B, 808A, and 2929A; and

   c. Household income violation described in FOF #1d for unit 808A.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

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 § 10.618 in 2013 by overcharging gross rents for units 2838B, 2848A, and 2848B.

4. Respondent violated 10 TEX. ADMIN. CODE §10.606 in 2013 by failing to provide Tenant Income Certifications for units 2848B, 737A, 808A, 808D, 2547A, 2547B, 2741A, 2838B and 2929A.

5. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013 by failing to provide fair housing disclosure notices for units 549A, 549B, 2848A, 2929C, and 2929D.

6. Respondent violated Section 4 of the LURA and 10 TEX. ADMIN. CODE §10.606 in 2013 by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 808A.

7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.

8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

9. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.

10. An administrative penalty of $1,000.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $1,000.00, 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 April 13, 2015.

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

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of $1,000.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent 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 11th St	TDHCA Attn: Ysella Kaseman P.O. Box 13941

Austin, Texas 78701	Austin, Texas 78711

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

Approved by the Governing Board of TDHCA on _____, 2015.

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

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

THE STATE OF TEXAS §
§
COUNTY OF _____ §

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

(Seal)

_____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

(Seal)

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____§

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

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

RESPONDENT:

SOUTHEAST TEXAS COMMUNITY DEVELOPMENT CORPORATION, INC.
a Texas nonprofit corporation

By: _____

Name: _____

Title: _____

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

_____
Signature of Notary Public

_____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____
My Commission Expires: _____

Attachment 1

Tenant File Instructions

Upload the following corrective documentation to CMTS by following the instructions at this link: http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf. Once uploaded, email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to indicate that documentation is ready for review.

1. Failure to provide tenant income certification and documentation for units 2848B, 808A, and 2929A.

- 2848B – See letter at Attachment 2 for instructions.
- 2929A – See letter at Attachment 2 for instructions.
- 808A – Submit letter certifying that this vacant unit is ready for occupancy. Once occupied, follow instructions in the letter at Attachment 2. Occupancy after the 4/13/2015 deadline is acceptable provided that a letter certifying that the unit is ready for occupancy is received by the deadline.

2. Gross rent findings for units 2838B and 2848A.

- 2838B – See letter at Attachment 2 for instructions.
- 2848A – See letter at Attachment 2 for instructions.

3. Household income above income limit upon initial occupancy for unit 808A. Submit letter certifying that this vacant unit is ready for occupancy. Once occupied, follow instructions in the letter at Attachment 2. Occupancy after the 4/13/2015 deadline is acceptable provided that a letter certifying that the unit is ready for occupancy is received by the deadline.

4. For all units listed above: For any files listed above where the letter at Attachment 2 requests a Fair Housing Disclosure Notice, please check to ensure that the notice was correctly signed. According to the old rule relating to that notice, it must be signed between 30 and 120 days before notice is due under the lease. If it was not signed during that period, provide the new Tenant Rights and Resources Guide to the household and have them sign the Acknowledgment Form. This Guide recently replaced the Fair Housing Disclosure Notice and the Tenant Services and Amenities Notice, available online at: http://www.tdhca.state.tx.us/pmcomp/forms.htm along with an Acknowledgement form that must be signed by residents. Submit a copy of the Guide and signed Acknowledgment in place of the Fair Housing Disclosure Notice. Do not backdate any documents.

Attachment 2

Instruction Letter dated 2/19/2015

(see attached)

NOTE – Remember that in addition to providing instructions regarding how to resolve current violations listed at Attachment 1 and within the Agreed Final Order, this letter also identifies three new gross rent violations for units 2848A, 2929C, and 549A, and provides a new corrective deadline of 5/20/2015 to resolve those new findings. Those findings are not subject to the terms of this Agreed Final Order and may be referred for an administrative penalty at a later date if not timely resolved.

February 19, 2015

Writer's direct phone # (512) 305-9560
Email: wendy.quackenbush@tdhca.state.tx.us

Madison Hopson
Southeast Texas Community Development Corp, Inc
Beaumont, Texas
mhopson@setcdc.org

RE: Southeast Texas Community Development, Inc CMTS ID: 2680

Dear Mr. Hopson:

The Texas Department of Housing and Community Affairs (Department) has received documentation addressing the noncompliance identified during the monitoring reviews conducted at Southeast Texas Community Development, Inc on September 10, 2012 and November 21, 2013. A response was received on February 9, 2015 and February 12, 2015. The following determinations have been made.

- *Failure to provide Fair Housing Disclosure Notice* – the signed acknowledgment form for the Tenant Rights and Resources Guide was submitted for units 549A, 549B, 2848A, 2929C and 2929D. The noncompliance issue is corrected.
- *Failure to provide Tenant Income Certification and documentation* – sufficient documentation was submitted to evidence that the HOME recertification requirement has been met for the following units 2547A, 2547B, 2741A, 2838B, 737A and 803D. The noncompliance issue is corrected.
- *Gross rent exceeds the highest rent allowed under the LURA or other deed restriction* – A copy of certified funds pay to the order of the Housing Authority for the City of Port Arthur in the amount of $56 was submitted for unit 2878B. This noncompliance issue is corrected.

Please note, noncompliance that is corrected but that was not corrected during the applicable corrective action period will be considered for a three (3) year period in future funding decisions. Please see 10TAC§1.5 for additional details.

The following noncompliance remains uncorrected and the Department's Enforcement Committee has been updated. Please see 10TAC §2.302 for a listing of specific penalty amounts.

- *Failure to provide Tenant Income Certification and documentation*

1. **Unit 2848B** – copies of the lease contract and applicable lease addendum(s) were not submitted for the new household. Noncompliance cannot be corrected until all required documents for the new certification is submitted.

2. **Unit 2929A** – copies of the lease contract, applicable lease addendum(s) and Fair Housing Disclosure Notice were not submitted for the new household. Noncompliance cannot be corrected until all required documents for the new certification is submitted.

3. **Unit 808A** – the owner indicated in the corrective action response that the unit is currently vacant. To correct, occupy the unit with an income eligible household and submit the following documents: copies of the application(s), the executed Income Certification form, verifications of income and assets, lease, applicable lease addendum(s), and the executed acknowledgment form for the Tenant Rights and Resources Guide.

- *Household income above income limit upon initial occupancy (program unit not leased to low-income household*

1. **Unit 808A** - the owner indicated in the corrective action response that the unit is currently vacant. To correct, occupy the unit with an income eligible household and submit the following documents: copies of the application(s), the executed Income Certification form, verifications of income and assets, lease, applicable lease addendum(s), and the executed acknowledgment form for the Tenant Rights and Resources Guide.

- *Gross rent exceeds the highest rent allowed under the LURA or other deed restriction*

1. **Unit 2838B** – No documentation addressing this issue was received. To correct, submit a copy of the household' rent ledger from the time of move-in (9/10/2012), most recent lease contract and utility allowances from the Housing Authority for 2012, 2013, 2014 and 2015 (as applicable). If the household has moved out, also include a copy of their move-out disposition form completed by the property to evidence the move-out date. The Department will then determine the amount of rent overage that is payable to the Housing Authority regardless if the household currently occupies the unit.

2. **Unit 2848A** - No documentation addressing this issue was received. To correct, submit a copy of the household' rent ledger from the time of move-in (7/6/2011), most recent lease contract and utility allowances from the Port Arthur Housing Authority for 2012, 2013, 2014 and 2015 (as applicable). If the household has moved out, also include a copy of their move-out disposition form completed by the property to evidence the move-out date. The Department will then determine the amount of rent overage that is payable to the Housing Authority regardless if the household currently occupies the unit.

Please be advised, finding of noncompliance not corrected during the applicable corrective action period will be considered in future funding decisions. Please see 10TAC§1.5 for details.

An additional finding of noncompliance has been identified during this corrective action review and was previously cited as a concern under *Development failed to meet additional state required rent and occupancy restrictions.* Per the HOME Land Use Restriction Agreement (LURA), the development is required to have four (4) units income restricted at 50% AMI (very low income) with rent restricted at the Low-HOME limit. The unit status report submitted on (2/4/2015) seems to support the Department's concern that the development had not met this required restriction. Unit 808C is the only unit identified that the household's income is less than the 50% limit with the rent restricted at the Low-HOME limit. Documentation requested below must be submitted on or before **May 20, 2015** (a new corrective action deadline) for these three (3) units identified below. **Failure to submit will result in a referral for additional penalties.**

The unit status report indicates that the owner has designated the following units (2848A, 2929C and 349A) at or below the 50% AMI and the households' current income listed supports this designation.

However, the rent for these three (3) units exceeds the Low-HOME rent limits, which has resulted in the additional finding with:

- *Gross rent exceeds the highest rent allowed under the LURA or other deed restrictions affecting units*

1. **Unit 2848A** – date of noncompliance (1/22/2014)
2. **Unit 2929C** – date of noncompliance (11/4/2013)
3. **Unit 549A** – date of noncompliance (10/11/2013)

To correct noncompliance 1) Reduce the households' rents 2) Calculate the rent overage and notify the tenants of the reduction of rent in writing 3) Update/amend the lease contracts 4) Provide the Housing Authority a refund. To evidence compliance submit copies of the resident notices, the calculation of refunded rent (an excel spreadsheet is preferred but not required), copies of the updated lease contracts, copies of cancelled checks to the Housing Authority and current tenant ledgers. If a household has moved out, the excess monies must still be paid the Housing Authority. In accordance with 10TAC§10.622(d), HOME developments that collect rent in excess of the allowable limit, the Department will require the owner to refund the amount of rent that was overcharged (not a credit to amounts owed to the development.)

The Department will then determine whether or not the submitted materials sufficiently correct the noncompliance. Partial corrections are unacceptable and the Owner is responsible for ensuring that submissions are complete and satisfactorily address all findings. If there are questions, the Department urges you to ask them before the deadline so that a complete submission can be made. If it is not possible to provide the requested documentation by the corrective action deadline, you should submit a corrective action plan detailing how and when the issues identified will be resolved. Please be advised any uncorrected finding(s) and any noncompliance not corrected during the corrective action period will be taken into consideration prior to any future funding or awards from the Department.

Please upload your corrective action to the Electronic Document Attachment system using the development's Compliance Monitoring and Tracking System (CMTS) account. For instructions on how to use the attachment system, please see *Attaching Documents to CMTS* found on the Department's website. To access, on the home page, select "Support and Services" tab; then select "Compliance". From the submenu, select "Online Reporting".

If you have any questions, please contact Wendy Quackenbush toll free in Texas at (800) 643-8204, directly at (512) 305-8860 or email: wendy.quackenbush@tdhca.state.tx.us.

Sincerely,

Wendy Quackenbush
2015.02.19
09:08:11 -06'00'

Wendy Quackenbush
Manager, Compliance Monitoring

Cc: Ysella Kaseman -TDHCA

1c

BOARD ACTION REQUEST

LEGAL DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Bread of Life, Inc. (Contract # 42110001270)

RECOMMENDED ACTION

WHEREAS, Bread of Life, Inc. ("Subrecipient" or "Respondent"), has one uncorrected compliance finding regarding the above referenced Emergency Shelter Grant ("ESG") Program contract and the associated statutory and rule requirements;

WHEREAS, the remaining compliance finding occurred when Subrecipient procured leased facilities located at 4124 Kolb, Houston, Harris County, without following small purchase procurement requirements and despite a known conflict of interest (the property was owned by the family of a board member);

WHEREAS, disallowed costs associated with the above finding total $44,000.00;

WHEREAS, The U.S. Department of Housing and Urban Development ("HUD") monitored the Texas Department of Housing and Community Affairs ("Department") on June 23, 2014 and agreed with the compliance finding, requiring repayment of disallowed costs in the amount of $44,000.00;

WHEREAS, the Department has repaid disallowed costs to HUD in the amount of $44,000.00;

WHEREAS, Subrecipient is liable to repay the $44,000.00 in disallowed costs to the Department and there is no other corrective remedy for the finding;

WHEREAS, on February 24, 2015, a representative of Subrecipient joined an Enforcement Committee informal conference by phone and agreed, subject to Board approval, to enter into an Agreed Final Order calling for a forgivable penalty in the maximum amount of $1,000.00, and a monthly payment plan to repay the above referenced disallowed costs totaling $44,000.00 within six months, with the first payment due on April 1, 2015; and

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

NOW, therefore, it is hereby

RESOLVED, that the Agreed Final Order assessing a fully forgivable $1,000.00 administrative penalty as outlined above for noncompliance by Bread of Life, Inc. with respect to ESG Contract #42110001270, substantially in the form presented at this

meeting, and including any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

During TDHCA Fiscal Year 2011, Bread of Life, Inc. ("Respondent") was awarded by the Board an allocation of Emergency Shelter Grants ("ESG") Program funds in the total amount of $190,940.00, to provide approved services necessary to help persons that are either homeless or at risk of homelessness. The award is subject to ESG Contract Number 42110001270, which was signed on September 21, 2011 (the "Contract"). The period of performance under the Contract was September 1, 2011 through August 31, 2012.

An on-site monitoring review was conducted during 2013 to determine whether Subrecipient was in compliance with the Contract and all applicable state and federal statutes, regulations, and rules. The monitoring review resulted in multiple findings that were timely resolved, and one finding indicated below for which the only corrective action available is for Subrecipient to reimburse disallowed costs in the amount of $44,000.00 as required under the Contract.

1. Respondent procured leased facilities located at 4124 Kolb, Houston, Harris County, and, in doing so, failed to follow small purchase procurement requirements, a violation of Section 6.B of the Contract, and 10 TEX. ADMIN. CODE §5.10, both of which require compliance with procurement procedures at Office of Management and Budget ("OMB") Circular A-110 as implemented by 2 C.F.R. Part 215. In addition to the small purchase procurement violation, Respondent signed the lease contract despite a known conflict of interest; the property was owned by the family of a board member, a violation of Section 16 of the Contract regarding conflicts of interest, and a violation of OMB Circular A-110 as implemented by 2 C.F.R. Part 215, which prohibits the participation of an employee, officer, or agent in the selection, award, or administration of a contract supported by Federal Funds if the employee, officer, or agent, or any member of his or her immediate family has a financial interest. The full amount of funds expended on the leased premises, totaling $44,000.00, is a disallowed cost and must be reimbursed to TDHCA in accordance with Sections 4.C. and 22.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under this Contract.

Dana Hogan, Executive Director for Subrecipient, joined an informal conference with the Enforcement Committee by telephone on February 24, 2015. He indicated that he joined the organization after the procurement violation and has worked to ensure that the organization improved and follows procurement procedures. He also indicated that the organization's Board of Directors has been fully replaced, largely as a result of the conflict of interest component of the violation. The Enforcement Committee and Subrecipient agreed to the following terms:

1. Disallowed costs totaling $44,000.00 to be repaid to TDHCA according to the payment plan defined below.

Payment Submission Date	Minimum Payment Amount
4/1/2015	$7,333.00
5/1/2015	$7,333.00
6/1/2015	$7,333.00
7/1/2015	$7,333.00
8/1/2015	$7,333.00
9/1/2015	$7,335.00

2. Administrative penalty in the amount of $1,000.00, subject to deferral and forgiveness if full repayment is received on or before September 1, 2015.

Consistent with direction from the Department's Enforcement Committee, a fully forgivable penalty in the amount of $1,000.00 is recommended for Bread of Life, Inc.

ENFORCEMENT ACTION AGAINST BREAD OF LIFE, INC. WITH RESPECT TO EMERGENCY SHELTER GRANT PROGRAM CONTRACT # 42110001270)	§ § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of March, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **BREAD OF LIFE, INC.,** a Texas nonprofit corporation ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During TDHCA Fiscal Year 2011, Bread of Life, Inc. ("Respondent") was awarded by the Board an allocation of Emergency Shelter Grants ("ESG") Program funds in the total amount of $190,940.00, to provide approved services necessary to help persons that are either homeless or at risk of homelessness.

2. Respondent signed ESG Contract Number 42110001270 on September 21, 2011 (the "Contract"). The period of performance under the Contract was September 1, 2011 through August 31, 2012.

Compliance Violations:

3. An on-site monitoring review was conducted on January 30, 2013, to determine whether Respondent was in compliance with the Contract and all applicable state and federal statutes, regulations, and rules. The monitoring review resulted in three findings. Notifications of noncompliance were sent and a March 20, 2013, corrective deadline was set, however, the following findings were not corrected before the deadline and remain outstanding at the time of this order, with disallowed costs totaling $44,000.00:

   a. Respondent procured leased facilities located at 4124 Kolb, Houston, Harris County, Texas and, in doing so, failed to follow small purchase procurement requirements, a violation of Section 6.B of the Contract, and 10 TEX. ADMIN. CODE §5.10, both of which require compliance with procurement procedures at Office of Management and Budget ("OMB") Circular A-110 as implemented by 2 C.F.R. Part 215. In addition to the small purchase procurement violation, Respondent signed the lease contract despite a known conflict of interest; the property was owned by the family of a board member, a violation of Section 16 of the Contract regarding conflicts of interest, and a violation of OMB Circular A-110 as implemented by 2 C.F.R. Part 215, which prohibits the participation of an employee, officer, or agent in the selection, award, or administration of a contract supported by Federal Funds if the employee, officer, or agent, or any member of his or her immediate family has a financial interest. The full amount of funds expended on the leased premises, totaling $44,000.00, is a disallowed cost and must be reimbursed to TDHCA in accordance with Sections 4.C. and 22.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under this Contract.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TEX. ADMIN. CODE §2.

2. The Contract is a Program Agreement as that term is defined in 10 TAC §2.101(a)(4).

3. Respondent is a Responsible Party because it is subject to a Program Agreement (see 10 TAC §2.101(a)(5)

4. Respondent violated Section 6.B of the Contract and OMB Circular A-110 as implemented by 2 C.F.R. Part 215, by failing to follow procurement procedures and codes of conduct when leasing the property at 4124 Kolb, Houston, Harris County, Texas.

5. Because Respondent is a Responsible Party who has violated rules promulgated pursuant to Tex. Gov't Code §2306, TDHCA is authorized to impose administrative penalties pursuant to Tex. Gov't Code §2306.041

6. An administrative penalty of $1,000.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

7. Respondent is required to repay disallowed costs to the Department in accordance with Sections 4.C and 22.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under the Contract.

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

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

IT IS FURTHER ORDERED that Respondent shall repay $44,000.00 in disallowed costs in accordance with the payment schedule listed below:

Payment Submission Date	Minimum Payment Amount
4/1/2015	$7,333.00
5/1/2015	$7,333.00
6/1/2015	$7,333.00
7/1/2015	$7,333.00
8/1/2015	$7,333.00
9/1/2015	$7,335.00

IT IS FURTHER ORDERED that Respondent shall submit regular monthly payments to TDHCA beginning on 4/1/2015, as indicated at Attachment 1, to be applied toward disallowed costs.

IT IS FURTHER ORDERED that if Respondent complies with the payment requirements above and repays the full amount of disallowed costs, $44,000.00, on or before September 1, 2015, the satisfactory performance under this order will be accepted in lieu of the full assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to repay the full amount of disallowed costs, $44,000.00, or fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of $1,000.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent

IT IS FURTHER ORDERED that all monthly payments and/or penalty payments shall be submitted to the following address:

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

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

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

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

THE STATE OF TEXAS §
§
COUNTY OF _____ §

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

(Seal)

_____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

(Seal)

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____§

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

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

RESPONDENT:

BREAD OF LIFE, INC., Texas nonprofit corporation

By: _____

Name: _____

Title: _____

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

_____
Signature of Notary Public

_____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____
My Commission Expires: _____

1d

BOARD ACTION REQUEST

COMMUNITY AFFAIRS

MARCH 12, 2015

Presentation, Discussion, and Possible Action on Approval of the Draft Federal Fiscal Year ("FFY") 2015 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan for Public Comment.

RECOMMENDED ACTION

WHEREAS, the Energy Conservation In Existing Buildings Act of 1976 (42 USC §6851), as amended in Title II, Part 2 of the National Energy Conservation Policy Act allows DOE WAP funds to be utilized to carry out a program of weatherization assistance for low-income person, as well as 10% for planning and administration;

WHEREAS, the Department develops and submits a State Plan to the DOE each year to administer the WAP;

WHEREAS, the Department has received notice of Federal Fiscal Year ("FFY") 2015 Department of Energy Weatherization Assistance Program ("DOE WAP") funds in the amount of $4,657;454;

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

WHEREAS, the attached Draft FFY 2015 DOE WAP State Plan is proposed for public comment;

NOW, therefore, it is hereby

RESOLVED, that the Draft FFY 2015 DOE WAP State Plan, in the form presented to this meeting, is hereby approved for public comment and public hearing; and

FURTHER RESOLVED, that the final plan along with award recommendations to Subgrantees as indicated in Section IV.1 of the State Plan will be presented to the Board at the April 16, 2015 meeting.

BACKGROUND

The Department has received notice of an award of $4,657,454 for the 2015 DOE WAP. The funding

provides for the installation of weatherization measures to increase energy efficiency of a home including caulking; weather-stripping; adding ceiling, wall, and floor insulation; patching holes in the building envelope; duct work; and repair or replacement of energy inefficient heating and cooling systems. Additionally, the funds allow for subrecipients to complete financial audits, household energy audits, outreach and engagement activities, and program administration. Further, funding provides for state administration and state training and technical assistance activities. The list of Subgrantees and the proposed award amounts is included in the State Plan in section IV.1, Subgrantees. To the extent the awarded funds are greater or less than the amount in the draft plan, proposed activities will be proportionally adjusted.

The Draft plan will be posted on the Department's website on Monday, March 16, 2015. Further, an announcement of the availability of the draft plan and details regarding a public hearing for the plan will be published in the *Texas Register* on Friday, March 27, 2015. The Department will conduct a public hearing for the draft plan on Monday, April 6, 2015, at Department headquarters.

DOE regulations require a Weatherization Policy Advisory Council be designated in the Plan in order to provide guidance and comment on the plan. The Policy Advisory Council is comprised of six individuals appointed by the Department. The Council meeting is scheduled to occur after the conclusion of the Public Hearing and after all public comment has been received.

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BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action regarding a Housing Tax Credit Application Amendment for Hunter's Chase in Rockdale (#11202)

RECOMMENDED ACTION

WHEREAS, Hunter's Chase received an award of 9% Housing Tax Credits in 2011 to construct 80 multifamily units in Rockdale;

WHEREAS, the Application reflected the Development was proposed to be built on 7.66 acres;

WHEREAS, the Development Owner has provided a final as built survey reflecting the total final acreage to be 7.041 acres resulting in a modification of the residential density by more than 5%;

WHEREAS, the recorded Declaration of Land Use Restrictive Covenants ("LURA") requires an amendment and clerical correction to reflect the legal description to include the final 7.041 acres;

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

WHEREAS, Board approval is required for the modification to residential density by at least 5% under Texas Government Code §2306.6712 and 10 TAC §10.405(a)(4), and the Owner has complied with the amendment requirements in 10 TAC §10.405(a);

NOW, therefore, it is hereby

RESOLVED, that the amendment of the Housing Tax Credit application for Hunter's Chase and resulting amendment to LURA are 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

Hunter's Chase received a 2011 HTC award to construct 80 new multifamily units in Rockdale, Milam County. At the time of application, the Development Owner reflected that 7.66 acres would be required for the Development. At cost certification, the final as-built survey reflects that 7.041 acres were used for the Development consisting of 4.599 acres on which the buildings are developed and an additional 2.442 acres for a dedicated drainage easement. This 0.619 acre reduction (8.08% decrease) results in an increase in the residential density from 10.44 units to 11.36 units per acre, an increase of 8.79%. The recorded LURA for the development incorrectly restricts only the 4.599 acres on which the buildings are located but will be amended to correctly reflect the full 7.041 acres if approval for this request is granted.

The Owner has complied with the amendment requirements under the Department's rule at 10 TAC §10.405(a). Staff recommends approval of the amendment request.

February 6, 2015

Ms. Lee Ann Chance
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

RE: Amendment Request for Hunters Chase, TDHCA #11202

Dear Ms. Chance,

On behalf of Hunters Chase Senior Apartments, LP and Ingenious Living, LLC, I am writing to request an amendment to application #11202, Hunters Chase Senior Apartments, an 80-unit development located in Rockdale, TX. We are requesting a change in the acreage of the site and a subsequent change in the LURA to reflect the site acreage change.

Acreage
In the application for tax credits, the developer had site control of 17.49 acres but proposed to build the development on only 6.6 of those acres, as shown on the site plan submitted with the application. The developer subsequently purchased the entire tract and as planned, built on a portion of the total tract. As shown on the attached surveys, the finished building is on 4.599 acres and a drainage easement dedicated to serve the building takes up an additional 2.442 acres for a total of 7.041 acres used by the development. The 7.66 acres should always have been an estimate of the site area required to deliver the proposed development. We are requesting that the application be amended to reflect the actual area of 7.041 acres.

LURA
In the LURA, only the 4.599 acres containing the site were included. This was an error that was discovered at cost certification. We request that the full area required for the development be included in the LURA. A legal description and/or survey can be provided to make that change official

Thanks you for your consideration of this request. A check for $2500 to process the amendment is attached. We have almost reached stabilized occupancy and anticipate closing on the perm loan this spring, so time is of the essence. Please contact me at 512/698-3369 or sarah@structuretexas.com should you have questions or require additional information.

Sincerely,

Sarah H. Andre
Consultant to the Project

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action regarding a Housing Tax Credit Application Amendment for La Ventana Apartments (#12065)

RECOMMENDED ACTION

WHEREAS, La Ventana Apartments received an award of 9% Housing Tax Credits in 2012 to construct 84 multifamily units in Abilene;

WHEREAS, the Development Owner is requesting approval for a reduction in the square footage of the common area from 2,145 to 1,994 square feet, resulting in a 7.03% reduction in the square footage;

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; and

WHEREAS, Board approval is required for a material alteration to the Development under Texas Government Code §2306.6712 and 10 TAC §10.405(a)(4)(D), and the Owner has complied with the amendment requirements in 10 TAC §10.405(a)(1);

NOW, therefore, it is hereby

RESOLVED, that the amendment of the Housing Tax Credit application for La Ventana Apartments 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

La Ventana received a 2012 HTC award to construct 84 new multifamily units in Abilene, Taylor County. At cost certification, it was discovered the common area was reduced from 2,145 to 1,994 square feet. The difference of 151 square feet results in a 7.03% reduction which

requires Board approval. The Development Owner explained that the most significant reason for the reduced square footage is that the original site plan included two leasing offices within the community building; however, it was later determined that the second leasing office was not necessary to manage 84 units.

The Owner has complied with the amendment requirements under the Department's rule at 10 TAC §10.405(a). Staff recommends approval of the amendment request.

LA VENTANA

February 20, 2015

Ms. Lee Ann Chance
Asset Manager
Texas Department of Housing and Community Affairs
P.O. BOX 13941
Austin, TX 78711-3941
(512) 936-7835

RE: La Ventana, LLC – Amendment Request

Dear Ms. Chance,

I am writing you to request an amendment from TDHCA authorizing a change in square footage in the clubhouse that occurred during construction. Please see attached the common area comparison prepared by the architect for before and after. While there was an overall reduction in total square footage, the enclosed areas used by the tenants, the computer lab, fitness center, gathering room and restrooms actually increased by 95 SF. The porch areas also increased from 600 SF at application to 820 SF during construction.

The changes in the clubhouse configuration were twofold. One, we wanted to have after-hours access to the restrooms so that the pool could be open after hours as well. Otherwise the pool hours would have been limited to the times when the clubhouse was staffed. This re-work of the restroom area moved them separate from the main space, accessed off a breezeway. Two, we determined that a second office was not necessary for management of 84 units. Therefore we reduced the administrative space within the clubhouse from two offices to one offices. Overall removing the extra office space and re-working the restroom area resulting in an overall SF reduction from 2145 sq. ft. at time of application to 1994 sq. ft. after construction. However, the area available for use by the residents (offices are generally not available for resident use) increased by 95 enclosed SF and 220 porch SF.

Should you have any questions, please feel free to contact me.

Sincerely,

Louis Wolfson III
La Ventana, LLC
421 West 3rd Street, Suite 1504
Austin, TX 78701
512.383.5470

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action regarding a Housing Tax Credit Application Amendment for Eagles Rest (#14150)

RECOMMENDED ACTION

WHEREAS, Eagles Rest received an award of 9% Housing Tax Credits in 2014 to construct 108 multifamily units in San Antonio;

WHEREAS, the Development Owner is requesting approval for several changes to the Development, including a reduction of the square footage of the common area of more than 3% and changes to the site plan design and units;

WHEREAS, the changes to the site acreage, site plan design and units do not negatively affect the Development, impact the viability of the transaction, or affect the amount of tax credits awarded; and

WHEREAS, Board approval is required for a material alteration to the Development under Texas Government Code §2306.6712 and 10 TAC §10.405(a)(4)(D), and the Owner has complied with the amendment requirements in 10 TAC §10.405(a)(1);

NOW, therefore, it is hereby

RESOLVED, that the amendment of the Housing Tax Credit application for Eagles Rest 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

Eagles Rest received a 2014 HTC award to construct 108 new multifamily units in San Antonio, Bexar County. According to the owner the design team encountered city and site specific requirements that were not anticipated at the time of application which has necessitated several

changes to the Development. The site specific requirements which necessitate some of the requested changes include local jurisdiction tree preservation efforts, changes to the entry of the development as a result of road infrastructure and storm drainage projects, and the addition of a detention pond to manage surface site drainage and water shed from the existing pond. Changes to the units and buildings include the separation of the community center from one of the residential buildings to make it a stand-alone community building and slight increases in the square footage for several of the unit types.

Based on the information provided by the owner, the unit sizes for the two and four-bedroom units have increased slightly as reflected in the table below:

Unit Type	Square Footage at Application	Square Footage at Amendment	Change (%)
1BR/1BA	656 sf	656 sf	0%
2BR/2BA	914 sf	923 sf	+ 0.98%
3BR/2BA	1,050 sf	1,050 sf	0%
4BR/2BA	1,441 sf	1,460 sf	+ 1.31%

Overall the changes noted above result in a slight increase in total net rentable square footage from 104,410 square feet to 104,857 square feet, less than a 1% increase. The community building square footage has decreased as a result of separating it from one of the residential buildings as originally proposed. The common area decreased from 2,927 square feet to 2,500 square feet, resulting in a 14.6% reduction and thereby requiring Board approval pursuant to §10.405(a)(D) of the Uniform Multifamily Rules.

The owner has confirmed that there is no change to the site acreage, number of units, unit mix, or the development cost budget as a result of the changes herein described. The Real Estate Analysis Division reviewed the changes and found that the total development costs are still within 1% of the Department's estimate and would not impact the previously recommended award.

The Owner has complied with the amendment requirements in 10 TAC §10.405(a)(1). Staff recommends approval of the amendment request.

Eagles Rest Ltd.

c/o the NRP Group LLC · 200 Concord Plaza, Suite 900 · San Antonio, TX 78216
office 210-487-7878 · Fax 210-487-7880

January 23, 2015

Colton Sanders
Asset Manager
Texas Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: **TDHCA # 14150 - Eagles Rest Apartments**

Dear Mr. Sanders,

During the design development of the Eagles Rest Apartments, the design team encountered some City and site specific requirements that we didn't anticipate at the time of application which has necessitated changes to the site plan.

Also in order to improve the development services and units; we are proposing changes to the community center and some of the units / buildings.

It is important to mention that none of the proposed changes affects the number of points received by the application. The size of the site, the number of units and the unit mix remain the same.

Site Plan:

- New TXDOT road infrastructure and storm drainage planning projects require the entry drive on the FM1560 frontage to be relocated at the east/northeast corner of the site.

- A tree survey recently performed revealed a number of heritage trees that require preservation to meet local jurisdiction tree preservation requirements. Preservation methods require significant site modifications to meet building and fire codes and traffic throughout the development.

Eagles Rest Ltd.

c/o the NRP Group LLC · 200 Concord Plaza, Suite 900 · San Antonio, TX 78216
office 210-487-7878 · Fax 210-487-7880

- A detention pond was added to the project to manage surface site drainage and water shed from the existing pond located along the northeast of the site.

- To manage water and site drainage from the pond a 40′ storm drainage swale was added from the existing pond to the new detention pond. This drainage swale will run parallel and along the length of the north property line.

- The number of total parking spaces was increased from 194 spaces to 210.

- In order to enhance the design of the project and for programming reasons, the community center/leasing office was re-designed as a new building separated from building type B showing in the application concept package.

Units and Buildings:

- Total Project net square footage changed from 107,869 SF to 107,889 SF approximately a 0.5% change Please refer to the Project Summary on drawing A-101-R

- Unit B was increased from 914 SF with a total unit B net yield of 33,818 SF to 923 SF feet totaling unit B net yield of 34,151 SF. Please refer to the unit B floor plan A-302-R.

- Unit D was increased from 1,441 SF with a total unit C net yield of 51,450 SF to 1,460 SF feet totaling unit D net yield of 51,205 SF. Please refer to unit D floor plan A-304-R.

- The community center/leasing office programmed square footage was decreased from 2,927 SF to 2,500SF because the building design and footprint no longer needs to align with units above when previously located in building type B. Please refer to drawing A-305-R.

- Building B overall gross square footages significantly changed from 24,923 SF to 21,002 SF because of the removal of the community center. This square footage modification reflects the removal of the community center only and the number of units did not change. Please refer to drawing A-221-R

Eagles Rest Ltd.

c/o the NRP Group LLC · 200 Concord Plaza, Suite 900 · San Antonio, TX 78216
office 210-487-7878 · Fax 210-487-7880

Although we believe that the changes are not substantial, in the interest of time, we are including a check for $2,500.00 for the application amendment fee. If you agree that these changes do not require Board approval, we respectfully request a return of the fee.

If you consider it necessary for the amendment to be approved by the board; we would like the amendment to be considered on the board meeting of March 12, 2015.

Respectfully,

Eagles Rest LTD., a Texas limited Partnership.

By: Eagles Rest GP LLC, a Texas limited liability company, its general partner.

By: Community Housing Resource Partners, Inc. and Ohio nonprofit corporation, its sole member.

By: _____

Meghan Garza-Oswald, Executive Director

Enclosures

cc. Raquel Morales.
Debra Guerrero.
Brent McMahon.

1f

BOARD ACTION REQUEST

HOME PROGRAM DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action regarding an amendment to HOME CHDO Single Family Development Contract 1001522 for the development of eight single family homes by Architecture for Charity of Texas located in Los Fresnos, Cameron County

RECOMMENDED ACTION

WHEREAS, the Department executed a Community Housing Development Organization ("CHDO") Single Family Development Contract with Architecture for Charity of Texas on March 6, 2013;

WHEREAS, the Department executed an Amendment to the Contract which extended the Contract by one year, to end on March 5, 2015;

WHEREAS, Architecture for Charity of Texas has completed construction of eight single family homes and transferred ownership to eligible households for four of the homes; and

WHEREAS, Architecture for Charity of Texas experienced delays in obtaining appropriate licensure of the Residential Mortgage Loan Officer ("RMLO"), and has requested an additional two months extension to complete the homebuyer loan closings for the remaining four projects; and

WHEREAS, Architecture for Charity of Texas has obtained a licensed RMLO that will complete the closings for the remaining four projects; and

WHEREAS, Staff believes a four month extension, as opposed to two months, will ensure sufficient time to close all transactions;

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 amendment to extend the expiration date of HOME CHDO Single Family Development Contract 1001522 by four months, as presented to this meeting.

BACKGROUND

The Department contracted with Architecture for Charity of Texas for the acquisition and development of eight single family residential units targeting low-income homebuyers in Cameron County. Architecture for Charity of Texas has completed construction for all eight projects under the Contract and the permanent mortgage loans have closed for four of the homes. The remaining four permanent mortgage loans are not yet processed.

On February 27, 2015, Architecture for Charity of Texas submitted a request for an additional extension of two months to complete the process to close the permanent mortgage financing, which will be provided by the Department. The reason for the delay cited in the request includes difficulty in obtaining a license from the Texas Department of Savings and Mortgage Lending to perform loan origination activities. Architecture for Charity of Texas has obtained the services of a licensed RMLO, who is actively working with the identified households and who has been in contact with the Department. Architecture for Charity of Texas believes that the extension will provide sufficient time to submit documentation to the Department and for the Department to draft the documents required to close the permanent mortgage loans for the remaining four projects.

Staff has reviewed the documentation submitted to support the request and finds that the request from Architecture for Charity of Texas is reasonable. Because the cumulative total of this extension request exceeds 12 months, the Executive Director does not have authority to grant the extension; Board approval is necessary. Due to the unique nature of the Single Family Development Program and, to ensure that the Department can meet the HUD HOME commitment and expenditure deadlines for CHDO funds, staff recommends approval of the amendment request, however staff recommends an extension of four months not two, to ensure sufficient time to fulfill the terms of the contract.

1g

BOARD ACTION REQUEST

HOUSING RESOURCE CENTER

MARCH 12, 2015

Presentation, Discussion, and Possible Action regarding adoption of the final 2015 State of Texas Low Income Housing Plan and Annual Report, and an order adopting amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs ("TDHCA" or "the Department") enabling statute Texas Government Code §2306.0721 requires that the Department produce a state low income housing plan;

WHEREAS, Texas Government Code §2306.0722 requires that the Department produce an annual low income housing report;

WHEREAS, Texas Government Code, §2306.0723 requires that the Department consider the annual low income housing report to be a rule; and

WHEREAS, at the Board meeting of December 18, 2014, the Board approved proposed amendments to 10 TAC §1.23, concerning State of Texas Low Income Housing Plan and Annual Report, and directed their publication in the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report are hereby adopted in the form presented at this meeting; and

FURTHER RESOLVED, that the final 2015 State of Texas Low Income Housing Plan and Annual Report, in the form presented to this meeting, together with such grammatical and non-substantive technical corrections as they may deem necessary or advisable, is approved and adopted.

BACKGROUND

The Texas Department of Housing and Community Affairs ("TDHCA" or "the Department") is required to prepare and submit to the Board not later than March 18 of each year an annual report of the Department's housing activities for the preceding year. This State of Texas Low Income Housing Plan and Annual Report ("SLIHP") must be submitted annually to the Governor, Lieutenant Governor, Speaker of the House, and legislative oversight committee members not later than 30 days after the Board receives and approves the final SLIHP. The document offers a comprehensive reference on

statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2013, through August 31, 2014).

Texas Government Code, §2306.0723 requires that the Department consider the SLIHP to be a rule and in developing the SLIHP, the Department is required to follow rulemaking procedures required by Texas Government Code, Chapter 2001.

At the Board meeting of December 18, 2014, the Board approved the release of a draft 2015 SLIHP for public comment. The public comment period for the draft 2015 SLIHP was between December 19, 2014, and January 21, 2015, and a public hearing was held on January 6, 2015, in Austin, TX. The Department received two comments on the draft 2015 SLIHP from one source: Disability Rights Texas.

Summary of changes made to the final 2015 SLIHP following the public comment period:

1. Clerical, non-technical corrections
2. Corrected reporting errors and typos in the Housing Report Chapter
3. Revised Public Participation chapter to reflect public comment period
4. Revised Action Plan Chapter and Appendix D in response to public comment

Appropriate language revisions based on public comment:

Action Plan Chapter (Page 218):
Set-aside percentages outlined ~~about~~ above refer only to the units that are to be solely restricted for persons with disabilities. This section does not prohibit a property from having a higher percentage of occupants ~~that are disabled~~ with disabilities.

Appendix D: Fair Housing Action Steps By AI Impediment:
Added the following note to the top of Appendix D (page 272):
The Fair Housing Action Steps by AI Impediment report as presented below reflects the Department's Fair Housing Tracking Database as of Friday, January 23, 2015.

Appendix D – Action Step revisions:
Action Step 34: Project Access vouchers were increased from 100 in 2012 to 140 in 2014 to maximize the amount of assistance provided to low income, ~~disabled~~ households with an individual with a disability.
Action Step 35: In working with local stakeholders and examining the needs of ~~disabled~~ tenants with disabilities across the state, the Section 8 Program Area created the Project Access Pilot, in which 10%

of 140 vouchers offered through Project Access are made available in partnership with TX DSHS and DADS to specifically assist persons exiting state psychiatric hospitals.

Action Step 37: Out of the state's HOME allocation, TDHCA reserves 5% for use in PWD activities to encourage better service provision to ~~disabled~~ households with an individual who has a disability across the state and in Participating Jurisdictions.

Action Step 44: The revision of the Single Family Umbrella Rule for the 2014 Rules Cycle included revised language concerning the use of Federal funds in mobile home modifications. The Rule was specifically modified to allow the use of State funded HTF funds in the Amy Young Barrier Removal Program to be used to modify existing mobile homes where accessibility features are required to meet the needs of ~~disabled~~ individuals with disabilities ~~and households~~. Feedback on this Rule was generated through TDHCA's work with the Health and Human Services Council and the Disability Advocacy Workgroup.

Action Step 66: The Uniform Multifamily rule provision included in 10 TAC Chapter 10, Subchapter F, §10.613(k), Leasing Provisions, requires that the development owner provide each household at the time of execution of an initial lease a notice describing common amenities, unit amenities, or required services. The provision assists the Department in expanding choice to low income and ~~disabled~~ households with an individual with a disability who might desire particular amenities or services.

Action Step 89: The SF HOME CFDC rules allow for an additional $5,000 in direct cost funds requested for recipients if the household ~~is disabled~~ includes an individual with a disability and requires accessible features.

The full text of the 2015 SLIHP may be viewed at the Department's website: http://www.tdhca.state.tx.us/board/meetings.htm. The public may also receive a copy of the 2015 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

Also at the Board meeting of December 18, 2014, the Board approved proposed amendments to 10 TAC §1.23, concerning State of Texas Low Income Housing Plan and Annual Report, and directed their publication in the *Texas Register* for public comment. The public comment period for the proposed rule amendment was open from Friday, January 2, 2015, through Wednesday, January 21, 2015. No public comment was received concerning the proposed rule amendment.

The following attachments are provided:

Attachment A – Adoption preamble and amendment to 10 TAC §1.23 with comments and response to comments.

Attachment B – final 2015 SLIHP, as presented to the Board on March 12, 2015.

Attachment A. Preamble and adopted amendment to 10 TAC §1.23

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, concerning State of Texas Low Income Housing Plan and Annual Report, without changes to the proposed text as published in the January 2, 2015 issue of the *Texas Register* (40 TexReg 7) and will not be republished. The section adopts by reference the 2015 State of Texas Low Income Housing Plan and Annual Report ("SLIHP") as a rule. While the rule text has not been changed, changes have been made to the 2015 SLIHP in response to comment, as discussed in this preamble.

REASONED JUSTIFICATION. The Department finds that Texas Government Code, §2306.0723 specifically authorizes the Department to consider the SLIHP as a rule. Accordingly, the amendment adopts by reference the 2015 SLIHP. The purpose of the rule and referenced 2015 SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on State Fiscal Year 2014 performance.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was between January 2, 2015, and January 21, 2015 and a public hearing was held on January 6, 2015, in Austin, TX. Written comments were accepted by mail, email, and facsimile.

Although no comments were received concerning the proposed rule amendment, the Department received two comments on the 2015 SLIHP from one source: Disability Rights Texas.

COMMENT SUMMARY: Disability Rights Texas commented that there is a formatting error in the Action Plan Chapter, introducing the description of the Disability Advisory Workgroup.

DEPARTMENT RESPONSE: The Department agrees with the comment and will make the appropriate formatting correction.

COMMENT SUMMARY: Disability Rights Texas requested that appropriate language revisions be made in the Action Plan Chapter and in Appendix D – Fair Housing Action Steps By AI Impediment, when referring to persons and households with disabilities.

DEPARTMENT RESPONSE: The Department agrees with the comment and will make the appropriate language revisions. To make the revisions in Appendix D – Fair Housing Action Steps By AI Impediment, staff updated the Fair Housing Tracking Database and generated a new report, following the receipt of the public comment. Appendix D, as presented in the final 2015 SLIHP, reflects the Fair Housing Tracking Database as of Tuesday, January 13, 2015.

The TDHCA Governing Board approved the Final 2015 SLIHP and the final order adopting the amendments on March 12, 2015.

The full text of the final 2015 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2015 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules and pursuant to §2306.0723 which specifically authorizes the Department to consider the SLIHP as a rule.

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP)

The Texas Department of Housing and Community Affairs (the "Department") adopts by reference the 2015 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2015 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2015 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3800.

Attachment B:
The final 2015 SLIHP is available on the Board Meeting Materials webpage at http://www.tdhca.state.tx.us/board/meetings.htm.

2a

TDHCA Outreach Activities, February 2015

A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public

Event	Location	Date	Division	Purpose
AssetManagement/Compliance/REA Rules Roundtable	Austin	Feb 2	Asset Management, Compliance, Real Estate Analysis	Roundtable
Texas Mortgage Bankers Assn/Southern Secondary Market Conference	Grapevine	Feb 2-3	Homeownership	Panelist
Housing Presentation/City of Austin	Austin	Feb 5	Executive	Presentation
Department Overview/City of Donna	Austin	Feb 11	Policy & Public Affairs	Presentation
HOME Program Round Table Discussion	Austin	Feb 17	HOME	Roundtable Hearing
Department Overview/Cities of El Cenizo, Rio Bravo	Austin	Feb 18	Office of Colonia Initiatives, Policy & Public Affairs	Presentation
Tenant Selection Criteria Webinar	Austin	Feb 17	Fair Housing	Training
HOME Homebuyer, Homeowner Rehabilitation, Tenant-Based Rental, Contract for Deed, and Persons with Disabilities Assistance Rules Roundtable	Austin	Feb 17	HOME	Roundtable Hearing
Affirmative Marketing Requirements Webinar	Austin	Feb 23	Fair Housing	Training
National Association for State Community Services Programs	Arlington, VA	Feb 23-27	Compliance, Community Affairs	Participant
HOME Homebuyer, Homeowner Rehabilitation, Tenant-Based Rental, Contract for Deed, and Persons with Disabilities Assistance Rules Roundtable	Nacogdoches	Feb 25	Executive, HOME	Round Table
Emergency Solutions Grant Program/ Application Webinar	Austin	Feb 25	Community Affairs	Training
Department Overview/City of Port Isabel	Austin	Feb 25	Policy & Public Affairs	Presentation

Internet Postings of Note, February 2015

A list of new or noteworthy documents posted to the Department's website

HOME Program Homebuyer Assistance Project Set Up Checklist — *updated form required from recipients administering homebuyer assistance funds through the Department's HOME Program:*
www.tdhca.state.tx.us/home-division/forms/home_forms_hba.htm

2015 Weatherization Assistance Program Subrecipient List — *updated list of and contact information for entities currently administrating WAP funds under this program:*
www.tdhca.state.tx.us/community-affairs/wap/index.htm

2015 9% Pre-Application log of Senators and Reps Notified — *detailing names of state representatives by district receiving notification of pre-applications; also includes corresponding US Representative and State Senator:*
www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

2015 Emergency Solutions Grant Program: Notification of Funding Availability — *providing application and sample budgets and appendices needed to complete the application for entities seeking to administer ESG funds:*
www.tdhca.state.tx.us/community-affairs/esgp/nofas.htm

2015 HOME Multifamily Development: Notification of Funding Availability — *notifying interested entities of funding available for the development of affordable rental housing through the Department's HOME Program:*
www.tdhca.state.tx.us/nofa.htm; www.tdhca.state.tx.us/multifamily/nofas-rules.htm;
www.tdhca.state.tx.us/multifamily/announcements.htm

Purchasing: Report on No-Bid Contracts — *detailing all no-bid contracts in response to Governor Abbott's call for increased transparency with state contracts:*
www.tdhca.state.tx.us/purchasing/vendors.htm

HOME Single-Family CHDO Certification Packet — *setting forth the basic information needed to apply for financing through the Department's HOME Program single family housing fund:*
www.tdhca.state.tx.us/home-division/sfd.htm

Affirmative Marketing Tools — *including demographic data on groups considered underrepresented in a given affordable rental property or area to whom management must affirmatively market, as well as census data sorted by census tract:*
www.tdhca.state.tx.us/pmcomp/forms.htm

Estimated 2015 Community Services Block Grant Allocations and Goals for Transitioning Persons out of Poverty — *detailing grant dollar amounts by CSBG eligible entity, and proportional share of persons to be transitioned out of poverty:*
www.tdhca.state.tx.us/community-affairs/csbg/guidance.htm

2015 Multifamily HOME and Tax Credit Assistance Program: Frequently Asked Questions — *providing answers to question most often asked of staff by developers seeking to layer HTC funds with other Department resources:*
www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

Tenant Rights and Resources Guide: Spanish —*providing important definitions regarding Fair Housing and tenant rights information in Spanish to individuals residing in TDHCA-monitored rental properties:*
www.tdhca.state.tx.us/pmcomp/forms.htm

2b

ORAL

PRESENTATION

2c

3-DAY POSTING

OR

ORAL

PRESENTATION

2d

ORAL

PRESENTATION

2e

BOARD REPORT ITEM

ASSET MANAGEMENT DIVISION

MARCH 12, 2015

Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers

REPORT ITEM

This report contains information on the 2nd Quarter of Fiscal Year 2015 (12/1/2014 to 2/28/2015).

- 13 LURA Amendments (All Administratively Approved)
- 5 Application Amendments (4 Administratively Approved; 1 Board Approved)
- 18 Extensions - 17 Cost Certification and 1 Ten Percent Test (17 Administratively Approved; 1 Withdrawn)
- 19 Ownership Transfers (All Administratively Approved)

3rd Quarter of Fiscal Year 2015 information will be reported at the June 2015 meeting.

Land Use Restriction Agreement (LURA) Amendments

2015 Quarter 2

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
060627B, 060627	12/15/2014	Aspen Park Apartments	Houston	Sandy McBride	Multiple Corrections to Ex B-1 and B-2 - unit mix and amenities.
11260	12/30/2014	Braeburn Village Apts	Houston	Amay Inamdar	Swap Green Building Amenities.
12409, 94189	1/2/2015	Tealwood Place Apartments	Wichita Falls	Cynthia Bast	waiver of mandatory threshold item - "exhaust/vent fans (vented to outside) in bathrooms"
12408, 93201	1/2/2015	Willow Green Apartments	Houston	Cynthia Bast	waiver of mandatory threshold item - "exhaust/vent fans (vented to outside) in bathrooms"
12407, 93199, 94183	1/2/2015	Woodglen Park Apartments	Dallas	Cynthia Bast	waiver of mandatory threshold item - "exhaust/vent fans (vented to outside) in bathrooms"
12406, 94184	1/2/2015	Ridgewood West Apartments	Huntsville	Cynthia Bast	waiver of mandatory threshold item - "exhaust/vent fans (vented to outside) in bathrooms"
12405, 94185	1/2/2015	Saddlewood Club	Bryan	Cynthia Bast	waiver of mandatory threshold item - "exhaust/vent fans (vented to outside) in bathrooms"

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
12404, 94187	1/2/2015	Pine Club Apartments	Beaumont	Cynthia Bast	waiver of mandatory threshold item - "exhaust/vent fans (vented to outside) in bathrooms"
08182, 15090009925	1/8/2015	Suncrest Apartments	El Paso	Cari Garcia	Correction to supportive services: check the box.
1001537, 11033	1/9/2015	American GI Forum Village I and II	Robstown	Walter M. Martinez	Change in mobility accessible units and green building amenity swap
1001279, 10279	1/21/2015	Hudson Green	Hudson	Cynthia Bast	LURA Amendment to swap Green Building Amenities
1001278, 10271	1/21/2015	Hudson Manor	Hudson	Cynthia Bast	LURA Amendment for Green Building unit amenity swap
04608, 04608B	1/26/2015	Trinity Trails Apartments (fka Grove Village)	Dallas	Matthew Borah/Cynthia Bast	Decrease # of residential units from 232 to 230, remove requirement for microwave ovens and add 30-year roofing, and remove requirement for public phone.

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Housing Tax Credit Application Amendments

2015 Quarter 2

Board Approved

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
1001506, 11061	2/23/2015	Pioneer Crossing for Seniors Burkburnett	Burkburnett	Noor Jooma	Original site plan was changed due to relocation of the ingress and egress for the property

Administratively Approved

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
12170	12/11/2014	Fairfield Creek Estates	Cypress	Barry Kahn	Change in Acreage and Density due to TxDot taking front easement of property due to Highway 290 expansion
13145, 1002032	12/22/2014	Mariposa at Elk Drive	Burleson	Casey Bump, Bonner Carrington	reduced acreage by more than 10% and modification to residential density more than 5% due to local gov't requirements
13252	1/22/2015	Oak Creek Village	Austin	Sarah Andre	Change in the number of bathrooms in the two-, three-, and four-bedroom units, change in acreage/density, and addition of another guarantor.
1001278, 10271	2/23/2015	Hudson Manor	Hudson	Elizabeth Young	Application Amendment to Site Plan

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Housing Tax Credit Extensions

2015 Quarter 2

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Type of Extension	Original Deadline	Approved Deadline
13270	12/2/2014	Bella Terra	Brownsville	10% Test - 2nd Extension	11/15/2014	12/30/2014
1001674, 12112	12/10/2014	Inez Tims	Lufkin	Cost Certfication	8/22/2014	12/31/2014
1001681, 12388	12/11/2014	Paseo Pointe	Los Fresnos	Cost Certification	1/15/2015	4/30/2015
1001682, 12339	12/11/2014	Hacienda del Sol Apartments	San Benito	Cost Certification	1/15/2015	4/30/2015
13402	12/12/2014	Paddock at Norwood	Austin	Cost Certification	1/15/2015	4/15/2015
1001828, 12413	12/12/2014	Sienna Pointe	San Marcos	Cost Certification	1/15/2015	6/1/2015
12276	12/16/2014	AT Villages at Cypress	Houston	Cost Certification	1/15/2015	4/15/2015
12254	12/18/2014	The Palms at Leopard	Corpus Christi	Cost Certification	1/15/2015	7/15/2015
1001686, 12393	12/22/2014	Highland Villas	Bryan	Cost Certification	1/15/2015	4/15/2015
1001684, 12365, 92063	12/22/2014	Stepping Stone & Taylor Square Apartments	Taylor	Cost Certification	1/15/2015	4/15/2015

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Type of Extension	Original Deadline	Approved Deadline
11011	12/30/2014	Sedona Village	Fort Worth	Cost Certification	1/15/2015	2/28/2015
12332	1/20/2015	Parc East Apartments	Mesquite	Cost Certification - Request Withdrawn	1/15/2015	
12083	1/21/2015	Harmon Villas	Fort Worth	Cost Certification	1/15/2015	4/15/2015
12152	1/27/2015	Eastside Crossings	El Paso	Cost Certification	1/15/2015	4/30/2015
12004	1/28/2015	Sutton Oaks II	San Antonio	Cost Certification	1/15/2015	3/15/2015
1001750, 12269	2/17/2015	Stonebridge of Kelsey Park	Lubbock	Cost Certification	1/15/2015	4/15/2015
1001506, 11061	2/23/2015	Pioneer Crossing for Seniors Burkburnett	Burkburnett	Cost Certification	1/15/2014	4/15/2015
1001668, 12032	2/23/2015	Heartland Village Apartments	Sulphur Springs	Cost Certification	1/15/2014	1/15/2015

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Housing Tax Credit Program Ownership Transfers

2015 Quarter 2

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Person/Entity Departing	New Person/Entity	Type of Ownership Change
93009	12/3/2014	Stonebrook Village Apartments	Frisco	Frisco-Stonebrook Affordable Housing Partnership, Ltd.	Crossroads Housing Development Corporation	Sale
04608, 04608B	12/4/2014	Trinity Trails Apartments (fka Grove Village)	Dallas	Grove Village Limited Partnership	Loop 12 Trails, Ltd.	Sale
97058	12/5/2014	Madison Park	Lubbock	McDonald Ohio Tax Credit Fund-1998, LP and McDonald Corporate Tax Credit Fund IV, LP	not applicable-no new entities or individuals	Acknowledgment
1001673, 12075	12/8/2014	Saddlebrook Apartments	Burkburnett	None	Patrick L. Beatty Trust No. 1 dated September 1, 2010	Acknowledgment
1001672, 12060	12/8/2014	The Reserves at High Plains	Dumas	None	Patrick L. Beatty Trust No. 1 dated September 1, 2010	Acknowledgment
MF008, 986559069	12/11/2014	Highland Bluffs I	Dallas	Alden Montierra Enterprise, LLC	Highland Bluffs LLC	Sale
MF007, 794839127	12/11/2014	Highland Bluffs II	Dallas	Alden Montierra Enterprise, LLC	Highland Bluffs LLC	Sale
94157	12/12/2014	Calcasieu Apartments, The	San Antonio	Calcasieu Ltd.	Alamo Area Mutual Housing Assoc. dba Alamo Community Group	Sale of Property
10051	12/15/2014	Parkway Ranch II	Houston	No new members	Same	Adding Related Party Members

Dev. No.	Date of Approval	Development Name	City	Person/Entity Departing	New Person/Entity	Type of Ownership Change
96179	12/22/2014	Rollins Martin Apartments	Austin	Joe Garcia Company Number One LP	iPayDebt Financial Services, Inc. dba Cornerstone	Sale
92016	12/23/2014	Cornerstone Apartments Phase II	Dallas	CLF II Associates, Inc.	AIGP Cornerstone Apartments	Sale
93072	12/23/2014	Cornerstone Apartments Phase I	Dallas	CLF Associates, Inc.	AIGP Cornerstone Apartments LLC	Sale
05610, 05610B	1/12/2015	Prairie Ranch Apartments	Grand Prairie	ARDC GPRanchWest, LLC	GPRW GP, LLC	GP and SLP Replacement
99102	1/14/2015	Stonebriar Village of Plainview	Plainview	American Housing Foundation & AHF Stonebriar Village, Inc.	AHF_Stonebriar Village, LLC	General Partner
00001	1/27/2015	Winfield Estates	Texarkana	Hadrian Development, LLC	DKH Real Estate Advisors, LLC	HUB Transfer
01032	1/29/2015	Cantibury Pointe	Lubbock	Lone Star Housing Corporation	Albatross Diversified Holdings, LLC	Co-General Partner
02029	1/29/2015	North Grand Villas	Amarillo	Lone Star Housing Corporation	Albatross Diversified Holdings, LLC	Co-General Partner
01108	1/29/2015	Logans Pointe	Mount Vernon	Lone Star Housing Corporation	Albatross Diversified Holdings, LLC	Non-affiliate
12118	2/25/2015	Spring Trace	Spring	None	Same	Change in Structure for Estate Planning Purposes

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3a

BOARD ACTION REQUEST

COMPLIANCE DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action withdrawing proposed amendments to 10 TAC §1.5, Previous Participation

RECOMMENDED ACTION

WHEREAS, at the Board meeting of October 19, 2014, the Board approved amendments to the Previous Participation rule to be published in the *Texas Register* for public comment;

WHEREAS, commenters requested a workgroup to discuss ideas not included in the proposed amendments prior to re-presentation to the Board and staff convened such a workgroup in the form of a roundtable discussion and is incorporating new concepts into the rule;

WHEREAS, staff anticipates presenting the Board with a significantly revised rule to be presented to the board at its April 16, 2015, meeting, seeking approval to publish it in the *Texas Register* for public comment; and

WHEREAS, proposing the revised rule which has recently been developed will necessitate withdrawal of the previous proposed rule;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered and directed, for and on behalf of the Department, to withdraw the proposed amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.5 concerning Previous Participation, that were published in the November 7, 2014, edition of the *Texas Register* (39 TexReg 8658) and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

At the Board meeting of October 9, 2014, the Board approved for public comment proposed amendments to the Department's Previous Participation rule. Previous Participation reviews are the process used by the Department to evaluate the compliance history of applicants and their affiliates prior to awarding funds or other assistance or entering into certain contracts.

Commenters requested a workgroup to discuss ideas not included in the proposed amendments prior to bringing a final recommendation to the Board. A roundtable was held on January 29, 2015. That roundtable mainly focused on ownership transfers and multifamily awards. Participants provided suggestions that are being incorporated into a staff draft of the rule. This recent draft is significantly different from the previously proposed amendments. Once the staff draft of the rule is posted to the Department's website, a conference call will be held to focus on the rule from the standpoint of ownership transfers and multifamily awards.

A roundtable for community affairs and single family stakeholders is scheduled for March 11, 2015. Feedback from that roundtable will be taken into consideration and incorporated into the staff draft of the rule.

Staff recommends withdrawal of the previously published amendments and anticipates presenting a new rule to be published in the *Texas Register* for public comment at the April 16, 2015, Board meeting.

3b

3-DAY POSTING

OR

ORAL

PRESENTATION

ACTION ITEMS

4a

BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action regarding Denial of Program Year 2015 Low Income Home Energy Assistance Program ("LIHEAP"), and PY 2014 and 2015 Department of Energy Weatherization Assistance Program ("DOE-WAP") Awards to Cameron and Willacy Counties Community Projects, Inc. ("CWCCP"), and for LIHEAP the Commencement of the 30-day Notification Period required by §2105.203 of the Texas Government Code.

RECOMMENDED ACTION

WHEREAS, the Department has received Federal Fiscal Year ("FFY") 2014 DOE WAP funds in the amount of $4,284,475 and has received notification of award of approximately $4,657,454 for FFY 2015;

WHEREAS, the Department has received notification of award from the U.S. Department of Health and Human Services ("USHHS") for the FFY 2015 LIHEAP award in the amount of $115,873,090;

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

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

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

WHEREAS, CWCCP is a member of the network of organizations that receives formula funds from each of the above programs;

WHEREAS, CWCCP has had outstanding monitoring findings that have prevented the Executive Award and Review Advisory Committee ("EARAC") from making affirmative award recommendations;

WHEREAS, at the Governing Board Meeting of February 19, 2015, the Board acted to maintain CEAP continuity of services to eligible households of the Cameron and Willacy counties service area by awarding 24.99% ($841,162) of the PY 2015 LIHEAP award that would have gone to CWCCP to Community Action Corporation of South Texas, a neighboring provider;

WHEREAS, at the Governing Board Meeting of February 19, 2015, the Board deferred action on the possible approval or denial of awards of the DOE funds and the remainder of the LIHEAP funds;

WHEREAS, the prompt distribution of program funds is critical as inclement weather exacerbates the need to provide services and utility payment assistance and CWCCP may not be in a position to provide those services; and

WHERAS, in order to identify and award funds to an alternate provider who will be able to deliver timely assistance, §2105.203 of the Texas Government Code requires that CWCCP be given 30 days notice relating to the nonrenewal of the LIHEAP award;

NOW, therefore, it is hereby

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

FURTHER RESOLVED, that the remaining balance (75%) of the formula-based award to CWCCP for PY 2015 LIHEAP (WAP and CEAP) in the amount of $3,365,997 is hereby denied; and

FURTHER RESOLVED, that the Board instructs Department staff that CWCCP be given 30 days notice relating to the denial of the LIHEAP award.

BACKGROUND

At the Board Meeting of December 18, 2014, the Governing Board approved awards for the PY 2014 DOE WAP and PY 2015 LIHEAP subrecipients as recommended by EARAC. At that time, awards for CWCCP were not acted upon pending concerns from EARAC relating to financial management issues. The Department's monitoring staff has been unable to trace LIHEAP funds through CWCCP's accounts to determine a final eligible use expended in the correct budget category during the applicable contract period. On February 4, 2015, EARAC met with CWCCP's Executive Director, Finance Director, and several Board members. Through that meeting and subsequent phone calls and emails, Department staff, in collaboration with the Department's Internal Auditor, has determined that CWCCP has incorrectly interpreted some key program rules which has resulted in significant disallowed costs. CWCCP may have incurred other costs which could offset the disallowed amounts but has failed to provide documentation supporting that position. CWCCP has also failed to provide the general ledger for the account where LIHEAP funds have been transferred which would possibly show how LIHEAP funds were ultimately expended.

At the Board Meeting of February 19, 2015, EARAC recommended denial of the new awards to CWCCP for LIHEAP (CEAP and WAP) and DOE-WAP. The Board deferred action on 75% of the LIHEAP funds and on the DOE-WAP funds. However, in order to ensure continuity of CEAP services in Cameron and Willacy counties, $841,162 in 2015 LIHEAP funds were immediately awarded to a neighboring CEAP provider, Community Action Corporation of South Texas. Under a separate board item, authorization was approved by the Board to directly select or release a Request for Applications for a temporary or permanent replacement provider to provide prompt assistance in delivering services in Cameron and Willacy counties.

The deferment of the remaining award of LIHEAP funds and the award of the DOE-WAP funds was taken by the Board in the anticipation that an audit could be performed, and that conditions associated with the award in February of CSBG funds would be satisfied. However, an audit as

anticipated by the Board cannot be promptly provided; the State Auditor's Office and USHHS have both indicated that limited resources prevent them from performing a timely review of the issues. Furthermore, to date, the conditions associated with the February award of CSBG have not been satisfied, including most significantly, CWCCP having not provided the requested general ledger or repaid the disallowed amounts.

In an effort to promote timely delivery of services to the low income households in Cameron and Willacy counties, staff believes that steps should be taken to allow for the potential award of funds to an alternate provider. In order to make such an award consistent with the process required by Texas Government Code, the Department will provide CWCCP a written notification of nonrenewal of the LIHEAP award. After the 30-day period, the Board will be presented with a possible action relating to the award of those funds for the Cameron and Willacy counties service area in order to maintain WAP and CEAP continuity of services to eligible low-income households in the Cameron and Willacy counties services area.

4b

BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action to Authorize the Procurement of a Single Audit Firm for performance of an Audit for Cameron and Willacy Counties Community Projects, Inc. ("CWCCP")

RECOMMENDED ACTION

WHEREAS, CWCCP has had outstanding monitoring findings that have been considered during previous participation reviews by the Executive Award and Review Advisory Committee ("EARAC") and have prevented EARAC from making affirmative award recommendations for CWCCP;

WHEREAS, at the Governing Board Meeting of February 19, 2015, it was determined that an audit review of CWCCP's financial records was mutually acceptable and necessary; and

WHEREAS, based upon communications with both agencies, it has been determined that such audit cannot be timely provided by either the State Auditor's Office ("SAO"), or the U.S. Department of Health and Human Services ("USHHS"); and if other means cannot be utilized, it may be necessary to procure a third party single audit provider to perform an audit at CWCCP;

NOW, therefore, it is hereby

RESOLVED, that the executive director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the procurement of a single audit provider in adherence to and compliance with state and federal procurement requirements; and

FURTHER RESOLVED, that in an effort to expedite the initiation of the audit, the Board authorizes the selection and award of the procured audit provider, with subsequent Board ratification.

BACKGROUND

At the Board Meeting of December 18, 2014, the Governing Board approved awards for the Program Year 2014 Department of Energy Weatherization Assistance Program ("DOE WAP") and Program Year 2015 Low Income Home Energy Assistance Program ("LIHEAP") subrecipients as recommended by the EARAC. At that time, awards for CWCCP were not acted upon pending concerns from EARAC relating to financial management issues. At the Board Meeting of February 19, 2015, EARAC recommended nonrenewal of the awards to CWCCP for

LIHEAP and DOE-WAP. The Board tabled the nonrenewal of 75% of the LIHEAP funds and all of the DOE WAP funds in the anticipation that an audit could be performed by the SAO or USHHS. However, both SAO and USHHS have indicated that limited resources prevent them from performing a timely review of the issues. The Department currently has a contract with a previously procured provider of assessment and technical assistance services for community action agencies, the Community Action Partnership. If that provider is able to timely provide the audit services desired, that option will first be pursued. However, if that option is not feasible, staff is requesting the authority to otherwise procure a provider for the audit of CWCCP.

5a

15053

Glenoak Apartments

Corpus Christi

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under any of the Department's Program Rules

RECOMMENDED ACTION

WHEREAS, a 2015 Competitive Housing Tax Credit Pre-Application was submitted for Glenoak Apartments (#15053) on January 6, 2015;

WHEREAS, upon review staff identified that the Site Control documentation file, required under 10 TAC §11.8(b)(1)(a), was inoperable, making the Pre-Application ineligible;

WHEREAS, the Pre-Application was terminated on January 26, 2015;

WHEREAS, the Applicant has timely appealed the termination;

WHEREAS, in order for the Pre-Application to be reinstated, the board must grant a waiver of either §11.8(a)(1) of the Qualified Allocation Plan ("QAP"), related to General Submission Requirements, allowing the pre-application to be submitted after the applicable deadline, or §11.8(b)(1)(A), Pre-Application Threshold Criteria, allowing the Application to be submitted without the required Site Control documentation;

WHEREAS, pursuant to §10.207 of the Uniform Multifamily Rule ("the Rule"), a request for a waiver should establish how it is necessary to address circumstances beyond the Applicant's control and how, if not granted, the Department will not fulfill some specific requirement of law; and

WHEREAS, the Applicant has provided insufficient evidence to support such a waiver request;

NOW, therefore, it is hereby,

RESOLVED, the request for waiver is denied and the Applicant's appeal of the termination of Glenoak Apartments (#15053) is hereby denied.

BACKGROUND

Pursuant to §11.8(b)(1)(A) of the QAP, site control documentation must be submitted as part of the Pre-Application Threshold Criteria. On January 6, 2015, two days before the Pre-Application Final

Delivery Date, a Competitive Housing Tax Credit Pre-Application was submitted for Glenoak Apartment using the Department's online Pre-Application system, hosted by JotForm. This submission appeared at first glance to include the required site control documentation. On January 7, 2015, the Department sent out a listserv announcement that stated "Applicants are advised to carefully review the submission confirmation email to ensure that all elections are correct and that all necessary attachments are included and can be opened from the confirmation email."

Once the Pre-Application Final Delivery Date passed, staff downloaded all of the submissions from JotForm, at which point it was discovered that the site control documentation for Glenoak Apartments was unable to be opened or downloaded. Staff contacted JotForm to see if the file could be retrieved from their servers another way. The response from JotForm's technical support staff states that the "file seems to have not been properly uploaded to our servers." The pre-application was then terminated on January 26, 2015, for failing to meet the threshold requirements outlined in §11.8(a)(1) of the QAP.

Both the Applicant's appeal to the Executive Director and to the Board suggest that the online pre-application system did not function properly. Staff disagrees. Through the online system, TDHCA received 337 pre-application submissions and 714 corresponding attachments. Of these attachments, only one file was unable to be retrieved, that being the site control documentation for Glenoak Apartments. This equates to 0.001% of all attachments, or 0.003% of all Applicants.

The Applicant's appeal to Mr. Irvine included a sworn declaration from a forensic investigator, who opined that the file was corrupted during one of three transfer points: 1) between the Applicant and the JotForm server, 2) between JotForm and TDHCA, or 3) during some internal handling of the file by TDHCA staff. TDHCA staff was never able to open or download the file from the JotForm server, so the file must have been corrupted or not saved correctly on the JotForm server during the initial transfer point (between the Applicant and JotForm). For this reason, the second and third transfer points could not have been the cause of the problem, as confirmed by the Department's senior Information Systems staff, the second and third points of transfer did not occur. Therefore, staff could not be found responsible.

Further, the appeal to the Board argues that the "Applicant uploaded two clean files through the online system. That has been verified by a computer forensic consultant." In fact, that is not what the sworn declaration from the forensic investigator indicates. The only definitive conclusion that Mr. Hallman makes is that the file emailed to him by the Applicant did exist on the Applicant's computer at 1:08pm on January 6, 2015, approximately 16 minutes prior to the submission of the Pre-Application. The Applicant is unable to verify that the file arrived intact at JotForm, and thus cannot confirm that the file was indeed delivered, uncorrupted, to TDHCA or Jotform.

Both appeals state that sufficient safeguards were not in place to alert a user to a problem with the upload. However, the safeguard that was in place, the submission confirmation email which included all the data input by the user and hyperlinks to the uploaded documents, was not utilized by the Applicant.

In the appeal to the Board, the Applicant analogizes that when Pre-Applications were submitted via CD, an Application would not have been terminated in the event that TDHCA staff stepped on and broke the Applicant's CD. Staff believes this is not a fair comparison. A more apt analogy would be if an Applicant submitted a CD that appeared to contain the necessary file, but when staff attempted to open said file, it was found to be corrupt, or not the file that the Applicant intended to include on the CD. Recent history includes several examples of applications that were submitted with similar errors (see chart below), and in each case, the applications were terminated and any associated appeals denied. These errors, including the one that occurred during the Glenoak submission, could have been remedied by the Applicants themselves, by taking one more step to ensure that their submissions were accurate and complete.

14106	Submitted application without functioning bookmarks
14114	Submitted application without bookmarks
14261	Submitted blank pre-application CD; complete files submitted after the deadline
14301	Submitted pre-application without site control documentation; site control submitted after deadline
13188	Submitted application with ESA for the wrong development
13030	Submitted CD without required Excel file; file submitted after deadline

Further, in the appeal to Mr. Irvine, the Applicant stated that the Applicant "was not made aware of any method to check the success of the upload." However, the appeal to the Board includes a copy of the very email TDHCA sent on January 7, 2015, indicating receipt by the Applicant.

Finally, the appeal suggests that this matter should be treated as an Administrative Deficiency. Staff again disagrees. As stated in §10.201(7) of the Rule, "the purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application." Because evidence of site control is a Pre-Application threshold criteria, its omission cannot be considered "non-material missing information." Therefore, the Administrative Deficiency process is not an appropriate method by which to cure the missing site control documentation. Therefore, staff recommends denial of the appeal.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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January 26, 2015

Writer's direct phone # 512-475-1676
Email: jean.latsha@tdhca.state.tx.us

Mr. Roger Canales
TG 110 Glenoak, LP
8610 N New Braunfels, Suite 500
San Antonio, TX 78217

RE: TERMINATION OF HTC PRE-APPLICATION #15053, 911 GLENOAK APARTMENTS, CORPUS CHRISTI, TEXAS

Dear Mr. Canales:

Pursuant to §11.8(b)(1)(A) of the 2015 Qualified Allocation Plan ("QAP"), documentation evidencing Site Control must be submitted as part of the Pre-Application Threshold Criteria. The Pre-Application for Glenoak Apartments was submitted to the Department by the Pre-Application Final Delivery Date, January 8, 2015 and appeared to include the required site control documentation file. However, upon review, staff found that the file was corrupt and could not be opened, constituting no submission of the required documentation. Because the Application submitted does not meet the threshold criteria outlined in §11.8(b)(1)(A) of the 2015 QAP, the Pre-Application is hereby terminated.

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements relating to the filing of an appeal can be found in §10.902 of the 2015 Uniform Multifamily Rules. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §10.902 of the 2015 Uniform Multifamily Rules for full instruction on the appeals process.

If you have any questions or concerns, please contact me at 512-475-1676 or by email at jean.latsha@tdhca.state.tx.us.

Sincerely,

Jean M. Latsha
Director of Multifamily Finance

There is an access denied error when downloading submission uploaded PDF file of JotForm (Private)

Asked by **J_o_e** on January 12, 2015 at 01:51 PM

2) Separately, this PDF link is provided in our submission results but we get an access denied error when trying to download it. The other 714 PDF files downloaded successfully. Can you shed any light on this one? http://www.jotform.com/uploads/TDHCA/42594360357156/296380735269895524/purcha

«Original post of this question

download error | download link | xml access denied

Edit

JotForm Support

(Private)

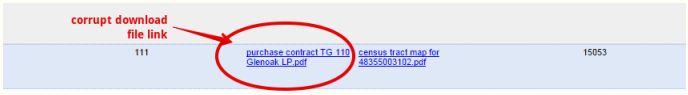
Answered by **jonathan** on January 12, 2015 at 02:45 PM

Hi Joe,

I was able to reproduced the issue.

I could not download the uploaded file using the link in the Submission data of your jotform http://www.jotform.us/form/42594360357156

This download link



Unfortunately, the user uploaded file seems to have not been **properly uploaded** to our server. This was the reason it was inaccessible.

The most I can suggest at this time is to contact the form respondent and request from them to either re-upload the file thru submission again of the form, or contact them via email and request copy via the email attachment instead.

Hope this help. Please inform us if you need further assistance.

Thanks.

Locke Lord LLP
Attorneys & Counselors

600 Congress, Suite 2200
Austin, TX 78701
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Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

February 2, 2015

Via Electronic Mail

Mr. Tim Irvine
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Glenoak Apartments in Corpus Christi (the "**Development**")
TDHCA No. 15053

Dear Tim:

We represent TG 110 Glenoak, LP (the "**Applicant**"), which submitted a pre-application for low income housing tax credits for the rehabilitation of the Development on January 6, 2015. The application has been terminated because TDHCA was unable to open the file that was uploaded to evidence site control. We appeal TDHCA's termination of the application and request reinstatement for the reasons set forth below.

There is no dispute that the Applicant submitted its application in a timely manner. The only concern arises from the fact that TDHCA was unable to open the PDF file (the "**File**") that contained the purchase contract, evidencing site control. Because TDHCA was unable to open the file that was uploaded using TDHCA's online application system, the application has been terminated.

The facts of this matter are set forth in the attached Affidavit from Roger Canales, a representative of the Applicant; they will not be repeated here. A supporting affidavit s provided by Bonnie Sears, who worked with Mr. Canales in uploading the application.

Upon learning that TDHCA was unable to open the File, the Applicant engaged a computer forensic consulting firm to try to determine the genesis of the problem. The report from Digital Discovery is attached hereto. The consultant has examined the File that was uploaded and has concluded that there was absolutely nothing wrong with that file when it was uploaded into TDHCA's online system. The consultant therefore concludes that the corruption must have occurred at one of three times: (1) as the File was proceeding to the system of the online vendor that

was engaged to create the application system or (2) as the File transferred from the online vendor's system to TDHCA's server or (3) as TDHCA was handling the File. In any event, the Applicant had absolutely no control over the File at that time and could not have known that any corruption had occurred.

Further, it is clear that TDHCA and the vendor who created the online application system did not include safeguards that could have helped avoid this result. The online application system could have been structured so that it would provide the user with immediate feedback when a file is uploaded. This feedback could have alerted the user to any problems with the upload by indicating the size of the file uploaded. Such a feature was not included in the system.

TDHCA may argue that the confirming email, which the Applicant acknowledges receiving, contained a hyperlink for the File, which could have been launched, allowing the Applicant to examine the file that TDHCA received. However, as shown in Mr. Canales's affidavit, he had no idea that the confirming email contained this feature. Nothing provided him with an obvious indication. The webinar that TDHCA presented, and Mr. Canales reviewed, contained thorough instructions, including a description of the confirming email. However, nothing in the webinar indicated that the applicant would be able to check the status of the uploaded files via a hyperlink on the confirming email. Nothing on the confirming email itself noted that these files could be launched and reviewed.

Appeal

Because the Applicant submitted a fully readable File, had no control over the corruption that occurred during the upload, and was not made aware of any method to check the success of the upload, the Applicant simply cannot be held responsible for this occurrence. We respectfully request that you reinstate the application. If you deny this appeal, the Applicant requests to be heard at the next available Board meeting.

Sincerely,

Cynthia L Bast

Cynthia L. Bast

cc: Jean Latsha
Kathryn Saar
TDHCA

Gil Piette
Ray Lucas
Roger Canales
Bonnie Sears
Applicant

STATE OF TEXAS)
) §§
COUNTY OF BEXAR)

AFFIDAVIT

I, Roger Canales, being first duly sworn on oath, depose and say that:

1. I am the Director of Real Estate Development for Housing & Community Services, Inc. ("HCS"). In that capacity, I was responsible for submission of a pre-application (the "Application") to the Texas Department of Housing and Community Affairs ("TDHCA") for low-income housing tax credits for the Glenoak Apartments in Corpus Christi, Texas (TDHCA No. 15053).

2. Prior to preparing the Application, I viewed the pre-application webinar posted on TDHCA's website (the "Webinar") and reviewed the Pre-Application FAQs published on TDHCA's website.

3. On Tuesday, January 6, 2015, I completed and submitted the Application, utilizing TDHCA's mandatory on-line system. I received a confirming email at 1:25 pm. A copy of that confirming email is attached as Exhibit A. The confirming email shows that two documents were uploaded to TDHCA's online system as follows:

Site Control Documentation – file name of "purchase contract TG 110 Glenoak LP.pdf"

Census Tract Map – file name of "census tract map for 48355003102.pdf"

The Application was submitted three days before the deadline.

4. The two documents that were uploaded were both saved on HCS's computer server, in the same folder. A screen shot of the folder in which these two documents were saved is attached as Exhibit B. HCS uses version 9.5.5.315 of Adobe Acrobat. After these two files were uploaded to TDHCA's online system, no further changes were made to the files on HCS's server.

5. Prior to uploading the two documents, they were opened on multiple computers by multiple people working for HCS. Each time, the documents were accessible and readable. Prior to uploading the documents on TDHCA's online system, I opened them to assure that they were fully accessible and readable and had all pages intact.

6. Upon reviewing the confirming email attached as Exhibit A, I noticed an error in the zip code of the Applicant. I therefore clicked on the "Edit Submission" link on the confirming email, which opened TDHCA's online system and allowed me to change the zip code. I received a second confirming email of the submission at 1:53 pm. A copy of that confirming email is attached as Exhibit C. The second confirming email does not indicate any change to the Site Control Documentation or Census Tract Map.

7. Upon reviewing the confirming email attached as Exhibit C, I noticed an error in the requested tax credit amount. I therefore clicked on the "Edit Submission" link on the second confirming email, which opened TDHCA's online system and allowed me to change the requested tax credit amount. I received a third confirming email of the submission at 3:48 pm. A copy of that confirming email is attached as Exhibit D. The third confirming email does not indicate any change to the Site Control Documentation or Census Tract Map.

8. After receipt of the third confirming email on Tuesday, January 6, 2015 at 3:48 pm, I took no further action with regard to the Application.

9. On Friday, January 16, 2015, I received a deficiency notice from TDHCA, indicating that the Site Control Documentation file would not open. I proceeded to investigate. I went back to both the Site Control Documentation file and the Census Tract Map file saved on the HCS server and confirmed that both documents would open. I sent the Site Control Documentation file to our counsel via email, and she confirmed she was able to open it.

10. I learned from TDHCA staff that the references to the two uploaded files on the confirming emails were actually hyperlinks. I clicked on the hyperlink for file name "census tract map for 48355003102.pdf" in one of the confirming emails, and a complete and readable file opened properly. I clicked on the hyperlink for the file name "purchase contract TG 110 Glenoak LP.pdf" in one of the confirming emails, and I received an error message.

11. I did not know that the references to the two uploaded files on the confirming emails were hyperlinks. This information was not covered in the Webinar or the FAQs. Had I known that these were hyperlinks, I would have tried to open them upon receipt of the confirming emails; I would have discovered the problem with the Site Control Documentation; and I would have corrected the problem prior to the filing deadline for the pre-application.

12. I consulted with GMT Enterprises, a computer consulting firm that is a consultant to HCS. I sent Mr. Terry Mathis of GMT Enterprises the file "purchase contract TG 110 Glenoak LP.pdf" from our computer server, the same file that was uploaded to TDHCA. Upon examination, he determined that the file was not corrupted as it existed on HCS's server when it was uploaded. His conclusion was that the corruption occurred during the upload process as the file was transmitted via the online system to TDHCA's server.

13. HCS engaged Digital Discovery, a computer forensics consulting firm, to examine the file that was uploaded to TDHCA. I provided the consultant with the file that was uploaded to TDHCA. Digital Discovery examined my computer and this file and generated a declaration of findings.

14. I have provided TDHCA with a replacement copy of the file "purchase contract TG 110 Glenoak LP.pdf".

AFFIANT:

Roger Canales

Sworn to before me on February 2, 2015.

Notary Public

Audrey D Rogers
Notary Public
State of Texas
My Comm. Exp. 11/19/18

EXHIBIT A

From: TDHCA [mailto:htcnotifications@tdhca.state.tx.us]
Sent: Tuesday, January 06, 2015 1:25 PM
To: Canales, Roger
Subject: 2015 HTC Pre-Application Submission Confirmation: #15053

You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle. Your Application number is 15053. If you have not done so already, please submit your application fee, which should be in the amount of $680, along with a copy of this confirmation. Certain Qualified Nonprofits are eligible for a 10% discount; please see §10.901(1) of the Uniform Multifamily Rule for more information. Pre-Applications submitted without the required fee will be rejected. Pre-Application fees must be received by 5:00 p.m. on Thursday, January 8, 2015.

A copy of your submission is below and will be posted to the Department's website along with the site control documentation, census tract map, and any other attachments included in the Pre-Application submission. If you find that any of the information submitted is incorrect, please use the Edit Submission link below in order to make corrections. Any edits must be received by 5:00 p.m. on Thursday, January 8, 2015.

Edit Submission

Please do not respond to this email. If you have questions, please contact a Multifamily Staff Member. http://www.tdhca.state.tx.us/multifamily/contacts.htm

JotForm

Question	Answer
Full Name	Gilbert Piette
Address	8610 N. New Braunfels, Suite 500
City	San Antonio
State	TX
Zip Code	78108
Phone Number	(210) 821-4300
Phone Extension	105
E-mail	gilp@hcscorp.org
Full Name	Roger Canales

Phone Number	(210) 821-4300
Phone Extension	120
E-mail	rogerc@hcscorp.org
Full Name	Raymond Lucas
Phone Number	(210) 821-4390
Phone Extension	
E-mail	luke007rhl@aol.com
Name of Proposed Entity	TG 110 Glenoak, LP
Development Name	Glenoak Apartments
Development Type	Reconstruction
Secondary Development Type	
Previous TDHCA #	
Initial construction year	
Units Demolished	68
Units Reconstructed	68
# of Non-Contiguous Sites	
# of Census Tracts	
Target Population	General
Address	711 Glenoak Drive
City	Corpus Christi
Zip Code	78418
ETJ?	No
County	Nueces
Region	10
Rural/Urban	Urban
Census Tract	48355003102
Census Tract 2	
Census Tract 3	
Census Tract 4	
Census Tract 5	
Total LI Units	68

Total MR Units	0
Total PHA Units	0
Total Units	68
HTC Request	1200000
Pre-App Fee Due	680
Has fee already been submitted?	Yes
Check #	12294
Check all that apply	At-Risk Nonprofit
U.S. Representative	Blake Farenthold
District	27
State Senator	Juan "Chuy" Hinojosa
District	20
State Representative	Todd A. Hunter
District	32
School Superintendent	Joe Kelley
District Name	Flour Bluff ISD
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Office 2	City Council Member
Name 3	Chad Magill
Office 3	City Council Member
Name 4	Pricilla Leal
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Name 22	
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Name 25	
Office 25	
More than 25 Local Officials?	
Are there Neighborhood Organizations whose boundaries contain the Development Site?	No
Neighborhood Organization	
N.O. Address	
Neighborhood Organization 2	
N.O. Address 2	
Neighborhood Organization 3	
N.O. Address 3	
Neighborhood Organization 4	
N.O. Address 4	
Neighborhood Organization 5	
N.O. Address 5	
Neighborhood Organization 6	
N.O. Address 6	
Neighborhood Organization 7	
N.O. Address 7	
Neighborhood Organization 8	

N.O. Address 8	
Neighborhood Organization 9	
N.O. Address 9	
Neighborhood Organization 10	
N.O. Address 10	
Neighborhood Organization 11	
N.O. Address 11	
Neighborhood Organization 12	
N.O. Address 12	
More than 12 Neighborhood Organizations?	
Unit Sizes	8
Unit Features	7
Sponsor Characteristics	1
High Quality Housing Total	16
Income Levels of Tenants	16
Rent Levels of Tenants	11
Tenant Services	10
Opportunity Index	0
Educational Excellence	3
Underserved Area	0
Tenant Populations with Special Needs	2
Serve and Support Texans Most in Need Total	42
Declared Disaster Area	10
Community Support and Engagement Total	10
Financial Feasibility	18

Cost of Development per Square Foot	12
Pre-Application Participation	6
Leveraging of Private, State and Federal Resources	3
Extended Affordability or Historic Preservation	2
Right of First Refusal	1
Funding Request Amount	1
Efficient Use of Limited Resources and Applicant Accountability Total	43
Point Adjustment	
Total Application Self Score	111
Site Control Documentation	purchase contract TG 110 Glenoak LP.pdf
Census Tract Map	census tract map for 48355003102.pdf
Other Pertinent Information	
App #	15053

EXHIBIT B

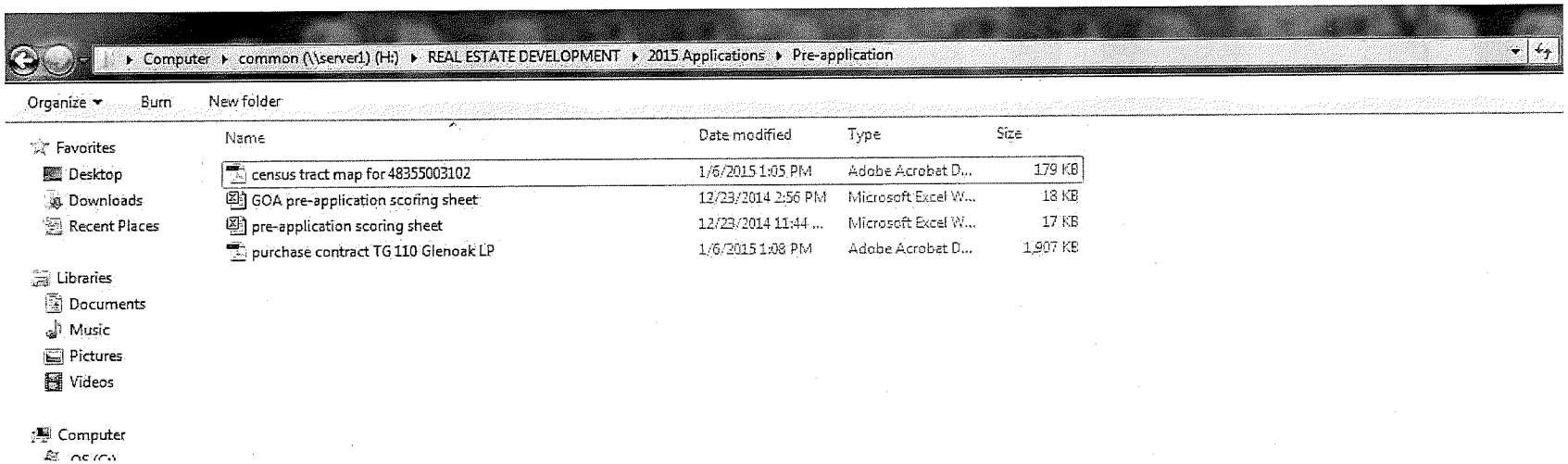
Computer ▸ common (\\server1) (H:) ▸ REAL ESTATE DEVELOPMENT ▸ 2015 Applications ▸ Pre-application
Organize
Burn
New folder
Favorites
Desktop
Downloads
Recent Places
Libraries
Documents
Music
Pictures
Videos
Computer
Name
Date modified
Type
Size
census tract map for 48355003102
1/6/2015 1:05 PM
Adobe Acrobat D...
179 KB
GOA pre-application scoring sheet
12/23/2014 2:56 PM
Microsoft Excel W...
18 KB
pre-application scoring sheet
12/23/2014 11:44 ...
Microsoft Excel W...
17 KB
purchase contract TG 110 Glenoak LP
1/6/2015 1:08 PM
Adobe Acrobat D...
1,907 KB

EXHIBIT C

From: TDHCA [mailto:htcnotifications@tdhca.state.tx.us]
Sent: Tuesday, January 06, 2015 1:53 PM
To: Canales, Roger
Subject: EDIT: 2015 HTC Pre-Application Submission Confirmation: #15053

You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle. Your Application number is 15053. If you have not done so already, please submit your application fee, which should be in the amount of $680, along with a copy of this confirmation. Certain Qualified Nonprofits are eligible for a 10% discount; please see §10.901(1) of the Uniform Multifamily Rule for more information. Pre-Applications submitted without the required fee will be rejected. Pre-Application fees must be received by 5:00 p.m. on Thursday, January 8, 2015.

A copy of your submission is below and will be posted to the Department's website along with the site control documentation, census tract map, and any other attachments included in the Pre-Application submission. If you find that any of the information submitted is incorrect, please use the Edit Submission link below in order to make corrections. Any edits must be received by 5:00 p.m. on Thursday, January 8, 2015.

Edit Submission

Please do not respond to this email. If you have questions, please contact a Multifamily Staff Member. http://www.tdhca.state.tx.us/multifamily/contacts.htm

JotForm

Question	Answer
Full Name	Gilbert Piette
Address	8610 N. New Braunfels, Suite 500
City	San Antonio
State	TX
Zip Code	78217
Phone Number	(210) 821-4300
Phone Extension	105
E-mail	gilp@hcscorp.org
Full Name	Roger Canales

Phone Number	(210) 821-4300
Phone Extension	120
E-mail	rogerc@hcscorp.org
Full Name	Raymond Lucas
Phone Number	(210) 821-4390
Phone Extension	
E-mail	luke007rhl@aol.com
Name of Proposed Entity	TG 110 Glenoak, LP
Development Name	Glenoak Apartments
Development Type	Reconstruction
Secondary Development Type	
Previous TDHCA #	
Initial construction year	
Units Demolished	68
Units Reconstructed	68
# of Non-Contiguous Sites	
# of Census Tracts	
Target Population	General
Address	711 Glenoak Drive
City	Corpus Christi
Zip Code	78418
ETJ?	No
County	Nueces
Region	10
Rural/Urban	Urban
Census Tract	48355003102
Census Tract 2	
Census Tract 3	
Census Tract 4	
Census Tract 5	
Total LI Units	68

Total MR Units	0
Total PHA Units	0
Total Units	68
HTC Request	1200000
Pre-App Fee Due	680
Has fee already been submitted?	Yes
Check #	12294
Check all that apply	At-Risk Nonprofit
U.S. Representative	Blake Farenthold
District	27
State Senator	Juan "Chuy" Hinojosa
District	20
State Representative	Todd A. Hunter
District	32
School Superintendent	Joe Kelley
District Name	Flour Bluff ISD
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Name 25	
Office 25	
More than 25 Local Officials?	
Are there Neighborhood Organizations whose boundaries contain the Development Site?	No
Neighborhood Organization	
N.O. Address	
Neighborhood Organization 2	
N.O. Address 2	
Neighborhood Organization 3	
N.O. Address 3	
Neighborhood Organization 4	
N.O. Address 4	
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Neighborhood Organization 7	
N.O. Address 7	
Neighborhood Organization 8	

N.O. Address 8	
Neighborhood Organization 9	
N.O. Address 9	
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Neighborhood Organization 11	
N.O. Address 11	
Neighborhood Organization 12	
N.O. Address 12	
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Unit Sizes	8
Unit Features	7
Sponsor Characteristics	1
High Quality Housing Total	16
Income Levels of Tenants	16
Rent Levels of Tenants	11
Tenant Services	10
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Underserved Area	0
Tenant Populations with Special Needs	2
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Declared Disaster Area	10
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Extended Affordability or Historic Preservation	2
Right of First Refusal	1
Funding Request Amount	1
Efficient Use of Limited Resources and Applicant Accountability Total	43
Point Adjustment	
Total Application Self Score	111
Site Control Documentation	purchase contract TG 110 Glenoak LP.pdf
Census Tract Map	census tract map for 48355003102.pdf
Other Pertinent Information	
App #	15053

EXHIBIT D

From: TDHCA [mailto:htcnotifications@tdhca.state.tx.us]
Sent: Tuesday, January 06, 2015 3:48 PM
To: Canales, Roger
Subject: EDIT: 2015 HTC Pre-Application Submission Confirmation: #15053

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Edit Submission

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Phone Extension	105
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E-mail	rogerc@hcscorp.org
Full Name	Raymond Lucas
Phone Number	(210) 821-4390
Phone Extension	
E-mail	luke007rhl@aol.com
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Secondary Development Type	
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# of Census Tracts	
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Census Tract Map	census tract map for 48355003102.pdf
Other Pertinent Information	
App #	15053

STATE OF TEXAS)
) §§
COUNTY OF BEXAR)

AFFIDAVIT

I, Bonnie Sears, being first duly sworn on oath, depose and say that:

1. I am a Special Projects Coordinator for Lucas & Associates, LP ("Lucas"). Lucas is a consultant to Housing & Community Services, Inc. ("HCS"). In that capacity, I worked closely with Roger Canales of HCS for submission of a pre-application (the "Application") to the Texas Department of Housing and Community Affairs ("TDHCA") for low-income housing tax credits for the Glenoak Apartments in Corpus Christi, Texas (TDHCA No. 15053).

2. I was present when Roger Canales uploaded the two files to TDHCA's online system. There was no indication of any problem when the two files were uploaded. I have no idea why TDHCA would be able to open and read the Census Tract Map file but would not be able to open and read the Site Control Documentation file. Both files were fully functional at the time they were uploaded.

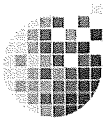
AFFIANT:

Bonnie Sears

Sworn to before me on January 30, 2015.

Notary Public

Audrey D Rogers
Notary Public
State of Texas
My Comm. Exp. 11/19/18



PDF Upload to TDHCA Analysis

Mark Hallman CHFI, CCE, EnCE, GCFE, GCFA

2/1/2015

This document shows the pertinent digital forensic artifacts related to the submission of a purchase agreement from HCS Corporation to TDHCA.

DECLARATION OF MARK HALLMAN

I, Mark Hallman, declare as follows:

1. My name is Mark Hallman. I am over the age of twenty-one years and have never been convicted of a felony or crime of moral turpitude and am completely competent to make this declaration.

2. All of the information set forth herein is within my personal knowledge and is, in all things, true and correct.

3. I am currently Chief Operating Officer and Vice President of Forensic Services for Digital Discovery in Dallas, Texas. I have held this position since January 2010. In this capacity, I have responsibility for overseeing and managing digital forensic investigations, incident response engagements and e-Discovery consulting and collections for a wide range of clients and industries. From 2005 to 2009, I served as Chief Knowledge Officer/Director of Forensic Services for Digital Discovery.

4. I have worked in the technology industry for approximately twenty-five years, and I have more than eight years of experience in forensic acquisitions, analysis and incident response. My experience includes conducting and/or managing over 350 digital forensic investigations or e-Discovery projects, including e-Discovery collection engagements that each involved hundreds of computers. I also have extensive experience performing large-scale acquisitions of complex, multi-server, multi-location environments and recovery of deleted data and data from damaged media. I received my B.B.A. in Management Information Systems from the University of Texas at Austin in 1984. I am a Certified Computer Hacking Forensic Investigator (CHFI), a SANS GIAC Certified Forensics Analyst (GCFA), a SANS GIAC Certified Forensics Examiner (GCFE), a ISFCE Certified Computer Examiner (CCE) and a Guidance Software EnCase Certified Examiner (EnCE).

5. Housing and Community Services, Inc. (HSC)retained Digital Discovery to conduct a forensic investigation related to the submission of a purchase agreement to the Texas Division of Housing and Community Affairs (TDHCA). I was responsible for conducting the forensic investigation and authoring this declaration reflecting my findings and conclusions on January 30, 2015.

6. On January 6, 2015 Roger Canales submitted two files named "purchase contract TG 110 Glenoak LP.PDF" and "census tract map for 48355003102.pdf" to the TDHCA web site. The TDHCA sent a confirmation email to Mr. Canales at 01:24:52 PM on January 6, 2015. The email had the subject line of: *"2015 HTC Pre-Application Submission Confirmation: #15053"* and the first line of the email stated that *"You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle."*

7. Mr. Canales has provided me with copies of the two files that he submitted on January 6, 2015. Mr. Canales stated these files were stored on the HSC server and that these files had not changed since he submitted them on January 6, 2015. He provided these files to me via email. Both files provided by Mr. Canales were intact and viewable with Adobe Reader.

8. A LNK file is a relatively simple but valuable artifact for the forensics investigator. Windows-created LNK files are generated when a user opens a local or remote file or document, giving investigators valuable information on a custodian's activity and the file itself. A LNK file was found on Mr. Canales' computer that points to the "purchase contract TG 110 Glenoak LP.PDF". The metadata contained in this showed that the file resided on the HSC. And that the document was last modified on 01/06/2015 01:08:02 PM. The metadata in this LNK confirms what Mr. Canales represented to me concerning the files that he emailed to me.

9. A copy of the file "purchase contract TG 110 Glenoak LP.PDF" was found on Mr. Canales' computer and was named "purchase contract TG 110 Glenoak LP (2).PDF".

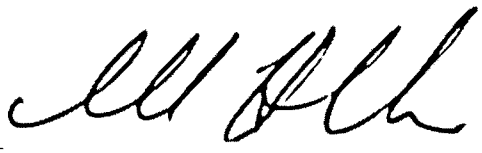
10. The file "purchase contract TG 110 Glenoak LP (2).PDF" was found in the "/Users/rogerc/AppData/Local/Microsoft/Windows/Temporary/Internet Files/Content.Outlook/ZW3WLWLG/" folder and was last modified on 01/06/2015 01:08:02 PM, the same date and time that was captured in the LNK file that contains metadata about the target file stored on the server. The Content.Outlook folder is the temporary storage location for attachments that are opened from within email client MS Outlook.

11. The MD5 hash value of the version of the purchase contract found in the MS Outlook temporary folder, "purchase contract TG 110 Glenoak LP (2).PDF", matches the MD5 hash value of the copy of the file named "purchase contract TG Glenoak LP.PDF" that was provided to me by Mr. Canales. That hash value is "d5bb160d1536387de5d31f3ed155df8b".

12. My opinion is that the file "purchase contract TG 110 Glenoak LP.PDF" was transmitted to the TDHCA between 01:08:02 PM and 01:24:52 PM on January 6, 2015. Any corruption had to have occurred during the transfer or handling of the document. This corruption could have occurred in one of several points during transfer; 1.) From HSC to the vendor that TDHCA uses to host their file transfers, jotform.us 2.) From jotform.us to the TDHCA server or 3.) Some TDHCA internal handling of the document.

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed February 2, 2015



MARK HALLMAN

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
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T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

February 5, 2015

Writer's direct phone # 512-475-3296
Email: tim.irvine@tdhca.state.tx.us

Cynthia Bast
Locke Lord
600 Congress, Suite 22000
Austin, TX 78701

RE: APPEAL OF HTC PRE-APPLICATION TERMINATION: #15053, 911 GLENOAK APARTMENTS, CORPUS CHRISTI, TEXAS

Dear Ms. Bast:

The Texas Department of Housing and Community Affairs is in receipt of your letter, dated February 2, 2015, appealing the termination of Glenoak Apartments (HTC #15053) in Corpus Christi, Texas. As stated in the termination letter, dated January 26, 2015, the Pre-Application for Glenoak Apartments was submitted to the Department by the Pre-Application Final Delivery Date, January 8, 2015, and appeared to include the required site control documentation file. However, when staff attempted to download the file from the JotForm server, it was discovered that the file was corrupt and could not be opened.

Through the online system, TDHCA received 337 pre-application submissions and 714 corresponding attachments. Of these attachments, only one file was found to be corrupt, that being the site control documentation for Glenoak Apartments. The appeal states that sufficient safeguards were not in place to alert a user to a problem with the upload. The safeguard staff did put in place was the submission confirmation email which included all the data input by the user and hyperlinks to the uploaded documents.

The appeal also states that the Applicant was not made aware of any method to check the success of the upload. However, the Department sent a Listserv email on January 7, 2015 (subject line: HTC Pre-Application Reminder), which stated, in part "Applicants are advised to carefully review the submission confirmation email to ensure that all elections are correct and that all necessary attachments are included and can be opened from the confirmation email."

Because the site control documentation was not received by 5:00 pm on January 8, 2015, the Applicant's appeal is hereby denied. As requested in your letter, this appeal has been placed on the agenda for the February 19, 2015, Board meeting.

Sincerely,

Timothy K. Irvine
Executive Director

Locke Lord LLP
Attorneys & Counselors

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

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

February 10, 2015

Via Electronic Mail

Mr. J. Paul Oxer
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Glenoak Apartments in Corpus Christi (the "**Development**")
TDHCA No. 15053

Dear Mr. Oxer:

We represent TG 110 Glenoak, LP (the "**Applicant**"), which submitted a pre-application for low income housing tax credits for the reconstruction of the Development on January 6, 2015. The application has been terminated because TDHCA was unable to open the file that was uploaded to evidence site control. We appealed TDHCA's termination of the application to the Executive Director, which appeal was denied. We now appeal to the Board and request reinstatement.

We ask that you review the appeal submitted to the Executive Director, as it contains important background information on this matter. The purpose of this letter is to respond to the Executive Director's determination on the appeal. Specifically, the Applicant disputes the safeguards that TDHCA implemented to protect against errors like the one that occurred. The Executive Director's response states:

> The appeal also states that the Applicant was not made aware of any method to check the success of the upload. However, the Department sent a Listserv email on January 7, 2015 (subject line: HTC Pre-Application Reminder), which stated, in part "Applicants are advised to carefully review the submission confirmation email to ensure that all elections are correct and that all necessary attachments are included and can be opened from the confirmation email."

A copy of the January 7 Listserv email is attached for your reference as Exhibit A. It is important to note several things:

- The reference to opening the file attachments is one small phrase, situated near the bottom of the email.
- This is the first time in the entire pre-application cycle that any public reference was made to opening the attachment files from the confirmation email.
- This email was not delivered until January 7, only one day before the deadline. By this time, the Applicant had already submitted its pre-application. It had received three confirming emails and had checked each to make sure the file names listed on the confirming email were the same as the names of the files that were uploaded. In short, the Applicant believed it had completed everything it needed to do, before this reminder email even arrived on January 7.

Additionally, we reiterate that nothing on the confirming emails delivered by TDHCA to the Applicant on January 6 stated that the Applicant could or should check the two PDF files by clicking on the links. It simply states that a "copy" of the submission is set forth below. The only reference to a link is to the "Edit Submission" link. Finally, the first line of the email states: "You have successfully submitted your Competitive HTC pre-application for the 2015 Cycle." A copy of one of the confirming emails is attached for your reference as Exhibit B.

The crux of this appeal seems to be who should bear the burden when a new system is implemented and does not work perfectly, through no fault of the Applicant. Previously, pre-applications were submitted on a CD. Certainly, if a complete CD were submitted, but someone at TDHCA dropped it and stepped on it, an applicant would not be responsible for submitting an incomplete application. The analogy applies here. The Applicant uploaded two clean files through the online system. That has been verified by a computer forensic consultant. But somehow, as TDHCA was trying to upload the file from the JotForm server, the file was broken.

In this situation, the appropriate resolution would be to allow the Applicant to cure this problem by submitting the site control documentation as an Administrative Deficiency. In fact, the Applicant has already delivered the site control documentation to TDHCA, upon receiving notification from TDHCA that the file was corrupt. The Applicant's submission of this site control documentation after the deadline cures the omission and does not necessitate a substantial reassessment or re-evaluation of the Application on the part of TDHCA.

Appeal

Because the Applicant submitted a fully readable file in the online system and had no control over the corruption that occurred during the upload, we believe it is appropriate for TDHCA to allow the omission to be corrected by an Administrative Deficiency. We respectfully request that you reinstate the application. Thank you.

Sincerely,

Cynthia L Bast

Cynthia L. Bast

cc: Jean Latsha
Kathryn Saar
TDHCA

Gil Piette
Ray Lucas
Roger Canales
Bonnie Sears
Brad McMurray
Applicant

EXHIBIT A

-----Original Message-----
From: TDHCA [mailto:do-not-reply@tdhca.state.tx.us]
Sent: Wednesday, January 07, 2015 1:51 PM
To: bonnies@LUCASLP.COM
Subject: TDHCA: HTC Pre-Application Reminder [S811][HP][HTC][HTF][MFB]

This message is a reminder that the Pre-Application Final Delivery date is 5pm CST tomorrow, January 8, 2015. Pursuant to §11.8(a)(1) of the 2015 Qualified Allocation Plan, the pre-application fee is required by the deadline in order for the pre-application to be accepted.

Although the pre-applications are submitted via the on-line system, payment must be physically received by the Department by the 5pm CST deadline. No other form is required to be submitted in hard copy, and Department staff will make a copy of the check to serve as a receipt. If submitting payment that includes a discounted fee pursuant to §10.901(1) of the 2015 Uniform Multifamily Rules, Applicants should include supporting documentation that the Applicant is non-profit or CHDO with the payment. Applicants are responsible for ensuring that the fee amount is appropriate; Department staff will not confirm that check amounts are correct since the on-line application can be manipulated after the submission of the fee.

Additionally, Applicants are advised to carefully review the submission confirmation email to ensure that all elections are correct and that all necessary attachments are included and can be opened from the confirmation email. If no confirmation email is received, Applicants should first check the spam folder; if the email confirmation is not in spam, please contact Kathryn Saar so that the confirmation can be resent.

Applicants are encouraged to submit pre-applications well in advance of the deadline.

If you have any questions about the upcoming deadline for pre-application submission, please contact Kathryn Saar at 512.836.7834 or by email at kathryn.saar@tdhca.state.tx.us
---
Please do not reply to this email. It is from an unattended email address.
To contact the Texas Department of Housing and Community Affairs, get more information, or view a slideshow of recent TDHCA activities, visit http://www.tdhca.state.tx.us/ in your Web browser. Like us on facebook
(http://www.facebook.com/TDHCA) and follow us on twitter (http://twitter.com/TDHCA).

Login to your email list account to edit your subscription:
http://maillist.tdhca.state.tx.us/list/login.html?lui=f9mu0g2g&mContainer=2&
mOwner=G382s2w2r2p&mAddress=bonnies%40LUCASLP.COM

Unsubscribe from this list:
http://maillist.tdhca.state.tx.us/list/unsubscribe.html?lui=f9mu0g2g&mContai
ner=2&mOwner=G382s2w2r2p&address=bonnies%40LUCASLP.COM&val=9y0nipeg

EXHIBIT B

Bast, Cynthia L.

From: TDHCA <htcnotifications@tdhca.state.tx.us>
Sent: Tuesday, January 06, 2015 3:48 PM
To: Canales, Roger
Subject: EDIT: 2015 HTC Pre-Application Submission Confirmation: #15053

You have successfully submitted your Competitive HTC Pre-Application for the 2015 Cycle. Your Application number is 15053. If you have not done so already, please submit your application fee, which should be in the amount of $680, along with a copy of this confirmation. Certain Qualified Nonprofits are eligible for a 10% discount; please see §10.901(1) of the Uniform Multifamily Rule for more information. Pre-Applications submitted without the required fee will be rejected. Pre-Application fees must be received by 5:00 p.m. on Thursday, January 8, 2015.

A copy of your submission is below and will be posted to the Department's website along with the site control documentation, census tract map, and any other attachments included in the Pre-Application submission. If you find that any of the information submitted is incorrect, please use the Edit Submission link below in order to make corrections. Any edits must be received by 5:00 p.m. on Thursday, January 8, 2015.

Edit Submission

Please do not respond to this email. If you have questions, please contact a Multifamily Staff Member. http://www.tdhca.state.tx.us/multifamily/contacts.htm

JotForm

Question	Answer
Full Name	Gilbert Piette
Address	8610 N. New Braunfels, Suite 500
City	San Antonio
State	TX
Zip Code	78217
Phone Number	(210) 821-4300
Phone Extension	105
E-mail	gilp@hcscorp.org
Full Name	Roger Canales
Phone Number	(210) 821-4300
Phone Extension	120
E-mail	rogerc@hcscorp.org
Full Name	Raymond Lucas

Phone Number	(210) 821-4390
Phone Extension	
E-mail	luke007rhl@aol.com
Name of Proposed Entity	TG 110 Glenoak, LP
Development Name	911 Glenoak Apartments
Development Type	Reconstruction
Secondary Development Type	
Previous TDHCA #	
Initial construction year	
Units Demolished	68
Units Reconstructed	68
# of Non-Contiguous Sites	
# of Census Tracts	
Target Population	General
Address	711 Glenoak Drive
City	Corpus Christi
Zip Code	78418
ETJ?	No
County	Nueces
Region	10
Rural/Urban	Urban
Census Tract	48355003102
Census Tract 2	
Census Tract 3	
Census Tract 4	
Census Tract 5	
Total LI Units	68
Total MR Units	0
Total PHA Units	0
Total Units	68
HTC Request	1119000

Pre-App Fee Due	680
Has fee already been submitted?	Yes
Check #	12294
Check all that apply	At-Risk Nonprofit
U.S. Representative	Blake Farenthold
District	27
State Senator	Juan "Chuy" Hinojosa
District	20
State Representative	Todd A. Hunter
District	32
School Superintendent	Joe Kelley
District Name	Flour Bluff ISD
Address	Street Address: 2505 Waldron Road City: Corpus Christi Zip Code: 78418
Presiding officer of Board of Trustees	Richard Pittman
Address	Street Address: 2505 Wladron Road City: Corpus Christi Zip Code: 7818
Name	Nelda Martinez
Office	Mayor
Name 2	Kelley Allen
Office 2	City Council Member
Name 3	Chad Magill
Office 3	City Council Member
Name 4	Priscilla Leal
Office 4	City Council Member
Name 5	Colleen McIntyre
Office 5	City Council Member
Name 6	Rudy Garza, Jr.
Office 6	City Council Member
Name 7	Lillian Riojas

Office 7	City Council Member
Name 8	Mark Scott
Office 8	City Council Member
Name 9	David Loeb
Office 9	City Council Member
Name 10	Judge Loyd Neal
Office 10	County Judge
Name 11	Mike Pusley
Office 11	County Commissioner
Name 12	Joe Gonzales
Office 12	County Commissioner
Name 13	Oscar Ortiz
Office 13	County Commissioner
Name 14	Joe McComb
Office 14	County Commissioner
Name 15	
Office 15	
Name 16	
Office 16	
Name 17	
Office 17	
Name 18	
Office 18	
Name 19	
Office 19	
Name 20	
Office 20	
Name 21	
Office 21	
Name 22	
Office 22	
Name 23	
Office 23	

Name 24	
Office 24	
Name 25	
Office 25	
More than 25 Local Officials?	
Are there Neighborhood Organizations whose boundaries contain the Development Site?	No
Neighborhood Organization	
N.O. Address	
Neighborhood Organization 2	
N.O. Address 2	
Neighborhood Organization 3	
N.O. Address 3	
Neighborhood Organization 4	
N.O. Address 4	
Neighborhood Organization 5	
N.O. Address 5	
Neighborhood Organization 6	
N.O. Address 6	
Neighborhood Organization 7	
N.O. Address 7	
Neighborhood Organization 8	
N.O. Address 8	
Neighborhood Organization 9	
N.O. Address 9	

Neighborhood Organization 10	
N.O. Address 10	
Neighborhood Organization 11	
N.O. Address 11	
Neighborhood Organization 12	
N.O. Address 12	
More than 12 Neighborhood Organizations?	
Unit Sizes	8
Unit Features	7
Sponsor Characteristics	1
High Quality Housing Total	16
Income Levels of Tenants	16
Rent Levels of Tenants	11
Tenant Services	10
Opportunity Index	0
Educational Excellence	3
Underserved Area	0
Tenant Populations with Special Needs	2
Serve and Support Texans Most in Need Total	42
Declared Disaster Area	10
Community Support and Engagement Total	10
Financial Feasibility	18
Cost of Development per Square Foot	12
Pre-Application Participation	6

Leveraging of Private, State and Federal Resources	3
Extended Affordability or Historic Preservation	2
Right of First Refusal	1
Funding Request Amount	1
Efficient Use of Limited Resources and Applicant Accountability Total	43
Point Adjustment	
Total Application Self Score	111
Site Control Documentation	purchase contract TG 110 Glenoak LP.pdf
Census Tract Map	census tract map for 48355003102.pdf
Other Pertinent Information	
App #	15053

5b

12174

(incorrectly identified as 12074 on the agenda)

Royal Gardens Mineral Wells

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

MARCH 12, 2015

Presentation, Discussion, and Possible Action on a Request for the Reissuance of Competitive (9%) Housing Tax Credits to Royal Gardens Mineral Wells (#12174) including any necessary waivers

RECOMMENDED ACTION

WHEREAS, on December 31, 2014, the Department received a return of Competitive (9%) Housing Tax Credits in the amount of $697,774 from Royal Gardens Mineral Wells (#12174);

WHEREAS, the return included a request for the effective date of the return to be December 31, 2014, and asked that the credits be reissued to the same development pursuant to 10 TAC §11.6(5) of the 2015 Qualified Allocation Plan ("2015 QAP');

WHEREAS, pursuant to Treasury Regulation §1.42-14(i)(3)(ii), in order for a state to be eligible for National Pool, the amount of credit that remains unallocated at the end of the calendar year may not exceed one percent of the total credit ceiling;

WHEREAS, the 2014 credit ceiling, with the return from Royal Garden Mineral Wells, is approximately $64,814,078, one percent of which is $648,141;

WHEREAS, pursuant to Treasury Regulation §1.42-14(b)(2)(C)(iii), a state may, in its discretion, treat any portion of credit returned from a project after September 30 of a calendar year and that is not reallocated by the close of the calendar year as returned on January 1 of the succeeding calendar year;

WHEREAS, in order for the State of Texas to receive credit from the National Pool, the Department must consider all or a portion (at least $49,633) of the Royal Gardens Mineral Wells return as returned on January 1, 2015;

WHEREAS, on February 19, 2015, the Board directed staff to consider all credits returned from Royal Gardens Mineral Wells as returned on January 1, 2015 for purposes of reporting to the IRS; and

WHEREAS, with regard to the reissuance of the credit in accordance with 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events, additional information is required in order for staff to make a recommendation

NOW, therefore, it is hereby

RESOLVED, that the return of tax credits by the Owner of Royal Gardens Mineral Wells [is/is not] subject to the 2015 QAP; and

FURTHER RESOLVED, that additional information is needed in order to determine whether Royal Gardens Mineral Wells qualifies for application of the force majeure provisions of §11.6(5) of the 2015 QAP and staff is hereby directed to request the necessary information from the Owner for Royal Gardens Mineral Wells in order to determine whether the provisions of §11.6(5) of the 2015 QAP would be met.

BACKGROUND

An award of $697,774 in Competitive (9%) Housing Tax Credits to Royal Gardens Mineral Wells (the "Development") was approved by the Board on July 26, 2012, and staff executed a Carryover Allocation Agreement with the Owner of the Development on December 28, 2012. That Carryover Allocation Agreement included a certification from the Owner that each building for which the allocation was made would be placed in service by December 31, 2014, in order to satisfy the requirements of Section 42 of the Internal Revenue Code. On April 1, 2014, the Development, which at the time was under construction, was destroyed in a fire. As a result, the owner was unable to meet the December 31, 2014 deadline to place the buildings in service. Subsequently, on December 31, 2014, the Owner submitted a letter to the Department returning the credits.

Section 11.6(2) of the 2014 Qualified Allocation Plan ("2014 QAP") calls for any credit returned after January 1 and eligible for reallocation to be first returned to the sub-region or set-aside from which the original allocation was made. In addition, §11.6(4) of the 2014 QAP outlines procedures for establishing a Waiting List and making awards to active and eligible application on that list. Typically, Department staff, when receiving credit returns even late in the year, is able to reallocate those credits to applications on that Waiting List, but due to the extremely late date of this return, compounded by its coming in at the close of business, staff was unable to reallocate those credits to the next 2014 Application on the Waiting List. However, these credits are not lost to the state and can be added to the 2015 credit ceiling.

The Owner's return of credits included a request that the return be effective as of December 31, 2014, and that the credits be reissued to the same Development pursuant to §11.6(5) of the 2015 QAP, related to Credits Returned Resulting from *Force Majeure* Events. Staff does not agree that a return of credits in calendar year 2014 would be subject to the 2015 QAP.

However, because this return was made after September 30, 2014, the Department does have the discretion, under Treasury Regulation §1.42-14(b)(2)(C)(iii), to consider all or part of this return as having been returned on January 1, 2015 for purposes of reporting to the IRS. It is in the state's best interest to consider all or a portion (at least $49,633) of the credit returned as having been returned on January 1, 2015, in order to receive credit from the National Pool in 2015. The state is eligible to receive credit from the 2015 National Pool if the unallocated credit in 2014 does not exceed one percent of the total credit ceiling in 2014, which is approximately $648,141. Should the entire $697,774 return be considered returned in 2014, the state would not be eligible for 2015 National Pool. Therefore, the board took action at the February 19, 2015 meeting, directing staff to consider the credits returned from Royal

Gardens Mineral Wells as returned on January 1, 2015, for purposes of reporting to the IRS, and staff has since done so by submitting the Form 8610.

Apart from the Department's consideration of the returned credit as having been received on January 1, 2015, a determination must be made regarding the applicability of the *force majeure* provisions of the 2015 QAP. According to §11.6(5) of the 2015 QAP in order for the *force majeure* provisions to be applicable, several requirements must be met.

In addition to the voluntary return of credits and other requirements, the *force majeure* provision of the rule calls for evidence that both the Development and Development Owner were properly insured. Also, the Department's Real Estate Analysis Division must determine that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event. As of the date of this board action request, staff understands that the insurance claim has been filed but not settled. Should the board determine that §11.6(5) of the 2015 QAP applies, staff further recommends that the Owner be given until May 1, 2015 to provide the necessary documentation to satisfy the requirements of §11.6(5) of the 2015 QAP. While the rules regarding Administrative Deficiencies would typically apply, staff is already aware that some of the necessary documentation is unavailable, and allowing the Owner additional time will save the need for board action next month. This timeline would give staff the ability to make a recommendation to the board regarding the reallocation of the credits at the board meeting currently scheduled for June 16, 2015.

1500 MLK LLC

Cameron Dorsey
TDHCA
221 E 11th Street
Austin TX 78701
RE: 12174 Mineral Wells

December 31, 2014

Good afternoon Mr. Dorsey:

Pursuant to Section 11.6 (5) of the 2015 TDHCA Qualified Allocation Plan, 1500 MLK, LLC the Project Owner of Project # 12174, Royal Gardens, Mineral Wells, Texas is returning the tax credits effective as of 5:00 PM on December 31, 2014.

This return is based on a Force Majeure event which occurred on April 1, 2014, and which fits within the definition in 11.6(5) (A) and was not caused by the willful negligence of the Development Owner. All necessary proof of the fire, the loss and the fact that it was not caused by the willful negligence or willful act of the Owner has previously been submitted to TDHCA. As required by this Section of the QAP:

1. The tax credits were awarded in the prior three years—2012.

2. The credits are being returned after September 30 of the preceding year.

3. The credits are returned pursuant to a Force majeure event that occurred after the start of construction and before the issuance of Forms 8609.

4. The Department was timely notified of the event, all steps were taken to minimize the effects of the event and the project was properly insured.

5. The Force Majeure event prevents the Development Owner from meeting the placement in service requirements of the original allocation, which would be December 31, 2014.

The Owner respectfully requests that, having met the requirements of Section 11.6(5) of the 2015 QAP, which became effective on December 23, 2014, the Department treat this return of credits as having occurred on January 1, 2015 and that the Department issues credits and a Carryover Agreement for the same amount of credits from the current year's allocation.

Respectfully,

1500 MLK, LLC, a Texas Limited liability company

By: SE 14th Avenue, LLC, a Texas limited Liability Company,
Its Managing Member

By: Murid GP V, LLC, a Texas limited liability company,
Its Co-Manager

By: Noorallah Jooma
Noorallah Jooma--Manager

THE LAW OFFICES OF
CLAIRE G. PALMER, PLLC

2224 Clearspring Drive South
Irving, Texas 75063

972-948-3166
Fax: 972-432-8825

clairepalmerpllc@sbcglobal.net

January 30, 2015

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

RE: Royal Gardens- Mineral Wells, Texas (the "Project")
1500 MLK, LLC
Housing Tax Credit Development No. 12074

Dear Mr. Irvine:

On behalf of my client, 1500 MLK, LLC (the "Project Owner"), this letter is to request that the Texas Department of Housing and Community Affairs ("TDHCA") reissue the above-referenced 9% housing tax credits is accordance with Section 11.6 (5) of the 2015 TDHCA Qualified Allocation Plan ("QAP"). The Project Owner of Project # 12174, Royal Gardens, Mineral Wells, Texas returned the tax credits effective as of 5:00 PM on December 31, 2014. This was after the effective date of the 2015 QAP and, therefore, the referenced section is applicable to the reissue of the tax credit.

As you are aware, the return was based on a Force Majeure event which occurred on April 1, 2014, and which fits within the definition in 11.6(5) (A) and was not caused by the willful negligence of the "Development Owner". All necessary proof of the fire, the loss and the fact that it was not caused by the willful negligence or willful act of the Project Owner has previously been submitted to TDHCA.

The pertinent Sections of the QAP and the Project Owner's compliance therewith are set forth as follows:

> For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. Force Majeure events must make construction activity impossible or materially impede its progress; **The credits were returned after September 30 of the preceding program year (that being 2014), and were returned as a result of a Force Majeure event that occurred after the start of construction (at 80% completion) and before issuance of 8609, caused by an event outside the control of the Project Owner and making construction activity impossible**

(B) Acts or events caused by the willful negligence or willful act of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure; **The Force Majeure event was not the result of the willful negligence or willful act of the Project Owner or Developer, as shown by the Fire Marshall's report previously provided to TDHCA.**

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event; **All required information was provided to TDHCA when the event occurred.**

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, that the Development and Development Owner was properly insured and that the Department was Housing Tax timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph; **Evidence of insurance, all reasonable steps that have been taken to minimize or mitigate damages and all information about the event has been provided to TDHCA as soon as such information was available.**

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation; **The totality of the damages sustained in the Force majeure event made making the placed in service deadline of December 31, 2014 impossible.**

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; **The request is for the same amount.**

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; **The Project Owner requests that TDHCA REA perform an analysis to determine that the Project continues to be financially viable;** and

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs. **This request was made when the credits were returned.**

Having met the criteria established in the QAP, the Project Owner now respectfully request that TDHCA, after performing the required real estate analysis, reissue the tax credits and issue a new carryover agreement.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Claire G Palmer

Claire G, Palmer

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BOARD ACTION REQUEST
REAL ESTATE ANALYSIS
March 12, 2015

Presentation, Discussion, and Possible Action on the proposed amendments to 10 TAC Chapter 10, §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4) concerning Underwriting and Loan Policy and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

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

WHEREAS, at the November 4, 2014, Governing Board meeting a new 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy (the "Underwriting Rules") was approved and subsequently adopted and published in the *Texas Register*;

WHEREAS, staff has continued to receive input and questions regarding the applicability of certain aspects of the Underwriting Rules at cost certification; and,

WHEREAS, staff proposes clarifications and changes to the existing rules to address this input;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments to 10 TAC Chapter 10 §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4) regarding the 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 amendments to the 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

On November 4, 2014, the Department's Governing Board approved new Underwriting and Loan Policy rules for adoption in order to move forward with their timely implementation in conjunction with the Department's QAP. However, certain issues with regard to the Underwriting in conjunction with the cost certification review (issuance of IRS forms 8609) have caused the development and investor communities to express concern.

Several focused group discussions, including an open roundtable discussion, were held to engage the public on these matters. In addition, staff has received constructive input proposing changes that would address the concerns but also have an impact in several other areas of the rules. The proposed amendments presented herein include changes resulting from both public and staff input. The seven proposed changes are intended to address the industry concerns by providing limited instances in which different underwriting feasibility criteria would be applied at cost certification and to create, with appropriate limitations and controls, two options for using funds to benefit tenants residing at developments in cases in which a gap issue has occurred between underwriting at award and underwriting at cost certification. These proposed changes are summarized below.

Summary of proposed amendments:

1) §10.302 (c)(2) Gap/DCR Method

Staff proposes the clarification of including the potential amortizing payments that could occur with a cash flow loan that does not specifically require such payments. While this change is currently employed by staff during the underwriting process, the change will ensure clarity for the development and investor community and ensures that the full amount of debt being carried by a Development is considered at the time of cost certification.

Partnership agreements often have conditions which speak to the timing of the delivery of the credit. The delivery of the credit can involve the month when buildings are placed in service as well as the timing of the issuance of form(s) 8609. Equity partners may make adjustments to the price they pay for the credits as a result of these timing issues. These price changes are commonly called timing adjusters. Although they would not ever be projected to be a cost at application because they could be netted from the proposed syndication price, they become both real and fixed when the development is complete. This change to the rule will clarify that timing adjusters that affect the amount of tax credit equity are considered during the cost certification evaluation.

Staff recommends changes to the language with respect to the treatment of cash flow debt and proposes to consider the inclusion of timing adjusters at cost certification as follows:

> **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~~ downward (but not less than ~~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 (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

2) §10.302 (d)(3) Net Operating Income ("NOI")

Staff proposes clarifications emphasizing the use of actual operating income and expenses at the time of cost certification and the inclusion of lender and equity partner stabilization requirements in determining the appropriate NOI used by the underwriter. Utilizing actual income and expenses and including the lender and equity partner requirements in the underwriter's analysis has been the practice of the Department and therefore the proposed change should have no effect other than clarification, and therefore staff recommends the following change:

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. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

3) §10.302 (d)(4)(D) Acceptable Debt Coverage Ratio Range

Section 10.302(d)(4)(D) provides for an acceptable minimum and maximum debt coverage ratio ("DCR") range for underwriting purposes. The minimum DCR represents a test of basic operating feasibility while the maximum represents a test of allocation efficiency consistent with Internal Revenue Code (the "Code") §42 (m)(2) regarding "…the housing

credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." The Code leaves the specific methodology for this determination up to the state housing agency. The Department has used a cap on the debt coverage ratio as the key method to address this requirement since 1998 and it has been adjusted periodically based on changes in the industry such as rising costs and prevailing lender and investor requirements directed towards ensuring that financial feasibility will continue for thirty years or more.

The staff proposal herein is to raise this upward limit from 1.35 to 1.45 when underwriting at cost certification to address concerns including those related to relatively small historical increases in annual rent limits as compared to increases in operating expenses. During the round table held in February lenders also expressed concerns regarding refinance risks in the post-year 15 period and indicated that allowing for a higher debt coverage ratio at cost certification may reduce such risks in later years. On the other hand, increasing the maximum will result in more tax credit equity in some developments and therefore, more tax credits on a per development basis. Staff has estimated that this change to the rule could result in a 2% (approximate) reduction in the number of units produced on an annual basis. However, the additional cushion created is intended to ensure the long term health of tax credit developments and protection for the parties investing in tax credit developments. Comments received on this issue included proposals to raise it as high as 1.50 and to raise it for all underwriting. Staff will continue to monitor this matter and, consistent with past practice, may recommend further changes as conditions warrant. The proposed amendment is as follows:

> Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.45 for Housing Tax Credit Developments at cost certification).

4) §10.302 (e)(9) Reserves

Section 10.302(e)(9) provides the criteria for the allowance of reserves to be included by the underwriter in the total development cost of the development. The amount of reserves required is a significant unknown at the time of application since often the lender and equity partner have not yet been determined or if they have, they have not completed their full due diligence. Therefore, the Department has historically set limits at the application stage so that potentially unnecessary amounts of reserves do not increase the amount of credit required. At cost certification, however, the actual amount of reserves should be known and therefore, included in the cost of the development. The recommended language below clarifies the rule and makes it consistent with the Post Award and Asset Management Requirements regarding reserves at 10 TAC §10.404(c).

Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, ~~The~~ the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, 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). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

5) §10.302 (e)(11) Additional Tenant Amenities

Section 10.302(e)(11) is a new subsection that would allow an owner to utilize positive changes in the financing structure to provide additional amenities on site for tenants of a development. Essentially, excess funding sources that were not originally projected to exist could, within limits, be accessed for such amenities. Because of the additional costs of providing these amenities, this allowance may reduce the amount of tax credits returned at cost certification. However, staff will review the proposed amenities and ensure that they are appropriate for the development, including the tenant populations being served, and verify the actual costs of providing such amenities. Staff proposes the following language to provide this additional tenant amenities option at cost certification:

Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.

6) §10.302 (e)(12) Special Reserve Account

Staff proposes the ability for an owner to establish a Tenant Special Reserve at cost certification. A similar mechanism was deployed for the Exchange program which allowed for the preservation of an Exchange award at the time of cost certification. The special reserve account is governed by rules in 10 TAC §10.404(d), which requires submission and

approval of a plan for the use of the reserves as well as Department approval of any distributions. Section 10.404(d)(4) reads:

> "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."

This change may also result in the reduction of returned credit at cost certification resulting from the gap method in favor of establishment of this special reserve account. The staff proposed addition to §10.302(e)(12) is as follows:

> **Special Reserve Account.** For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to $2,500 per Unit into a Special Reserve Account [pursuant to §10.404(d)] as a Development Cost.

7) §10.302(i)(4) Initial Feasibility

Section 10.302(i)(4) provides for the calculation of the anticipated expense as a percentage of income to be generated by the property. This measurement addresses the initial feasibility of a development as well as providing a barometer of future performance. The higher the expense to income percentage the tighter the proposed deal is structured from the perspective of market, targeted households and household size, and deep rent targeting. Market conditions can change between the time of application and the completion of the project and cost certification, and therefore, it is possible for a transaction that was originally projected to have an acceptable expense to income ratio at application to have a real experience with expenses at a higher level than initially underwritten. Staff believes this ratio requirement remains necessary and relevant at the time of initial underwriting due to the fact that the maximum tax credit award is set at original underwriting and the need for that credit amount to be sufficient despite potential changes in financing terms and costs. However, at cost certification these factors are known and the investors have in effect assumed the risk of continuing feasibility and compliant operation. Staff recommends the following change:

(4) Initial Feasibility.

(A) Except when underwritten at cost certification, the ~~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.

Attachment A: Preamble and Proposed Amendments to 10 TAC Chapter 10 §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4) concerning Underwriting and Loan Policy for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 TAC Chapter 10 §§10.302 (c)(2), , 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), , 10.302 (e)(11), 10.302(e)(12) and 10.302 (i)(4) concerning Underwriting and Loan Policy. The purpose of the proposed amendments is to implement changes that will improve the underwriting that occurs at the time of cost certification Housing Tax Credit Program. The amended sections propose changes related to gap method analysis, reserves, acceptable debt coverage ratio, additional amenities, feasibility criteria and the underwriting process at cost certification.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the proposed amendments could reduce the revenues for the Department by an estimated $260,000 per year but does not have any foreseeable implications related to costs or revenues of local governments. Any such reduction in revenues would likely be partially offset by a reduction in the number of properties added to the portfolio for which the Department has monitoring and oversight responsibility. Additionally, the Department has authority to adjust its fees to compensate for shortfalls should the need arise. Mr. Irvine has determined that there will be no additional economic cost to persons who are required to comply with the amendments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be to allow owners to obtain their full amount of originally allocated credit and reduce the risk associated with changing economic conditions to enhance the stability and the feasibility of affordable housing developments proposed to be funded in part with limited state resources. It is also estimated that there will be 100 fewer low income tax credit units developed annually as a result of the adoption and implementation of the proposed amendments. By way of comparison in the three preceding years the tax credit program has created 91, 31, and 38 additional units.

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 March 27, 2015 to April 27, 2015 to receive input on the proposed amendments. 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 April 27, 2015.

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

§10.301. 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~~ downward (but not less than ~~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 (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) **The Amount Requested**. The amount of funds that is requested by the Applicant 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. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and

partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) **Debt Coverage Ratio**. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent 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 clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.45 for Housing Tax Credit Developments at cost certification).

(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**. Except for the underwriting of a Housing Tax Credit Development at cost certification, ~~The~~ the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, 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). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) **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.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to $2,500 per Unit into a Special Reserve Account [pursuant to §10.404(d)] as a Development Cost.

(f) **Development Team Capacity and Development Plan**.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). 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) Except when underwritten at cost certification, the ~~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.