

# **SUPPLEMENTAL BOARD BOOK OF FEBRUARY 28, 2017**



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

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

**A G E N D A  
9:00 AM  
February 28, 2017**

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

**CALL TO ORDER**

**ROLL CALL**

**Juan Muñoz, Vice Chair**

**CERTIFICATION OF QUORUM**

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

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

**CONSENT AGENDA**

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the 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 Order concerning Mission Pointe Club f/k/a Country Villa (HTC 91040 / CMTS 958)
- b) Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Order concerning Amistad Farm Labor Housing Phase II (HTF 98141 / CMTS 2627)
- c) Presentation, Discussion, and Possible Action on Report to Board regarding the initiation of a new administrative penalty contested case hearing concerning Southmore Park Apartments (HTC 94004 / CMTS 1204) and the adoption of an Agreed Final Order

**Jeff Pender**  
Deputy General Counsel

**ASSET MANAGEMENT**

- d) Presentation, Discussion and Possible Action regarding Material Amendment to the Housing Tax Credit Land Use Restriction Agreement
  - 94193 Sterling Green Village
  - 98135 Rio Grande Ranch
  - 99002 Tidwell Estates

**Raquel Morales**  
Director

Channelview  
Laredo  
Houston

**MULTIFAMILY FINANCE**

- e) Presentation, Discussion, and Possible Action on a waiver relating to 10 TAC §10.101(b)(2) of the Uniform Multifamily Rules concerning Development Size Limitations
- f) Presentation, Discussion, and Possible Action on the Issuance of Determination Notices for Housing Tax Credits with another Issuer
  - 16445 Campus Apartments
  - 16455 Chelsea Apartments
  - 16407 Fenix Estates

**Marni Holloway**  
Director

Fort Worth  
El Paso  
Houston

- g) Presentation, Discussion, and Possible Action regarding an exemption regarding Undesirable Site Feature under 10 TAC §10.101(a)(2) for 2017 Housing Tax Credit (“HTC”) Application #17122 Belfort Park Apartments

**COMMUNITY AFFAIRS**

- h) Presentation, Discussion, and Possible Action on the Reprogramming of Program Year (“PY”) 2016 Community Services Block Grant (“CSBG”) Discretionary and Administrative Funds
- i) Presentation, Discussion, and Possible Action on the selection of a Subrecipient to administer the Low Income Home Energy Assistance Program (“LIHEAP”) Comprehensive Energy Assistance Program (“CEAP”) to provide services in Dimmit, La Salle, and Maverick counties
- j) Presentation, Discussion, and Possible Action Regarding Authorization to Release a Notice of Funding Availability (“NOFA”) for Program Year 2017 Community Services Block Grant Discretionary (“CSBG-D”) Funds for Native American and Migrant Seasonal Farm Worker Populations
- k) Presentation, Discussion, and Possible Action on Approval of the Draft Federal Fiscal Year (“FFY”) 2017 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”) State Plan for Public Comment
- l) Presentation, Discussion, and Possible Action on Awards for 2017 Community Services Block Grant Discretionary (“CSBG-D”) Direct Client Assistance Funds

**Michael DeYoung**  
Director

**HOME AND HOMELESS PROGRAMS**

- m) Presentation, Discussion, and Possible Action on State Fiscal Year 2016 Homeless Housing and Services Program Award for the City of Houston

**Jennifer Molinari**  
Director

**RULES**

- n) Presentation, Discussion, and Possible Action on adoption of the 2017 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, Housing  
Resource Center

**CONSENT AGENDA REPORT ITEMS**

**ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:**

- a) TDHCA Outreach Activities, February 2017
- b) Report on the Department’s 1<sup>st</sup> Quarter Investment Report in accordance with the Public Funds Investment Act (“PFIA”)
- c) Report on an “unaudited subsequent event” related to the Basic Financial Statements and Revenue Bond Program for the Year Ended August 31, 2016
- d) Report on the Department’s 1<sup>st</sup> Quarter Investment Report relating to funds held under Bond Trust Indentures
- e) Acceptance and approval of submission of a report prepared by the Department’s Financial Advisor, George K. Baum & Company, to be submitted to the Texas Bond Review Board in accordance with Tex. Gov’t Code §2306.142

**Michael Lyttle**  
Chief, External Affairs  
**David Cervantes**  
Chief Financial Officer

**Monica Galuski**  
Director, Bond Finance

**Monica Galuski**  
Director, Bond Finance

**ACTION ITEMS**

**ITEM 3: BOARD**

Presentation, Discussion, and Possible Action on the election of Governing Board Officers for the upcoming biennium pursuant to Tex. Gov’t Code §2306.030

**Juan Muñoz**  
Vice Chair

**ITEM 4: REPORTS**

- a) Report on 2018 Qualified Allocation Plan (“QAP”) Project
- b) Report on Syndication Price Issues

**Marni Holloway**  
Director, Multifamily  
Finance  
**Timothy K. Irvine**  
Executive Director

**ITEM 5: ASSET MANAGEMENT**

- a) Presentation, Discussion and Possible Action regarding Amendments to HOME Direct Loan Terms
 

1002029 Pine Lake Estates	Nacogdoches
1002048 Sunrise Townhomes	Fredericksburg
- b) Presentation, Discussion and Possible Action on a Waiver of 10 TAC §10.101(b)(4)(E) and (F) and approval of Land Use Restriction Agreement (“LURA”) Amendments
 

14409 Lakes of El Dorado	McKinney
14410 Fountains of Rosemeade	Carrollton
14411 Ash Park Apartments	Eules

**Raquel Morales**  
Director

**ITEM 6: MULTIFAMILY FINANCE**

- a) Presentation, Discussion, and Possible Action regarding a request for waiver of rules for Merritt Hill Country, HOME Contract #1002298/ HTC #15273
- b) Presentation, Discussion and Possible Action on revisions to the 2016 State of Texas National Housing Trust Fund Allocation Plan and directing that it be published in the *Texas Register*

**Marni Holloway**  
Director

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

**EXECUTIVE SESSION**

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

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

**Juan Muñoz**  
Vice Chair

**OPEN SESSION**

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

**ADJOURN**

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

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

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact 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 Annette Cornier, 512-475-3803, 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 Annette Cornier al siguiente número 512-475-3803 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

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

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

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

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

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

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

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**BOARD ACTION REQUEST**  
**HOME AND HOMELESSNESS PROGRAMS DIVISION**  
**FEBRUARY 28, 2017**

Presentation, Discussion, and Possible Action on State Fiscal Year 2016 Homeless Housing and Services Program Award for the City of Houston

**RECOMMENDED ACTION**

**WHEREAS**, the Homeless Housing and Services Program (“HHSP”) was created during the 81st Legislative Session to be administered by the Texas Department of Housing and Community Affairs (the “Department”) to fund homelessness prevention and homeless services in the eight largest Texas cities;

**WHEREAS**, the allocation formula for HHSP set forth in 10 Texas Administrative Code (“TAC”) Chapter 7, Subchapter B, §7.1002 and previously found under 10 TAC Chapter 5, Subchapter J, §5.1004, provided that the City of Houston would be allocated \$1,320,400 in State Fiscal Year (“SFY”) 2016 HHSP funding;

**WHEREAS**, the City of Houston submitted their final expenditure report for the SFY 2016 contract on December 15, 2016, the City did not provide support to draw down all funds for that contract, and \$286,002.25 remains to be expended;

**WHEREAS**, under 10 TAC Chapter 7, Subchapter A, §7.4, the SFY 2016 contract cannot be extended to cover expenses incurred prior to the end date because it has expired;

**WHEREAS**, the two year statutory authority for the Department’s distribution of funds allocated to the City of Houston has not expired and these funds can be made available to the City of Houston under a new contract award; and

**WHEREAS**, the Executive Award Review Advisory Committee (“EARAC”) voted on February 23, 2017, that the HHSP contract to the City of Houston is approved with the condition that the HHSP contract will not be executed until the City of Houston provides evidence of its contract with an accounting software consultant to adjust its accounting software to track program income;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the issuance of a contract for the remaining \$286,002.25 to the City of Houston, pending the evidence of the contract with an accounting software consultant.

## **BACKGROUND**

The Department administers the HHSP in accordance with Tex. Gov't Code §2306.2585 and 10 TAC Chapter 7. Allowable activities include construction, development, or procurement of housing for homeless persons; rehabilitation of structures targeted to serving homeless persons or persons at-risk of homelessness; provision of direct services and case management to homeless persons or persons at risk of homelessness; or other homelessness-related activity, as approved by the Department.

The City of Houston was awarded \$1,320,400 in SFY 2016 HHSP funds on September 3, 2015, based on the formula currently set forth in 10 TAC Chapter 7, Subchapter A, §7.4. The Department entered into a contract agreement that was later reduced to \$1,293,992, and under the terms of the contract, funds were required to be spent by September 30, 2016, with a final expenditure report due no more than 45 days later. The final expenditure report indicated \$1,007,989.75 in total expenditures, with an unrequested balance of \$286,002.25. In February 2017, the City of Houston indicated that there were some HHSP-eligible activities that occurred during SFY 2016, for which the City did not submit an expenditure request; however staff does not have the authority to extend the contract after its expiration.

SF 2016 funds were awarded in the first year of the biennium and the Department maintains authority for the distribution of these State funds through the end of the biennium on August 31, 2017. Staff has determined that re-award of these funds to the City of Houston would be in the best interest of the State and fulfill the original intent of the statute by remaining with the City of Houston. The contract term will be March 1, 2017, through August 31, 2017, pending evidence of contract with a software consultant.

Prior to the execution of the 2016 HHSP contract, the Department brought to the City of Houston's attention concerns regarding the finding in the City of Houston's Single Audit related to their sweep account and potential program income tracking issues. The City of Houston groups program funds for a majority of its federal, state, and city programs in one account, which is earning interest. The interest earned is currently not able to be traced to a particular funding stream. Uniform Grants Management Standards requires program income earned for a state grant like HHSP to be spent on activities of that program. The Department's Management Review of the Single Audit had asked the City of Houston to remedy the tracking issue as a condition of their 2016 HHSP contract.

During the review of the 2017 HHSP contract to the City of Houston, the 2016 Single Audit was not available. However, during the re-award of \$286,002.25 of unexpended 2016 HHSP funds, Houston's Single Audit was available, and the program income tracking issue was not resolved. EARAC voted on February 23, 2017, that the HHSP contract to the City of Houston should be approved with the condition that the HHSP contract will not be executed until the City of Houston provides evidence of its contract with an accounting software consultant to adjust its accounting software to track program income. This accounting software contract is anticipated to be available very soon to resolve the entire matter by summer of 2017.



2e

BOARD ACTION ITEM  
BOND FINANCE DIVISION  
FEBRUARY 28, 2017

Acceptance and approval of submission of a report prepared by the Department's Financial Advisor, George K. Baum & Company, to be submitted to the Texas Bond Review Board in support of continued waiver pursuant to Tex. Gov't Code §2306.142(m)

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford;

WHEREAS, the Act authorizes the Department: (a) to issue revenue bonds, to provide money to (i) make and acquire mortgage loans or participations therein, (ii) fund or increase the Department's reserves or funds (iii) pay the costs and expenses of issuing the bonds and (iv) pay interest on the bonds; and (b) to pledge all or part of the revenues, income or resources of the Department, including the revenues to be received by the Department from the mortgage loans or participations therein, to secure the payment of the principal, interest or redemption premium on the bonds;

WHEREAS, Tex. Gov't Code §2306.142 requires the Department to evaluate the feasibility of a single-family mortgage revenue bond program designed to meet the credit needs of the underserved economic and geographic submarkets of the state, including those submarkets served disproportionately by subprime lenders;

WHEREAS, Tex. Gov't Code §2306.142(l) requires that, beginning on September 1, 2002, and in each subsequent state fiscal year, the Department allocate, through set-aside or reservation of funds, not less than 40 percent of the total single-family mortgage revenue bond loan volume for mortgage loans, including subprime mortgage loans, to be originated in underserved economic and geographic submarkets in the state;

WHEREAS, Tex. Gov't Code §2306.142(m) of the Act provides that if the Governing Board determines in any year that bonds intended to be issued to achieve the purposes of Tex. Gov't Code §2306.142 of the Act are unfeasible or would damage the financial condition of the Department, the Governing Board may formally appeal to and request a waiver from the Bond Review Board of the requirements of Tex. Gov't Code §2306.142(l);

WHEREAS, the Department has determined, with respect to each single family mortgage revenue bond issuance since 2002, that fulfilling the requirements of Tex. Gov't Code §2306.142(l) is unfeasible, is not consistent with the reasonable financial operation of the

Department, and could damage the financial condition of the Department; as such, the Department has requested and received, from the Bond Review Board, a waiver of the requirements of Tex. Gov't Code §2306.142(l) for each issuance of single family mortgage revenue bonds since 2002;

WHEREAS, the Department requested and received, from its financial advisor, George K. Baum & Company, a report (the "Report") that addresses the feasibility and potential economic impact to the Department of fulfilling the requirements of Tex. Gov't Code §2306.142(l); and

WHEREAS, the Governing Board has been presented with the Report;

NOW, therefore, it is hereby

RESOLVED, that the Report is accepted and approved by the Governing Board, and the Director of Bond Finance is authorized to submit the Report to the Bond Review Board in ongoing support of the waivers of Tex. Gov't Code §2306.142(l) as provided for in Tex. Gov't Code §2306.142(m).

#### BACKGROUND

The State Legislature amended Tex. Gov't Code §2306.142 in 2001 to encourage the Department to research and utilize Department issued single family mortgage revenue bonds, when feasible, to meet the credit needs of the underserved economic and geographic submarkets of the state. The legislation further emphasized the delivery of credit to submarkets disproportionately served by subprime lenders, mandating that not less than 40 percent of the total single-family mortgage revenue bond loan volume for mortgage loans, including subprime mortgage loans, be originated in underserved economic and geographic submarkets in the state. This provision in Tex. Gov't Code §2306.142(l) of the statute is conditioned by Tex. Gov't Code §2306.142(m) of the statute that "...if the board determines in any year that bonds intended to be issued to achieve the purposes of this section are unfeasible or would damage the financial condition of the department, the board may formally appeal to the Bond Review Board the requirements of Subsection (k) or (l), as applicable. The Bond Review Board has sole authority to modify or waive the required allocation levels."

Pursuant to Tex. Gov't Code §2306.142(m), the Department has requested and received, from the Bond Review Board, a waiver of the requirements of Tex. Gov't Code §2306.142(l) for all new origination single family mortgage revenue bond issues closed since 2002, based on a determination made, on an issue-by-issue basis, that fulfilling the requirements of Tex. Gov't Code §2306.142(l) was unfeasible, not consistent with the reasonable financial operation of the Department, and could damage the financial condition of the Department. In anticipation and support of the continuing need for such waivers, the Department requested that its Financial Advisor undertake a comprehensive review and analysis of the feasibility and potential economic impact of fulfilling the requirements of Tex. Gov't Code §2306.142(l).

As presented in more detail in the Report, there are four primary factors that result in the determination that compliance with Tex. Gov't Code §2306.142(l) is unfeasible, is not consistent with the reasonable financial operation of the Department, and could damage the financial condition of the Department. Specifically, these factors are:

1. Excessive cost of negative arbitrage to meet the 40% set aside requirement

Under current market conditions, any reservation or set-aside of bond proceeds will result in negative arbitrage, which is the “cost” incurred when the interest rate on the bonds exceeds the interest rate on the investment of the reserved or set-aside amounts. Currently, the negative arbitrage associated with reservations in conjunction with single family mortgage revenue bonds is cost prohibitive.

2. TDHCA indentures require “MBS eligible” loans

Prior to 1988, the collateral securing the Department's single family mortgage revenue bonds was in the form of “whole loans.” These whole loans carried FHA or VA insurance, or Primary Mortgage Insurance, as applicable, and were pledged as collateral under various indentures to secure the Department's repayment obligations to bondholders. Economic risks inherent with whole loans include timing risk related to the receipt of mortgage payments by the underlying borrowers, as well as principal, interest, and expense risk associated with foreclosures, bankruptcies, deeds-in-lieu, and other such events. While the Department carried insurance policies to mitigate these risks, these policies did not address timing risk and contained caps on the amount of losses they could cover for each loan and in the aggregate. As a result, the Department was required to post significant reserves in order to maintain investment grade ratings on its bonds.

Beginning in 1988, the Department began securing new bond issues with pools of Ginnie Mae, Fannie Mae, and/or Freddie Mac mortgage-backed securities (“MBS”); for which the timely receipt of principal and interest is guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac, respectively. The change from whole loans to MBS resulted in higher ratings on the bonds and provided more structuring certainty, which allowed bonds to be structured to meet individual investor needs. The higher rating and structuring certainty produces a lower cost of debt to the Department and lower interest rates to homebuyers under the Department's single family programs. In addition, using MBS eliminates the need for overcollateralization, eliminates the requirement to post debt service reserves, and eliminates uninsured losses associated with whole loans.

3. Master Servicers have minimum credit requirements

The MBS that secure the Department's bond issues are “issued” or “pooled” by a program Master Servicer. The Master Servicer must be a qualified Ginnie Mae issuer/servicer, and a Fannie Mae and Freddie Mac approved seller/servicer. The Master Servicer reviews the loans for compliance with the requirements of FHA, VA, RHS, Ginnie Mae, Fannie Mae, and/or Freddie Mac, as required. Typically, the Master Servicer also requires additional program guidelines with respect to the credit quality of the mortgage loans. The Department's current Master Servicer is the Idaho Housing and Finance Association (“IHFA”). IHFA requires that borrowers under the program have a minimum 620 FICO score.

4. The 40% set-aside requirement creates significant interest rate risk

During the set-aside period, while bond proceeds are invested at short-term rates, there is interest rate risk associated with the funds that have been set-aside or reserved. While the interest rate on the bonds was “locked” at bond closing, there is no way to “lock” the pass-through rate on the MBS and ensure that loans that meet the reservation or set-aside requirements are originated in order to meet the debt service requirements on the bonds. If mortgage rates decrease after bond closing, the Department may need to reduce the mortgage rate on its program, potentially resulting in a revenue shortfall requiring a deposit of additional funds by the Department to meet the debt service obligation on the bonds. In the alternative, the Department may be faced with a non-origination (or unexpended proceeds) call on the bonds. Investors are fairly sensitive to unexpended proceeds redemptions, and the Department may receive less favorable pricing (or a higher cost of borrowing) for future bond issues as a result.

Staff concurs that the Department cannot meet the technical requirements of Tex. Gov't Code §2306.142 of the Act. However, the Department's single family programs provide a significant benefit to the low, very low, and moderate income homebuyers throughout the state. Since October 2012, the Department has financed over \$935 million in first lien and approximately \$43 million in second lien mortgage loans; approximately 65% of these loans were made to borrowers at or below 80% of Area Median Income.

Staff recommends that the Governing Board approve the Report and authorize its submission to the Bond Review Board in support of continued waiver pursuant to Tex. Gov't Code §2306.142(m).



February 28, 2017

Executive Director and Board of Directors  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

At the request of Department staff, George K. Baum & Company prepared this report to address certain provisions of the Texas Government Code, Title 10, Subtitle G, Chapter 2306, specifically the feasibility and potential economic impact to the Department of complying with Section 2306.142(l). As noted below, we are not providing the Department with any legal advice. We are retained by the Department in an expert financial capacity only. For legal analysis of Texas Government Code, Title 10, Subtitle G, Chapter 2306, or any other applicable law or regulation, please contact your legal counsel.

This report provides our analysis of feasibility and economic impact, as well as a summary of how the Department serves the credit needs of borrowers in underserved economic and geographic submarkets. It is our understanding that the Department completed the market study required under Section 2306.142(c) in 2002. Our report concludes that compliance with the requirements of Section 2306.142(l) remains unfeasible and could damage the financial condition of the Department. This is consistent with the conclusion reached by the Bond Review Board (“BRB”) in granting waivers to the Department since 2002.

## Background

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Section 2306.142(l) of the Texas Government Code requires that single family mortgage revenue bonds issued by the Department contain specific set-asides or reservations of funds for mortgage loans, including subprime mortgage loans<sup>(1)</sup>, to be originated in underserved economic and geographic submarkets in the state. Specifically, Section 2306.142(l) states:

*In the state fiscal year beginning on September 1, 2002, and in each subsequent state fiscal year, the department shall allocate not less than 40 percent of the total single-family mortgage revenue bond loan volume to meet the credit needs of borrowers in underserved economic and geographic submarkets in the state, subject to the identification of a satisfactory market volume demand through the market study.*

As permitted under Section 2306.142(m), the Department has requested and received from the BRB a waiver of this provision for every new origination single family mortgage revenue bond issue closed by the Department since 2002. These waivers were granted on the basis that compliance with Section 2306.142(l) is unfeasible and could damage the financial condition of the Department.

(1) Section 2306.142 contains multiple references to the inclusion of subprime borrowers as part of underserved economic and geographic submarkets. The complete text of Section 2306.142 is attached.

## Feasibility and Economic Impact

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Under current market conditions, fulfilling the requirements of Section 2306.142(l) (specifically allocating or reserving any portion of the bond proceeds) is not feasible, not economically viable, would not be “consistent with the reasonable financial operation of the Department”, and could damage the financial condition of the Department. Further, it is anticipated and assumed that, due to the financing structures implemented by the Department, the Department will continue to request a waiver from BRB of the requirements of Section 2306.142(l).

Compliance with the 40% set aside requirement of Section 2306.142(l), which includes the subprime requirement of Section 2306.142(f), is not feasible and could damage the financial condition of the Department for the following reasons:

- 1) Excessive cost of negative arbitrage to meet the 40% set aside requirement. Negative arbitrage is the cost that results when the interest rate paid on the bonds exceeds the interest rate earned on bond proceeds. When bond proceeds are required to be set aside, the required amount is deposited and invested until used; concurrently, the bonds accrue and pay interest at a higher rate than that earned on the set-aside amounts. For the last ten years or so, interest rates on 30-year housing bonds have greatly exceeded the short-term investment rates at which bond proceeds can be invested.

However, a financing structure with no set-aside requirements can, and has been, implemented by the Department with no negative arbitrage cost. When the requirements of Section 2306.142(l) are waived, the Department is able to originate and pool its mortgage loans in advance of the bond issuance and can purchase the resulting MBS using bond proceeds at the closing of the bond issue. This eliminates negative arbitrage.

While a small amount of negative arbitrage might be absorbed by a financing structure, the amount of negative arbitrage associated with setting aside 40% of the bond proceeds would be cost prohibitive. The Department could be forced to make an outright donation to the structure (as opposed to a contribution that could be recouped). For example, TDHCA would need to set-aside more than \$100 million of loans annually to fulfill a 40% set aside requirement on \$250 million total loan volume. The cost of “negative arbitrage” associated with reserving \$100 million of loans annually (40% of \$250 million) could exceed \$1.5 to \$3.0 million per year in the current market. Historically, the vast majority of funds set aside for targeted areas (required by the IRS to meet tax law) and similar requirements are not used, remain idle, and incur negative arbitrage for the entire one-year set-aside period.

Even if the Department chose to fund the negative arbitrage by increasing the rate charged to the homebuyers, the resulting rate would be (i) too high to be attractive, making origination unlikely and exacerbating the cost of the negative arbitrage, and (ii) too high to comply with Internal

Revenue Service requirements related to the permissible spread between bond yield and mortgage yield for tax exempt bond issues.

- 2) TDHCA indentures require “MBS eligible” loans. The Department has not used “whole loan” collateral to support its indentures since 1988. Since then, the Department pools its mortgage loans into mortgage-backed securities (“MBS”) that are backed by Ginnie Mae, Fannie Mae, or Freddie Mac, which effectively guarantee the timely receipt of underlying mortgage loan payments to meet the debt service requirements of the Department’s indentures. This financing structure results in a higher rating on the bonds and a lower cost of debt, while the Department pledges fewer assets to the bond indenture than otherwise would be required. In addition, the MBS structure eliminates (i) the cost of overcollateralization, (ii) the need to fund debt service reserves, and (iii) the costs, expenses, and losses typically associated with whole loans.

Each agency (Ginnie Mae, Fannie Mae, and Freddie Mac) has specific mortgagor eligibility requirements for mortgage loans that are securitized into an MBS. While the definition of subprime has changed over time (particularly since the events of 2008), subprime loans generally are not eligible for securitization. As such, the Department would have to maintain those loans as whole loans. As detailed in the previous paragraph, there are significant economic reasons for the Department to maintain its MBS financing structure as it allows the Department to assist the maximum amount of low and moderate income homebuyers in the most efficient manner without incurring unnecessary credit risk. The cost of foregoing these efficiencies to accommodate the introduction of a significant number of low rated whole loans would be impractical and could damage the financial condition of the Department.

- 3) Master Servicers have minimum credit requirements. The Department uses a Master Servicer to purchase, pool, and service mortgage loans originated through its single family mortgage programs. The Master Servicer typically has minimum credit requirements for eligible borrowers. The Department’s prior Master Servicer had a minimum FICO score requirement of 640 with a 1% credit risk penalty paid by the Department, or a 660 with no penalty. On October 1, 2016, the Department changed Master Servicers. The new Master Servicer, Idaho Housing and Finance Authority (“IHFA”), has a minimum FICO score requirement of 620. Therefore, the Department cannot originate loans for credits below 620 FICO due to the Master Servicer’s credit requirements.
- 4) The 40% set-aside requirement creates significant interest rate risk in the form of rate buy-down and/or unexpended proceeds call risk. Because the bond rate is set at closing, the Department is subject to interest rate risk on set-aside amounts. If the market interest rate for mortgage loans drops, the Department’s mortgage rate may be unattractive. For short periods of time or for relatively small amounts, this is manageable; however, a 40% set-aside could be quite costly. The Department would be faced with a choice: a) contribute its own funds to “buy down” the mortgage rate, or b) invoke a non-origination call on the bonds, potentially damaging the Department’s reputation among bond purchasers and possibly increasing its borrowing cost in



the future. Once again, compliance with Section 2306.142(l) is not feasible and could damage the financial condition of the Department.

### **Serving the Needs of Borrowers in Underserved Economic and Geographic Submarkets**

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The Department regularly serves borrowers in underserved economic and geographic submarkets. Through its “to-be-announced” (or TBA) program, also known as the Taxable Mortgage Program (“TMP-79”), the Department offers daily financing options to homebuyers throughout the State. TMP-79, which began in October 2012, is a continuous funding program that currently serves as the Department’s primary mortgage loan origination mechanism for single family programs. Summary highlights of TMP-79 include the following:

- TMP-79 is currently the only statewide down payment assistance program that offers financing to borrowers with FICO scores as low as 620.
- Since October 2012, the Department has financed and purchased over \$935 million in first lien second mortgage loans and provided almost \$43 million in associated down payment and closing cost assistance (in the form of 0% interest, due on sale or refinance, second mortgage loans).
- Approximately 65% of program borrowers earn less than 80% of Area Median Income (“AMI”).
- The Department offers free online Homebuyer Education training. This tool educates first-time homebuyers regarding the complex process of purchasing a home and is required in order to be an eligible borrower in one of the Department’s single family loan programs.
- The Department is responsible for the Texas Statewide Homebuyer Education Program, which is offered through third party providers. This program provides training to housing counselors with respect to the content and techniques for providing comprehensive pre- and post-purchase homebuyer education that is used to provide quality homebuyer education throughout the state.

### **Conclusion**

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Based on the costs and risks described above, and consistent with the conclusion reached by the Bond Review Board (“BRB”) in granting waivers to the Department since 2002, we believe that meeting the requirements of Section 2306.142(l) remains unfeasible.

The Department, however, continues to achieve its objectives by adapting and innovatively structuring its programs to serve an ever-expanding borrower base of Texas homebuyers in underserved markets – economic, credit, geographic, or otherwise. The Department’s use of MBS to secure its bonds programs significantly reduces the Department’s risk and borrowing cost. Therefore, the Department expects to continue to request a waiver from BRB each time it finances a bond program. The Department will

continue to monitor its ability to meet these requirements as it looks for ways to better serve its borrower base, which is composed primarily of low, very low, and moderate income first-time homebuyers. The Department also will maintain the integrity of its bond indentures and operate in a manner that is “consistent with the reasonable financial operation of the Department”.

### **Use of the Report**

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It is expressly understood and agreed that (a) this report is provided solely for the information of and assistance to the Texas Department of Housing and Community Affairs and is not to be used, circulated, quoted or otherwise referred to without our written consent, and (b) this report is not intended, and is not under any circumstances to be construed, as legal advice or as requiring us to perform services which may constitute the practice of law. We are retained and engaged by TDHCA in an expert financial capacity only. Our statements and conclusions are based in part on information provided to us by TDHCA staff, and we assume that information to be materially complete, accurate and true. We have not undertaken any responsibility or duty to independently verify that information, and this report is not intended to and does not attest that such information is materially complete, accurate or true.

Sincerely,



Barton Withrow  
Senior Vice President  
George K. Baum & Company

Attachment: Texas Government Code, Title 10, Section 2306.142

## GOVERNMENT CODE

### CHAPTER 2306. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Sec. 2306.142. AUTHORIZATION OF BONDS. (a) Subject to the requirements of this section, the board shall authorize all bonds issued by the department.

(b) If the issuance is authorized by the board, the department shall issue single-family mortgage revenue bonds to make home mortgage credit available for the purchase of newly constructed or previously owned single-family homes to economic and geographic submarkets of borrowers who are not served or who are substantially underserved by the conventional, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration home mortgage lending industry or by housing finance corporations organized under Chapter 394, Local Government Code.

(c) The board by rule shall adopt a methodology for determining through a market study the home mortgage credit needs in underserved economic and geographic submarkets in the state. In conducting the market study required by this subsection, the department or its designee shall analyze for the underserved economic and geographic submarkets, at a minimum, the following factors:

- (1) home ownership rates;
- (2) loan volume;
- (3) loan approval ratios;
- (4) loan interest rates;
- (5) loan terms;
- (6) loan availability;
- (7) type and number of dwelling units; and

(8) use of subprime mortgage loan products, comparing the volume amount of subprime loans and interest rates to "A" paper mortgage loans as defined by Standard and Poor's credit underwriting criteria.

(d) The department or its designee shall analyze the potential market demand, loan availability, and private sector home mortgage lending rates available to extremely low, very low, low, and moderate income borrowers in the rural counties of the state, in census tracts in which the median family income is less than 80 percent of the median family income for the county in which the census tract is located, and in the region of the state adjacent to the international border of the state. The department or its designee shall establish a process for serving those counties, census tracts, and regions through the single-family mortgage revenue bond program in a manner proportionate to the credit needs of those areas as determined through the department's market study.

(e) Using the market study and the analysis required by this section, the board shall evaluate the feasibility of a single-family mortgage revenue bond program with loan marketing, eligibility, underwriting, structuring, collection, and foreclosure criteria and with loan services practices that are designed to meet the

credit needs of the underserved economic and geographic submarkets of the state, including those submarkets served disproportionately by subprime lenders.

(f) In evaluating a proposed bond program under this section, the board shall consider, consistent with the reasonable financial operation of the department, specific set-asides or reservations of mortgage loans for underserved economic and geographic submarkets in the state, including the reservation of funds to serve borrowers who have "A-" to "B-" credit according to Standard and Poor's credit underwriting criteria.

(g) The department may use any source of funds or subsidy available to the department to provide credit enhancement, down payment assistance, pre-homebuyer and post-homebuyer counseling, interest rate reduction, and payment of incentive lender points to accomplish the purposes of this section in a manner considered by the board to be consistent with the reasonable financial operation of the department.

(h) In allocating funds under Subsection (g), the department's highest priority is to provide assistance to borrowers in underserved economic and geographic submarkets in the state. If the board determines that sufficient funds are available after fully meeting the credit needs of borrowers in those submarkets, the department may provide assistance to other borrowers.

(i) The board shall certify that each single-family mortgage revenue bond issued by the department under this section is structured in a manner that serves the credit needs of borrowers in underserved economic and geographic submarkets in the state.

(j) After any board approval and certification of a single-family mortgage revenue bond issuance, the department shall submit the proposed bond issuance to the Bond Review Board for review.

(k) In the state fiscal year beginning on September 1, 2001, the department shall:

(1) adopt by rule a market study methodology as required by Subsection (c);

(2) conduct the market study;

(3) propose for board review a single-family mortgage revenue bond program, including loan feature details, a program for borrower subsidies as provided by Subsections (g) and (h), and origination and servicing infrastructure;

(4) identify reasonable capital markets financing;

(5) conduct a public hearing on the market study results and the proposed bond program;

and

(6) submit for review by the Bond Review Board the market study results and, if approved and certified by the board, the proposed bond program.

(l) In the state fiscal year beginning on September 1, 2002, and in each subsequent state fiscal year, the department shall allocate not less than 40 percent of the total single-family mortgage revenue bond loan volume to meet the credit needs of borrowers in underserved economic and geographic submarkets in the state, subject to the identification of a satisfactory market volume demand through the market study.

(m) On completion of the market study, if the board determines in any year that bonds intended to be issued to achieve the purposes of this section are unfeasible or would damage the financial condition of the department, the board may formally appeal to the Bond Review Board the requirements of Subsection (k)

or (l), as applicable. The Bond Review Board has sole authority to modify or waive the required allocation levels.

(n) In addition to any other loan originators selected by the department, the department shall authorize colonia self-help centers and any other community-based, nonprofit institutions considered appropriate by the board to originate loans on behalf of the department. All non-financial institutions acting as loan originators under this subsection must undergo adequate training, as prescribed by the department, to participate in the bond program. The department may require lenders to participate in ongoing training and underwriting compliance audits to maintain good standing to participate in the bond program. The department may require that lenders meet appropriate eligibility standards as prescribed by the department.

(o) The department shall structure all single-family mortgage revenue bond issuances in a manner designed to recover the full costs associated with conducting the activities required by this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 24, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 2.02, eff. Sept. 1, 2001.

5a

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**FEBRUARY 28, 2017**

Presentation, Discussion, and Possible Action regarding amendments to Direct HOME loan terms for Pine Lake Estates (#13232)

**RECOMMENDED ACTION**

**WHEREAS**, Pine Lake Estates (the “Development”) received a Direct Loan award of HOME funds in the form of a \$806,754 loan, secured by a second lien on the property, and an award of 9% Housing Tax Credits in 2013 to rehabilitate 100 multifamily units in Nacogdoches, Nacogdoches County;

**WHEREAS**, Tex. Gov’t Code §2306.142 provides the Board with the “specific duty and power to establish interest rates and amortization schedules for loans made or financed...” by the Department; and

**WHEREAS**, the Department re-evaluated the first lien financing prior to HOME closing and last formally approved a financing structure that included (i) \$2,252,500 in priority permanent debt, (ii) interest rate at 5.75%, (iii) a 30 year amortization period (\$157,740 in annual debt service), and (iv) a 15 year loan term, loaned by Community Bank of Texas, which closed on May 23, 2013;

**WHEREAS**, the Owner is now requesting to substitute for the permanent first lien financing a loan by Lancaster Pollard insured through the Federal Housing Administration (“FHA”) 223(f) Pilot Program that would (i) increase the permanent debt by \$747,500 to \$3,000,000, (ii) reduce the interest rate to 4%, (iii) extend the amortization period to a 35 years, and (iv) extend the loan term to 35 years for a new annual payment of \$159,399;

**WHEREAS**, the increase in first lien debt amounts to 93% of the outstanding HOME loan;

**WHEREAS**, the United States Department of Housing and Urban Development (“HUD”) requires, in its FHA Multifamily Accelerated Processing (“MAP”) Guide, that all subordinate debt in FHA insured developments must be repayable only from Cash Surplus (as defined for FHA purposes) after the deduction of certain expenses and first lien debt service and further restricts repayment of subordinate debt to be made from only 75% of such Cash Surplus;

**WHEREAS**, the Department’s rules regarding Amendments to Direct Loan Terms, under 10 TAC §13.12, require that post closing loan modifications requiring changes in the Department’s loan terms, lien priority, or amounts will generally only be considered as part of a work out arrangement or other condition intended to mitigate financial risk and will not require additional Board approval except where the post closing change could not have been anticipated prior to closing, which is not the case for this Development;

**WHEREAS**, 10 TAC §13.8(c)(2) allows for a Direct Loan to be structured as payable from surplus cash flow provided the first lien mortgage is a federally insured HUD or FHA mortgage and the debt coverage ratio, inclusive of the loan, continues to meet the Department's underwriting requirements;

**WHEREAS**, the Department has not previously accepted and HUD has not previously required or enforced the 75% Cash Surplus restriction in loan documents, loan modifications, or subordination agreements since this practice would have the effect of prioritizing a return to the owner ahead of debt service to the Department,

**WHEREAS**, HUD has rejected the Department's position and the sponsor lender's and Development Owner's requests to waive the 75% Cash Surplus requirement for this transaction;

**WHEREAS**, the 2013-1 NOFA references the Direct Loan Requirements at 10 TAC §10.307, which have since been relocated to Chapter 13, Multifamily Direct Loan Rule, but consistently in effect since prior to the time of NOFA release which provide for surplus cash to be available for debt service, and staff has interpreted this to mean all surplus cash, not some lesser percentage of surplus cash;

**WHEREAS**, the Direct Loan Requirements at 10 TAC §10.307 in place at the time of the NOFA release further specifically included that the Board may also approve cash flow loan structures on a case-by-case basis;

**WHEREAS**, the Development Owner now requests that the Department allow the Department's existing subordinate loan to be restricted to 75% of the Cash Surplus available along with the other accommodations requested for their refinancing of the first lien (namely (i) increased debt in front of TDHCA debt, (ii) increased debt service in front of TDHCA debt service, (iii) increased amortization of the debt in front of TDHCA, and (iv) increased term of the TDHCA loan to match first lien's maturity); and

**WHEREAS**, the staff interpretation of the rule would lead to a conclusion that the restriction on a certain percentage of surplus cash is inconsistent with the terms of the NOFA and insufficient mitigation exists to support the approval of an alternative cash flow structure;

**NOW, therefore, it is hereby**

**RESOLVED**, that the request to modify the loan terms of the Department's existing subordinate loan to mature at the same time or within six months of the first lien's 35 year loan term, allow the Department's existing subordinate loan to be restricted to 75% of the Cash Surplus available, approve the new source of the first lien debt and re-subordinate the Department's loan for Pine Lake Estates, as presented at this meeting, is denied, it being noted that the denial recommendation is based on staff's interpretation of the rule, which the Board is authorized and empowered to interpret as it deems fit or waive for good cause, yet the terms of a NOFA may not be waived after a NOFA is closed; and



**FURTHER RESOLVED**, that the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

Pine Lake Estates received a Direct Loan award of HOME funds in the amount of \$806,754 and an award of 9% Housing Tax Credits in 2013 to rehabilitate 100 multifamily units in Nacogdoches, Nacogdoches County. In letters dated January 5, 2017, and February 16, 2017, Pine Lake Apartments A Limited Partnership, a Texas limited partnership (the “Development Owner” or “Owner”) through its attorneys, Locke Lord, on behalf of the General Partner (Realtex Development Corporation, Manager – Rick J. Deyoe, President) requested approval to modify the terms of our existing HOME loan in conjunction with the refinancing of their permanent first lien.

The approved terms of the loan for Pine Lake Estates were based on those available via the Notice of Funding Availability (“NOFA”) open at the time of application, and the requested minimum 0% interest, 30 year amortization, and 18 year loan term with a second lien priority on the property as collateral. Construction of the development has been completed and the development is operating largely as anticipated.

Staff recently completed the cost certification review of this Development and reviewed the senior debt and HOME loan proposed changes within the analysis. The Owner has proposed an increase in the outstanding first lien from \$2,252,500 to \$3,000,000 and extending the amortization period and loan term of the first lien to 35 years. In addition to the increased debt amount and despite the extended amortization and reduced first lien interest rate (from 5.75% to 4%), the debt service for the first lien would also increase from \$157,740 to \$159,399. Based on both the Development’s historical operation and the analysis at cost certification, the analysis concludes that the Development is financially feasible at a DCR within the range of underwriting tolerance, with a structure that would have been consistent with the NOFA and the rules at the time of award. Pursuant to 10 TAC §13.12(7) the Owner’s request presents neither a work out arrangement nor any other condition intended to mitigate financial risk to the Department.

The 2013-1 NOFA references the Direct Loan Requirements (10 TAC §10.307) in effect at the time of NOFA release, which provided for debt service subordinate to an FHA loan to be “payable from surplus cash flow.” Staff has interpreted the plain meaning of this provision to mean that all surplus cash flow would be available for debt service towards the Department’s HOME loan, not some percentage of surplus cash. This is consistent with other surplus cash notes modified by the Department in recent years where a HUD loan was introduced. The Board has, on a case by case basis, reviewed for approval or denial requests for re-subordination pursuant to a revised, larger than originally anticipated, first lien. In cases where a re-subordination is requested and the first lien debt amount is equal to or less than the original first lien debt amount, the re-subordination is almost always approved since the new lender can typically get an assignment of the original lender’s debt instrument. In all prior cases where the permanent first lien was being refinanced with FHA insured funding, the Department’s position was to approve the shift from a hard second lien payment to a soft Cash Surplus payment where repayment of the Department’s subordinate loan would be made from the Cash Surplus. This is the first instance where FHA has indicated they would not continue with the transaction unless the Department limited its loan repayment to only 75% of the Cash Surplus. Restricting the repayment of the Department funds in such a way would put the return interests of equity and/or the Owner ahead of the Department, which is contrary to the traditional waterfall of operating income in the banking industry and limits or delays the Department’s ability to recycle HOME

funds into other affordable housing transactions. Moreover, in this instance the increase in first lien debt represents 93% of the total remaining HOME loan.

In the February 16, 2017, request letter the owner's counsel states disagreement with staff's interpretation of 10 TAC §10.307 (now at 10 TAC §13.8(c)(2)) which states that "annual payments payable from surplus cash flow," means 100% of surplus cash, and contends that the Department must have known that HUD meant 75% of surplus cash flow because it has been present in the Multifamily Accelerated Processing Guide ("MAP Guide") since August 2011. However, the HOME program is not made expressly subject to the provisions of the MAP Guide<sup>1</sup>, and the Department went through a rulemaking process for its Direct Loan programs and received no comment on this provision. Staff has consistently interpreted the Department's rule to mean all or 100% of surplus cash, and has closed on numerous transactions with a HUD or FHA first lien in place under this interpretation, and with HUD's approval.

Locke Lord's letter further asserts that changing repayment of the HOME loan from 100% of surplus cash to 75% of surplus cash has no material economic consequence for this Development and no material risk for TDHCA. At present, this contention is true and if it were not the Department would need to take that into account in considering any re-subordination. The risk is that this change eliminates our potential to access 25% of surplus cash to go back towards repayment of the Department's HOME loan and recycle those to fund future affordable housing. As stated previously, analysis at the time of cost certification (IRS Forms 8609s were issued in December 2016) concluded that Development remains financially feasible both with the first lien financing already in place as well as with the proposed refinance, remaining in the range of acceptable underwriting tolerance. In the alternative, staff has proposed to the owner's counsel and lender that the Department's HOME loan could be repaid in its entirety through the refinancing of the permanent first lien. At the same rates and terms, but an increased first lien to cover repayment of the Department's HOME loan, the development would remain financially feasible at an acceptable DCR and the need for the Department to re-subordinate its debt would not be necessary. A copy of the Department's cost certification analysis which was completed in December 2016 is provided behind this Board Action Request. In this scenario, the HOME LURA would, however, remain in place.

To the extent the Owner is seeking a waiver of the NOFA provision referencing the Direct Loan Requirements (10 TAC §10.307), generally NOFA provisions should not be waived after the NOFA is closed, as it is a competitive selection process.<sup>2</sup> Staff recommends denial of the requested modification of loan terms and re-subordination of the Department's loan for Pine Lake Estates because a literal reading of surplus cash flow means 100% of the cash flow, and staff proposes that the Department's subordinate debt be repaid through the refinancing of the permanent first lien.

If the Board, alternatively, finds that the reference in TAC §10.307(a)(3) to "cash flow loan structure" can include a 75% Cash Surplus structure (including modification of the loan terms and re-subordination of the Department's loan), it must first determine per 10 TAC §10.307(a)(3) that the financial risk of this structure is outweighed by the need for the proposed housing, and it is recommended that this approval be expressly

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<sup>1</sup> The Locke Lord letter also states that the Department must interpret its rule in accordance with Tex. Gov't Code §2306.1111(a) in accordance with federal regulation. The Department agrees, but the federal regulations governing the HOME funds are not contained in 24 CFR Part 200; thus, the Department is not constrained in its rules to conform to FHA lending requirements.

<sup>2</sup> The Department must follow its selection method for HOME funds as described in its 2013 Annual Action Plan per 24 CFR §92.320.

limited to the facts presented in this case. Staff, based on what it has been presented so far, does not believe this to be the case for the reasons previously enumerated.

**Pine Lake Estates, Nacogdoches, HTC #13232- Cost Certification Analysis**

**UNIT MIX / MONTHLY RENT SCHEDULE**

HTC		HOME (Rent/Inc)		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS			TDHCA PRO FORMA RENTS		
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA
TC30%	\$298	0%		38	1	1	630	\$621	\$74	\$547	\$0.87	\$547	\$20,786	\$20,786	\$547	\$32.99
TC30%	\$298	LH/50%	\$496	12	1	1	630	\$621	\$74	\$547	\$0.87	\$547	\$6,564	\$6,564	\$547	\$10.42
TC80%	\$596	0%		50	1	1	630	\$621	\$74	\$547	\$0.87	\$547	\$27,350	\$27,350	\$547	\$43.41
<b>TOTALS / AVERAGES:</b>				<b>100</b>			<b>63,000</b>				<b>\$0.87</b>	<b>\$547</b>	<b>\$54,700</b>	<b>\$54,700</b>	<b>\$547</b>	<b>\$35.49</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>		<b>\$656,400</b>	<b>\$656,400</b>
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**PROFORMA ANALYSIS & DEVELOPMENT COSTS**

**POTENTIAL GROSS RENT**

Secondary Income		Per Unit/Month	\$15.00					
Other Income: Pet Rent							\$1.50	Per Unit Per Month
Other Income: Early Termination Fees							\$0.85	Per Unit Per Month
POTENTIAL GROSS INCOME							\$5.80	Per Unit Per Month
Vacancy & Collection Loss		% of PGI	-7.5%					
EO/Non-Rental Units/Concessions								
<b>EFFECTIVE GROSS INCOME</b>								

TDHCA CC	TDHCA -Prior	APP - Prior	Owner CC	12-Mo Trailing- April 2016
\$656,400	\$634,800	\$634,800	\$656,400	\$656,369
\$18,000	\$24,000	\$12,000	\$1,800	\$4,660
		\$18,000	\$1,020	
			\$960	
\$674,400	\$658,800	\$664,800	\$660,180	\$661,029
(\$50,580)	(49,410)	(49,860)	(49,514)	(\$16,767)
(\$6,564)	-	-	(6,564)	(\$12,620)
\$617,256	\$609,390	\$614,940	\$604,103	\$631,641

EXPENSES	% of EGI	Per Unit	Per SF	TDHCA CC	TDHCA -Prior	APP - Prior	Owner CC	12-Mo Trailing- April 2016	Per SF	Per Unit	% of EGI
General & Administrative	5.22%	\$322	\$0.51	\$32,201	\$33,866	\$30,600	\$31,734	\$27,703	\$0.50	\$317	5.25%
Management	5.00%	\$309	\$0.49	\$30,863	\$30,470	\$30,359	\$32,177	\$40,683	\$0.51	\$322	5.33%
Payroll & Payroll Tax	16.15%	\$997	\$1.58	\$99,656	\$108,531	\$102,400	\$100,018	\$99,656	\$1.59	\$1,000	16.56%
Repairs & Maintenance	6.29%	\$388	\$0.62	\$38,807	\$60,000	\$43,300	\$34,530	\$17,806	\$0.55	\$345	5.72%
Electric/Gas	1.95%	\$120	\$0.19	\$12,042	\$15,502	\$15,000	\$12,057	\$12,042	\$0.19	\$121	2.00%
Water, Sewer, & Trash	6.39%	\$394	\$0.63	\$39,427	\$31,398	\$39,000	\$41,458	\$39,427	\$0.66	\$415	6.86%
Property Insurance	3.68%	\$227	\$0.36	\$22,746	\$20,471	\$28,000	\$22,740	\$22,746	\$0.36	\$227	3.76%
Property Tax	5.45%	\$336	\$0.53	\$33,615	\$31,770	\$40,000	\$40,000	\$33,615	\$0.63	\$400	6.62%
Reserve for Replacements	4.86%	\$300	\$0.48	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$0.48	\$300	4.97%
Cable TV	0.15%	\$9	\$0.01	\$928	\$0	\$0	\$1,237	\$928	\$0.02	\$12	0.20%
Supportive service contract fees	0.29%	\$18	\$0.03	\$1,800	\$12,000	\$14,000	\$1,800	\$1,800	\$0.03	\$18	0.30%
TDHCA Compliance fees	0.65%	\$40	\$0.06	\$4,000	\$4,000	\$4,000	\$3,996	\$4,000	\$0.06	\$40	0.66%
Security	0.06%	\$4	\$0.01	\$374	\$0	\$0	\$499	\$374	\$0.01	\$5	0.08%
Other: Describe	0.00%	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0.00	\$0	0.00%
Other: Describe	0.00%	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0.00	\$0	0.00%
<b>TOTAL EXPENSES</b>	<b>56.13%</b>	<b>\$3,465</b>	<b>\$5.50</b>	<b>\$346,459</b>	<b>\$378,008</b>	<b>\$376,659</b>	<b>\$352,246</b>	<b>\$330,780</b>	<b>\$5.59</b>	<b>\$3,522</b>	<b>58.31%</b>
<b>NET OPERATING INCOME</b>	<b>43.87%</b>	<b>\$2,707.97</b>	<b>\$4.30</b>	<b>\$270,797</b>	<b>\$231,382</b>	<b>\$238,281</b>	<b>\$251,857</b>	<b>\$300,861</b>	<b>\$4.00</b>	<b>\$2,519</b>	<b>41.69%</b>

**DEBT**

First Lien: 1st Lien; Perm Loan	\$157,705	\$162,547
Other: TDHCA HOME; 2nd Lien	\$26,892	
Other: 0		
<b>TOTAL DEBT SERVICE</b>	<b>\$184,597</b>	<b>\$162,547</b>
<b>NET CASH FLOW</b>	<b>\$86,200</b>	<b>\$108,250</b>
<b>AGGREGATE DEBT COVERAGE RATIO</b>	<b>1.47</b>	<b>1.67</b>
<b>RECOMMENDED DEBT COVERAGE RATIO</b>		

Current 1st lien	Refi w/payoff of TDHCA HOME Loan
\$157,705	\$162,547
\$26,892	
\$184,597	\$162,547
\$86,200	\$108,250
1.47	1.67

TDHCA CC	TDHCA -Prior	APP - Orig	Owner CC
\$159,399	\$157,740	\$157,740	\$157,705
\$26,892	\$33,333	\$26,892	\$26,892
\$186,291	\$191,073	\$184,632	\$184,597
\$84,506	\$40,309	\$53,649	\$67,260
1.45	1.21	1.29	1.36
1.45			1.63

**CONSTRUCTION COST**

	% of TOTAL	Per Unit	Per SF	TDHCA CC	TDHCA -Prior	APP - Orig	Owner CC	Per SF	Per Unit	% of TOTAL
Land Acquisition	1.05%	\$1,100	\$1.75	\$110,000	\$110,000	\$2,780,000	\$110,000	\$2	\$1,100	1.05%
Building Acquisition	23.20%	\$24,200	\$38.41	\$2,420,000	\$2,420,000	\$0	\$2,420,000	\$38	\$24,200	23.09%
Closing costs & acq. legal fees	0.00%	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	0.00%
Off-Sites	0.00%	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	0.00%
Sitework	0.00%	\$0	\$0.00	\$0	\$345,000	\$345,000	\$0	\$0	\$0	0.00%
Site Amenities	0.00%	\$0	\$0.00	\$0	\$254,500	\$254,500	\$0	\$0	\$0	0.00%
Other Construction Cost	0.00%	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	0.00%
Building Costs	46.70%	\$48,707	\$77.31	\$4,870,738	\$3,148,900	\$3,148,900	\$4,920,738	\$78	\$49,207	46.96%
Contingency		\$0	\$0.00	\$0	\$374,840	\$399,840	\$0	\$0	\$0	0.00%
Contractor's Fees	9%	\$4,464	\$7.09	\$446,358	\$496,356	\$496,356	\$446,358	\$7	\$4,464	4.26%
Indirect Construction	6.13%	\$6,397	\$10.15	\$639,679	\$668,500	\$668,500	\$639,679	\$10	\$6,397	6.10%
Developer's Fees	8.93%	\$9,312	\$14.78	\$931,233	\$825,213	\$838,733	\$931,233	\$15	\$9,312	8.89%
Financing	7.42%	\$7,742.16	\$12.29	\$774,216	\$621,501	\$621,501	\$774,216	\$12	\$7,742	7.39%
Reserves	2.27%	\$2,369.05	\$3.76	\$236,905	\$243,085	\$261,905	\$236,995	\$4	\$2,370	2.26%
<b>TOTAL COST</b>	<b>100.00%</b>	<b>\$104,291</b>	<b>\$166</b>	<b>\$10,429,129</b>	<b>\$9,507,895</b>	<b>\$9,815,235</b>	<b>\$10,479,219</b>	<b>\$166</b>	<b>\$104,792</b>	<b>100%</b>
<b>Construction Cost Recap</b>	<b>46.70%</b>	<b>\$48,707</b>	<b>\$77.31</b>	<b>\$4,870,738</b>			<b>\$4,920,738</b>	<b>\$78.11</b>	<b>\$49,207</b>	<b>46.96%</b>

**SOURCES OF FUNDS**

				RECOMMENDED	
First Lien: 1st Lien; Perm Loan	29%	\$30,000	\$48	\$3,000,000	Developer Fee Available
Other: TDHCA HOME; 2nd Lien	0.077355837	\$8,068	\$13	\$806,754	\$931,233
HTC Equity:	0.635634961	\$66,291	\$105	\$6,629,119	% of Dev. Fee Deferred
Deferred Developer Fee: PLE Development, LLC (Developer)	0.075820905	\$7,907	\$13	\$790,746	5%
Additional (Excess) Funds Req'd	-8%	(\$7,976)	(\$13)	(\$797,590)	\$0
<b>TOTAL SOURCES</b>				<b>\$10,429,129</b>	<b>\$1,476,637</b>

**MULTIFAMILY COMPARATIVE ANALYSIS (continued)**  
**Pine Lake Estates, Nacogdoches, HTC #13232- Cost Certification Analysis**

**PROPOSED PAYMENT COMPUTATION**

<b>First Lien: 1st Lien; Perm Loan</b>	\$2,252,000	Amort	360
Int Rate	5.75%	DCR	1.70
<b>Other: TDHCA HOME; 2nd Lien</b>	\$806,754	Amort	360
Int Rate	0.00%	DCR	1.45
<b>Other: 0</b>	\$0	Amort	0
Int Rate	0.00%	DCR	1.45
<b>Other: 0</b>	\$0	Amort	0
Int Rate	0.00%	DCR	1.45
<b>Other: 0</b>	\$0	Amort	0
Int Rate	0.00%	DCR	1.45

**RECOMMENDED FINANCING STRUCTURE: TDHCA NOI**

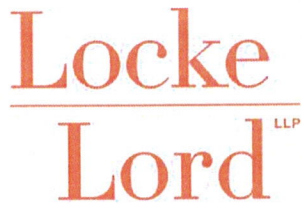
First Lien: 1st Lien; Perm Loan	\$159,399
Other: TDHCA HOME; 2nd Lien	26,892
Other: 0	0
<b>TOTAL DEBT SERVICE</b>	<b>\$186,291</b>

<b>First Lien: 1st Lien; Perm Loan</b>	\$3,000,000	Amort	420
Int Rate	4.00%	DCR	1.70
<b>Other: TDHCA HOME; 2nd Lien</b>	\$806,754	Amort	360
Int Rate	0.00%	Aggregate DCR	1.45
<b>Other: 0</b>	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.45

**LONG TERM OPERATING PROFORMA**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30
<b>EFFECTIVE GROSS INCOME</b>	\$617,256	\$629,601	\$642,193	\$655,037	\$668,138	\$737,678	\$814,456	\$899,225	\$992,818	\$1,096,151
LESS: TOTAL EXPENSES	346,459	356,544	366,926	377,612	\$388,613	448,665	\$518,090	598,361	691,183	798,530
<b>NET OPERATING INCOME</b>	<b>\$270,797</b>	<b>\$273,057</b>	<b>\$275,268</b>	<b>\$277,425</b>	<b>\$279,525</b>	<b>\$289,013</b>	<b>\$296,366</b>	<b>\$300,865</b>	<b>\$301,635</b>	<b>\$297,620</b>
LESS: DEBT SERVICE	186,291	186,291	186,291	186,291	186,291	186,291	186,291	186,291	186,291	186,291
<b>NET CASH FLOW</b>	<b>\$84,506</b>	<b>\$86,766</b>	<b>\$88,977</b>	<b>\$91,134</b>	<b>\$93,234</b>	<b>\$102,722</b>	<b>\$110,075</b>	<b>\$114,574</b>	<b>\$115,344</b>	<b>\$111,330</b>
<b>CUMULATIVE NET CASH FLOW</b>	\$84,506	\$171,273	\$260,250	\$351,384	\$444,618	\$939,979	\$1,476,637	\$2,041,813	\$2,618,681	\$3,185,510
DEFERRED DEVELOPER FEE BAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DCR ON UNDERWRITTEN DEBT (M	1.45	1.47	1.48	1.49	1.50	1.55	1.59	1.62	1.62	1.60
EXPENSE/EGI RATIO	56.13%	56.63%	57.14%	57.65%	58.16%	60.82%	63.61%	66.54%	69.62%	72.85%



Attorneys & Counselors

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

February 16, 2017

**VIA EMAIL: raquel.morales@tdhca.state.tx.us**

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

RE: Pine Lake Estates (the "**Development**")  
(TDHCA No. 13232)  
Amendment Request for Payment of HOME Loan from 75% of Surplus Cash

Dear Raquel:

We serve as counsel for Pine Lake Apartments A Limited Partnership, a Texas limited partnership (the "**Owner**"), which owns the Development. The Owner has received low-income housing tax credits and a HOME loan from the Department in the amount \$806,754.00 (the "**HOME Loan**") as evidenced by that certain Subordinate Promissory Note dated as of May 23, 2014 (the "**HOME Note**"). On January 5, 2017, we submitted a request (the "**Original Request**") to amend the terms of the HOME Loan in order to facilitate the Owner's refinancing of its permanent debt with a loan from Lancaster Pollard, having mortgage insurance through the Federal Housing Administration ("**FHA**") under the 223(f) PILOT Program (the "**HUD Loan**"). The Original Request was for the HOME Loan to be repayable from 75% of Owner's surplus cash, in accordance with HUD's Multifamily Accelerated Processing Guide (the "**MAP Guide**"). A copy of the Original Request is attached as Exhibit A.

The purpose of this letter is to provide additional legal, procedural, and financial support for the Original Request. We understand staff feels constrained in recommending approval of the Original Request under applicable rules. We believe such constraint is not applicable and that existing laws and rules can and should be interpreted in a manner consistent with granting the Original Request. In the alternative, if staff does not find our arguments compelling, and a waiver of rules is necessary, we request such action from the Board. We will show good cause for a waiver and mitigation of any risks associated with the Original Request.

Atlanta | Austin | Boston | Chicago | Cincinnati | Dallas | Hartford | Hong Kong | Houston | London | Los Angeles | Miami | Morristown  
New Orleans | New York | Providence | Sacramento | San Francisco | Stamford | Washington DC | West Palm Beach

AUS:0052944/00057:684159v2

### FHA Financing and MAP Guide

Legal authority found in 24 CFR § 200.71 states that a development receiving FHA financing must be free and clear of all liens, except for certain permitted inferior liens:

#### *§ 200.71 Liens.*

The project must be free and clear of all liens other than the insured mortgage, except that the property may be subject to an inferior lien as provided by terms and conditions established by the Commissioner for an inferior lien:

- (a) Made or held by a Federal, State or local government instrumentality;

Thus, the HOME Loan for the Development is a permitted inferior lien to the HUD Loan. HUD regulations further restrict an inferior loan as to repayment:

#### *§ 200.85 Covenant against liens.*

(a) The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be approved by the Commissioner in accordance with provisions of § 200.71; and

(b) A covenant against repayment of a Commissioner approved inferior lien from mortgage proceeds **other than surplus cash** or residual receipts, except in the case of an inferior lien created by an operating loss loan insured pursuant to section 223(d) of the Act, or a supplemental loan insured pursuant to section 241 of the Act. (emphasis added)

As noted in the Original Request, these regulatory requirements (the "**Surplus Cash Regulations**") are further defined in the MAP Guide.

The MAP Guide is promulgated by HUD "to establish national standards for approved lenders to prepare, process and submit loan applications for Federal Housing Administration (FHA) multifamily mortgage insurance." The most recent version of the MAP Guide was published in January 2016. Section 1.1 of the MAP Guide states:

Statutory authority for the implementation of MAP is contained in the basic insuring authority for each of the programs covered in MAP, pursuant to the National Housing Act, Sections 220, 221(d)(4), 231, 241(a), 223(a)(7), and 223(f). Additionally, Section 211 of the National Housing Act and Section 7(d) of the Department of HUD Act authorizes the Secretary to make such rules and regulations as may be necessary to carry out the provisions of the Act.

Thus, under its statutory authority to implement the Surplus Cash Regulations, HUD has provided the following in the MAP Guide at Section 14.14(A)(1):

Payments on all secondary debt are restricted to 75% or less of the annual surplus cash, or from the proceeds of a sale or refinancing of the property. (See 24 CFR 200.85(b).) This limit applies cumulatively to all secondary debt, private and public, to ensure that at least 25% of the surplus cash remains as an incentive to the owner. Owners may make additional payments on the debt out of their remaining 25% of cash flow, or from other sources.

**It should be noted that this restriction on payment of secondary debt from 75% of surplus cash has been part of the MAP Guide since the version published in August 2011.**

### Legal Considerations

In considering the Original Request, TDHCA staff expressed a concern that repayment of the HOME Loan from 75% of the Owner's surplus cash, as required by the MAP Guide, would not be consistent with TDHCA rules. Specifically, 10 TAC § 13.8(c)(2) states:

If the first lien mortgage is a federally insured HUD or FHA mortgage . . . , the Department may approve a loan structure **with annual payments payable from surplus cash flow** provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements of this subchapter. (emphasis added)

Staff has indicated that "annual payments payable from surplus cash flow" can only mean "annual payments payable from 100% of surplus cash flow." Therefore, staff cannot recommend approval of the Original Request to amend the HOME Loan because it would violate the rule. We disagree with this interpretation and believe that it is inappropriate in the context. The Texas Government Code addresses TDHCA's oversight of federal programs and the need for consistency with federal authority. Section 2306.1111(a) of the Government Code says:

Notwithstanding any other state law **and to the extent consistent with federal law**, the department shall establish uniform application and funding cycles for all competitive single-family and multifamily housing programs administered by the department under this chapter . . . . (emphasis added)

The mandate to operate within applicable federal program requirements is further recognized at 10 TAC § 13.1(a):

Notwithstanding anything in this Chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act and the implementing



regulations 24 CFR Part 91, Part 92, and Part 93, as they may be applicable to a specific fund source. The Department is authorized to administer HOME funds pursuant to Tex Gov't Code, §2306.111. Tex Gov't Code Chapter 2306, Subchapter I, Housing Finance Division.

Further, the intent to comply with federal programmatic requirements is evident in 10 TAC §13.1(c):

In no instance will the Department consider a waiver request that would violate **federal program requirements** or state or federal statute. (emphasis added)

At the time TDHCA approved the rule at 10 TAC § 13.8(c)(2) with regard to payment of direct loans from surplus cash, TDHCA was well aware of the MAP Guide requirement that subordinate loans should be paid from 75% of surplus cash. The MAP Guide requirement had been in place since August 2011. Given the statutory and regulatory direction that TDHCA operate its programs in a manner consistent with federal law and federal program requirements, it is therefore reasonable that TDHCA interpret its rules in a manner consistent with the MAP Guide. 10 TAC § 13.8(c)(2) requires that the payment come "from surplus cash flow." If the Owner uses 75% of its surplus cash to pay the HOME Loan, that payment is coming *from surplus cash flow*. To the extent the language must be interpreted in any way, legal authority favors an interpretation that is consistent with federal authority, not an interpretation that flies in the face of well-known federal authority.

#### **Economic Considerations and Mitigation**

**It should be noted that changing repayment of the HOME Loan from 100% of surplus cash to 75% of surplus cash has no material economic consequence for this Development and no material risk for TDHCA.** Please see the attached pro forma at Exhibit B. This pro forma was submitted in conjunction with the Owner's cost certification and reviewed and approved by TDHCA's staff. You will see that, if the HOME Loan is paid as hard debt, the Development generates a debt coverage ratio of 1.32 in Year 1 to 1.48 in Year 15. If the annual debt service of \$26,892 on the HOME Loan is paid from net cash flow instead, the following would result:

In year 1, the Development would have \$90,614 of net cash flow. Only 30% of the net cash flow would be needed to pay the HOME Loan.

In year 15, the Development would have \$121,958 of net cash flow. Only 22% of the net cash flow would be needed to pay the HOME Loan.

**HUD's limitation that the HOME Loan be repaid from 75% of surplus cash is irrelevant to TDHCA's economic risk because the Development needs less than 30% of its surplus cash, on average, to pay its annual debt service on the HOME Loan.**

This pro forma should provide TDHCA with sufficient comfort that approving the Original Request under the conditions described herein poses no additional economic risk for repayment of the HOME Loan. However, if TDHCA remains concerned about repayment issues, the Owner is willing to offer one of two additional protections:

The Owner would agree to establish a HOME Loan repayment reserve. One year worth of debt service on the HOME Loan (\$26,892) would be placed into a reserve account with the Owner's financial institution and utilized to cover any deficiency in the Owner's ability to pay the HOME Loan debt service in any given year. To the extent any withdrawals are made from this reserve, it would be replenished from net cash flow to maintain one year's worth of debt service at all times.

or

Section 14.14(A)(1) of the MAP Guide says "Owners may make additional payments on the debt out of their remaining 25% of cash flow, or from other sources." To the extent permitted by HUD, the Owner would agree to use the remaining 25% of cash flow for payment of the annual debt service on the HOME Loan, if needed. Alternatively, the Owner's general partner would pledge to use any cash flow distributions it receives from the remaining 25% to cover any deficiencies on the Owner's ability to pay annual debt service on the HOME Loan.

Both of these proposals get TDHCA to a place where the annual debt service payment on the HOME Loan is more secure.

### **Conclusion**

Mortgage financing through FHA is viewed as highly desirable for the preservation of affordable housing, with lower interest rates and longer amortization periods. Over the past several years, a number of owners have refinanced their properties using FHA financing. The request before you today is not a one-time accommodation for a single owner. Rather, it impacts a number of similarly situated owners who have received HOME loans from TDHCA. Despite responding differently in the past, it is clear that HUD is going to firmly implement the MAP Guide requirement that repayment of subordinate debt come from 75% of surplus cash. If TDHCA refuses to cooperate with HUD's mandate, a variety of owners will be denied the opportunity to pursue this favorable financing.

In conclusion, we believe that TDHCA's governing statute and rules indicate that consistency with federal law and programs is necessary and appropriate for the implementation of TDHCA's programs. To the extent interpretation of a rule is required, the interpretation must favor consistency with federal authority. The MAP Guide is created by HUD under federal authority, and TDHCA should interpret 10 TAC §13.8(c)(2) in a manner that allows approval of the Original Request for consistency with the MAP Guide.

To the extent any rule waivers are required, the good cause and necessity for such waivers includes allowing owners of affordable housing properties to access the favorable debt sources provided by FHA, along with the pursuit of consistency with federal authority, as described above. The economic considerations of the Development, represented by the strong debt coverage ratios reflected in Exhibit B, standing alone, provide sufficient mitigation of TDHCA's economic risk. In addition, if warranted, the Owner if offering additional mechanisms to assure debt service of the HOME loan is maintained.

We ask that staff provide a favorable recommendation for this request. If this matter requires further Board attention, we request to be heard at the meeting on February 28. Thank you.

Sincerely,



Cynthia L. Bast

cc: Rick J. Deyoe  
Tiffany Cornelius  
David Lacki  
Jeff Banker  
Orin Parvin  
Grant Blosser  
John Shackelford  
Michelle Snedden  
(via email)

**Exhibit A**

**Original Request**



600 Congress Avenue, Suite 2200  
Austin, Texas 78701-3055  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Matthew Borah  
Direct Telephone: 512-305-4877  
Direct Fax: 512-391-4897  
mborah@lockelord.com

January 5, 2017

**VIA EMAIL: raquel.morales@tdhca.state.tx.us**

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

RE: Pine Lake Estates (the "**Development**")  
(TDHCA No. 13232)  
Amendment Request for Payment of HOME Loan from 75% of Surplus Cash

Dear Ms. Morales:

We serve as counsel for the above referenced Development. As such, we are submitting this amendment request on behalf of Pine Lake Apartments A Limited Partnership, a Texas limited partnership (the "**Owner**"), the owner of the Development, to request approval for the repayment of a subordinate HOME loan made by Texas Department of Housing and Community Affairs (the "**Department**") be limited to 75% of surplus cash from the Development.

The Owner has received a HOME loan from the Department in the amount \$806,754.00 (the "**HOME Loan**") as evidenced by that certain Subordinate Promissory Note dated as of May 23, 2014 (the "**HOME Note**"). The Owner has applied for financing through the Federal Housing Administration, utilizing the 223(f) PILOT program (the "**HUD Loan**"), which would require the Department to subordinate the HOME Loan to the HUD Loan pursuant to a Subordination Agreement. As you are aware, a requirement of the standard HUD form of Subordination Agreement is that the payments of any subordinate debt be limited to 75% of surplus cash from the Development. Lancaster Pollard, the lender for the HUD Loan, submitted a waiver request to HUD to revise the Subordination Agreement to permit the repayment of the HOME Loan from 100% of surplus cash. Attached hereto as Attachment 1 is a letter from Lancaster Pollard detailing their correspondence with HUD regarding their efforts to seek a waiver.

Despite the Development serving the senior community and persons with disabilities, being subject to a HAP Contract, and the HUD Loan utilizing the 223(f) PILOT program, all of which make this HUD Loan very appealing to HUD, they have refused the request to revise the Subordination Agreement to provide for the HOME Loan to be repaid from 100% of surplus cash. Attached hereto

January 5, 2017

Page 2

as Attachment 2 is email correspondence detailing HUD's reasoning for refusing to accept the waiver request.

Given that HUD is unwilling to revise its policy regarding payment of the HOME Loan, the Owner requests the Department approve a modification of the terms of the HOME Loan, the amendment and restatement of the HOME Note, and the execution of a Subordination Agreement to provide for the repayment of the HOME Loan be limited to 75% of surplus cash.

Pursuant to Section 10.901 of the Multifamily Rules, this amendment request does not require an amendment fee because the changes are with respect to a Direct Loan program. The Owner requests staff recommendation, in support of this request, to be considered at the next available TDHCA Board meeting.

If there are any questions or if further information is needed regarding the foregoing, please let us know. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Borah", written in a cursive style.

Matthew Borah

cc: Rick J. Deyoe  
Tiffany Cornelius  
Jeff Banker  
Orin Parvin  
Grant Blosser  
Cynthia Bast  
(via email)

**ATTACHMENT 1**

**Letter from Lancaster Pollard**

**(attached hereto)**

July 12, 2016

Mr. Rick Deyoe  
President  
Realtex Development  
1101 S Capital of Texas Hwy, Suite F200  
Austin, TX 78746

RE: Pine Lake Estates

Dear Mr. Deyoe:

The purpose of this correspondence is to outline the request of a waiver that was submitted to HUD regarding Pine Lake Estates.

Pine Lake Estates has applied for financing through the Federal Housing Administration (FHA), utilizing the 223(f) PILOT program. In addition to the FHA financing, the project has been awarded Low Income Housing Tax Credits (LIHTC's) and a HOME loan both through the Texas Department of Community Affairs (TDHCA).

One component of the requirement for the FHA loan is for the subordinate lender to sign a subordination agreement. As part of the subordination agreement, no more than seventy five percent (75%) of the projects cash flow can be made available for the projects subordinate debt service.

A condition of the HOME Loan is the project apply one hundred percent (100%) of the projects available cash flow be applied to the payment due on the HOME loan. This requirement does not comport with the requirements under the HUD subordination agreement.

A waiver request was made to HUD to increase the maximum funds available from 75% of available cash flow to 100%. This request was denied by HUD on December 23, 2016. HUD is still committed to processing the transaction, however, HUD will not entertain any additional requests for the increase.

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

Sincerely,



Jeff Banker  
Lancaster Pollard

65 East State St. 16th Floor • Columbus, OH 43215 • Phone (614) 224-8800 • Fax (614) 224-8805



**ATTACHMENT 2**

**E-Mail Correspondence from HUD**

**(attached hereto)**

David,

The emails below constitute my interaction with HQ regarding the waiver request for 100% surplus cash to pay subordinate debt. Please let us know as soon as you hear something back regarding this issue, keeping in mind the 2/2/17 deadline that I noted in my previous email (12/28/16). Thank you.

Sincerely,

Mike Buis

Acting Underwriting Branch Chief

U.S. Department of Housing and Urban Development

801 Cherry Street, Unit #45, Suite 2500

Fort Worth, TX 76102

Phone 817-978-5809

[mike.buis@hud.gov](mailto:mike.buis@hud.gov)

**From:** Arteaga, Elizabeth H

**Sent:** Friday, December 23, 2016 1:45 PM

**To:** Buis, Michael A <[Michael.A.Buis@hud.gov](mailto:Michael.A.Buis@hud.gov)>

**Cc:** Johnson, Cynthia H <[Cynthia.H.Johnson@hud.gov](mailto:Cynthia.H.Johnson@hud.gov)>; Bernaciak, Thomas A <[Thomas.A.Bernaciak@hud.gov](mailto:Thomas.A.Bernaciak@hud.gov)>

**Subject:** RE: Pine Lake Estates - 75% Surplus Cash

This transaction includes a requested mortgage amount of \$3 million and a HOME loan for approx. \$806,000 (which was received in 2014/2015 when the project was sub. Rehabbed).

The underwritten DSCR is approx. 2.09% and cash flow after debt service is approx. \$185,000.

If this is correct, then TDHCA can expect to be repaid over the specified term with 75% of the project's surplus cash- and I'm guessing even sooner.

Based on the lender's underwriting, I don't anticipate the Owner defaulting during the term of the loan (which TDHCA seems to be concerned about).

The lender states "HUD is requiring the Department to take a higher risk position *in favor of the developer/owner*, which we've accommodated by modifying our hard debt structured HOME Loan secondary debt to a surplus cash structure, but with payment from cashflow before any return to the owner."

The 75% of cash flow requirement is intended to maintain the borrower's long-term interest in the *project's* success.

I don't see a compelling reason to approve the waiver.

**From:** Buis, Michael A  
**Sent:** Wednesday, December 21, 2016 3:09 PM  
**To:** Arteaga, Elizabeth H <[Elizabeth.H.Arteaga@hud.gov](mailto:Elizabeth.H.Arteaga@hud.gov)>  
**Cc:** Johnson, Cynthia H <[Cynthia.H.Johnson@hud.gov](mailto:Cynthia.H.Johnson@hud.gov)>  
**Subject:** FW: Pine Lake Estates - HUD Questions

Liz,

I received some answers to my questions on Pine Lake Estates from the lender/TDHCA (see email below). They are still asking for a waiver for payment of the subordinate loan out of 100% of cash flow rather than 75% of cash flow. This may continue to be an issue on future applications wherein there is subordinate debt and TDHCA is involved, as they appear to be pretty much set in their desire to have the subordinate debt paid out of 100% of cash flow. Perhaps General Counsel from HQ could get together with TDHCA to come to some sort of an agreement on this issue? Anyway, I am sending you all of this information so that the Loan Committee Members may opine on this waiver one last time. Should they still not accept this waiver request, we can tell the lender to continue on to the next phase of getting TDHCA Board approval of 75% surplus cash flow for subordinate debt payments, or we could final reject the application all together.

The lender also provided the following back on October 20<sup>th</sup> concerning the age restriction issues that the property was facing:

"The project recently underwent an MOR inspection in September, which resulted in a finding of noncompliance with HUD guidelines because the property did not properly implement the elderly and disabled preference according to the current Tenant Selection Plan. As such, the MOR report indicated a necessary plan of corrective action that the property must implement within 30 days in order to regain compliance.

The borrower is currently working with their HUD Asset Manager, Deborah Talamantes, to implement this corrective action plan and bring the project

into compliance with all HUD tenant selection guidelines. While communication has been somewhat slow in recent weeks, we are still optimistic that this issue will be resolved in the near term via the prescribed remedies detailed in the MOR report findings. Accordingly, we would request that you allow for additional time so that the borrower can implement this corrective action and clear the issue with their Asset Manager at HUD. It is our understanding that these steps should allow the project to move forward towards closing the 223(f) PILOT transaction.”

Sincerely,

Mike Buis

Acting Underwriting Branch Chief

U.S. Department of Housing and Urban Development

801 Cherry Street, Unit #45, Suite 2500

Fort Worth, TX 76102

Phone 817-978-5809

[mike.buis@hud.gov](mailto:mike.buis@hud.gov)

**From:** Lisa Vecchietti

**Sent:** Wednesday, December 14, 2016 11:28 AM

**To:** [mike.buis@hud.gov](mailto:mike.buis@hud.gov); Raquel Morales <[raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)>

**Cc:** David Lacki <[dlacki@lancasterpollard.com](mailto:dlacki@lancasterpollard.com)>; Orin Parvin <[oparvin@lancasterpollard.com](mailto:oparvin@lancasterpollard.com)>; Grant Blosser <[gblosser@lancasterpollard.com](mailto:gblosser@lancasterpollard.com)>

**Subject:** Pine Lake Estates - HUD Questions

Mike,

Below are the questions you sent to Raquel Morales at TDHCA with answers that she has reviewed.

1. Would you be able to explain the importance of having TDHCA's subordinate debt subject to 100% of surplus cash flow? It is possible, though not guaranteed, that upon gaining a better understanding of TDHCA's position, we could approve this request. *The Department's liability to HUD should the owner/developer default on our HOME Loan secondary debt is 100% of the debt we've provided. HUD is requiring the Department to take a higher risk position in favor of the developer/owner, which we've accommodated by modifying our hard debt structured HOME Loan secondary debt to a surplus cash structure, but with a fixed payment from cash flow before a return to the*

*developer. Cash flow above this amount will still be available to the developer. This will provide the owner with the incentive to maintain the property in order to always be able to achieve maximum allowable rents.*

2. Have all similar deals, of which you are aware, been structured with 100% of cash flow going towards repayment of the HOME Loan?  
*The Department has closed on several transactions with subordination documents that specify a fixed payment either specifically identifying from 100% surplus cash or simply stating from surplus cash and being silent on the percentage. See list below. (However, this is the first PILOT transaction with a TDHCA HOME Loan.)*

*Palladium Van Alstyne – 113-35652 (closed in May 2016)*

*LAKE DALLAS – HUD Project No:113-35575*

*VAN ALSTYNE – HUD Project No:113-35595*

*Mission Village of Pecos -- HUD Project No: 113-35602*

*Mission Village of Jacksonville -- HUD Project No: 113-35630*

*Mission Village of Monahans -- HUD Project No: 113-35646*

3. What are the possible repercussions to TDHCA if 100% of surplus cash is not allowed?  
*The Department's liability to HUD should the owner/developer default on our secondary debt is 100% of the HOME Loan debt we've provided. HUD is requiring the Department to take a higher risk position in favor of the developer/owner, which we've accommodated by modifying our hard debt structured HOME Loan secondary debt to a surplus cash structure, but with payment from cashflow before any return to the owner.*
4. Have any transactions, for which this was not allowed (if any), failed to pay off the subordinate debt or defaulted in some way? *The lack of sufficient cash flow to pay the fixed debt service does not constitute an event of default regardless of the 75% or 100% of cash flow language. The only difference is in the case of default of the first lien if a foreclosure should occur then any prior payments at 75% would have allowed 25% to the owner who lost the property and a larger outstanding balance that has to be written off/repaid by the Department.*
5. Is 75% of surplus cash insufficient to cover the required/desired payments for the HOME loan? If so, is there a percentage somewhere in between 75% and 100% that would cover those estimated payments? We may be able to approve a waiver is something can be worked out wherein we can meet in the middle and the reasoning for the requested higher percentage can be justified.  
*The transaction will be underwritten by TDHCA to meet an overall minimum 1.15 DSCR based on projected net operating income, debt service from the proposed 1<sup>st</sup> lien FHA loan, and an annual debt service of \$26,892 for the HOME Loan. This means that the Department's underwriting factors in cash flow that will go to the owner which is the .15 of the 1.15 DCR and represents 15% of the total debt service. The HOME Loan payments are treated as hard debt regardless of the restructuring to be subordinate with payments from cashflow. The \$26,892 annual debt service represents 12% of the*

*TDHCA underwritten Net Operating Income of \$224,000 and 42% of the cashflow after payment of the 1<sup>st</sup> lien FHA loan all-in debt service estimated at \$160,687 annually at application.*

We would like to move forward with the application with the waiver request for payment of the subordinate loan out of 100% of cashflow rather than 75% of cashflow. Please let me know if you have any questions.

Thank you,

Lisa Vecchietti  
*Vice President*

Office: (512) 327-7400 x3  
Cell: (512) 202-1655  
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## Asset Management Division

### Legal Document Request Form

Completed forms can be emailed to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us) or can be submitted as directed in the Introduction of the Post Award Activities Manual.

#### REQUEST INFORMATION

Date Submitted: March 10, 2016                      Document(s) Requested:     *HUD Rider,  
Subordination Agreement*

Requested Action: *Review of Drafted Document(s)*     Date Final Document Needed:     April 10, 2016

*NOTE: Please submit requests at least 30 days prior to the final document needed date.*

#### DEVELOPMENT INFORMATION

Dev. Name: Pine Lake Estates                      File No. / CMTS No.:     13232 /

#### CONTACT INFORMATION

Request Submitted By:     Matthew Borah                      Phone #/Email: (512) 305-4877 /

Attorney Contact:    Phone #/Email: (   )   -   /

*NOTE: Only enter Attorney contact if different from Requestor above.*

#### FINAL DOCUMENT MAILING ADDRESS

Final Documents must be FedExed to:

Independence Title Company  
5900 Sherpherd Mountain Cove, Bldg. 2, Suite 200  
Austin, Texas 78730    Phone #: (512) 279-7273  
Attn: Dan Phares

*NOTE: Documents will be sent priority overnight unless otherwise arranged.*

#### LIST OF ATTACHMENTS

The following documents are attached to this request (please list documents by title):

1. HUD Rider to LIHTC LURA
2. Subordination Agreement

3. HUD Rider to HOME LURA (clean)
5. HUD Memo re: HOME recording order

4. HUD Rider to HOME LURA (redline)
- 6.

Comments:

*NOTE: Draft notes and loan agreements must be submitted for any Loan Subordination and HUD Rider requests. The draft documents must identify all terms of the revised financing. If terms are not stated, additional documents should be submitted.*

#### LOAN SUBORDINATION REQUESTS AND HUD RIDERS ONLY – NEW LOAN INFORMATION

Name of Lender: Lancaster Pollard Mortgage Company, LLC

Loan Amt: \$3,000,000\*

*\*If Loan Amt will increase from original debt, please explain the purpose of the additional financing in the Comment box below:*

Comments:

1. HUD requires that the HOME Note be amended to extend the maturity date past the maturity date of the HUD loan (minimum of 35 years).
2. HUD requires that the HOME Note be amended to make it payable from up to 75% of available surplus cash in accordance with the MAP Guide. Section 8.7.E. of the MAP Guide provides the following proposed language to include in the HOME Note: "So long as the Secretary of Housing and Urban Development or his/her successors or assigns, are the insurers or holders of the first mortgage on Pine Lake Estates, FHA Project No. \_\_\_\_\_), payment(s) due under this Note, any secondary debt instruments shall be payable from up to 75% of available surplus cash. Non-project sources that are outside the Mortgaged Property may also be used to repay subordinate financing. The term surplus cash is defined in the Regulatory Agreement dated (insert date) between HUD and (insert name of borrower). The restriction on payment(s) imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by this Note."
3. HUD also requests TDHCA approve the HUD Rider to be attached to the HOME Loan LURA. Attached is a clean and redlined copy of the HUD Rider to HOME LURA compared against the LIHTC Rider approved by TDHCA. Although TDHCA has not approved use of the HUD Rider to the HOME LURA in the past, we are hopeful that the new 2016 MAP Guide eliminates TDHCA's concerns surrounding termination of the HOME affordable restrictive covenants. Section 8.7(5) of the 2016 MAP Guide now provides Lender's Counsel with the flexibility to modify the HUD Rider without obtaining a waiver from HUD such that the restrictive covenants are not subordinate to the HUD Mortgage and permit the Rider to HOME LURA to be recorded prior to the HUD Mortgage. The revisions highlighted in the redline of the Rider to HOME LURA as well as similar provisions set forth in the draft of the Subordination Agreement reflect this intent to carveout the subordination of the affordability restrictions. Please also see the attached memo/guidance from HUD issued in December 2015 that specifically addresses the HOME subordination issue. As the memo suggests, HUD's intent is to address concerns of the state agency and to eliminate the need for a waiver on this topic. I hope that the attached memorandum and the corresponding revisions to the Rider and Subordination Agreement adequately address the prior concerns of TDHCA.

Loan Type: HUD 223(f)

Amortization: 35 yrs

Term: 35 yrs

Annual Payment: \$Not yet determined.



**Subordination Agreement**

U.S. Department of Housing  
and Urban Development  
Office of Housing

OMB Approval No. 2502-0598  
(Exp. 06/30/2017)

**Public Reporting Burden** for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Project Name: Pine Lake Estates

HUD Project No: \_\_\_\_\_

THIS **SUBORDINATION AGREEMENT ("Agreement")** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and among (i) Lancaster Pollard Mortgage Company, LLC, a Delaware limited liability company ("**Senior Lender**"), (ii) Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas ("**Subordinate Lender**"), and (iii) Pine Lake Apartments a Limited Partnership, a Texas limited partnership ("**Borrower**").

#### Recitals

**WHEREAS**, Borrower is the owner of that certain 100 unit residential rental development known as "Pine Lake Estates" ("**Project**"), located at \_\_\_\_\_ . Senior Lender has made or is making the senior mortgage loan as described on Schedule A hereto ("**Senior Indebtedness**") to Borrower in the original principal amount(s) as shown on Schedule A, evidenced by the Note described in Schedule A ("**Senior Note**"), and secured by, among other things, the Security Instrument as described in Schedule A (collectively, "**Senior Security Instrument**"), covering the property described in Exhibit A attached hereto together with all improvements thereon and personal property used relative thereof, all as more particularly described in the Senior Security Instrument ("**Mortgaged Property**").

**WHEREAS**, Subordinate Lender made a subordinate loan to Borrower in the amount of \$806,754.00 ("**Subordinate Loan**"), pursuant to the Subordinate Loan Documents as defined below, and secured by, among other things, a mortgage lien against the Mortgaged Property.

**WHEREAS**, Senior Lender, with the approval of the U.S. Department of Housing and Urban Development ("**HUD**"), has agreed to permit Subordinate Lender to keep the Subordinate Loan outstanding and maintain a subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement and in accordance with Program Obligations. "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply

to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that site).

**NOW, THEREFORE**, in order to induce Senior Lender to permit Subordinate Lender to keep outstanding the Subordinate Loan to Borrower and to keep a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

**1. Definitions.**

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

(a) "**Affiliate**" is defined in 24 C.F.R. 200.215, or any successor regulation.

(b) "**Bankruptcy Proceeding**" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(c) "**Borrower**" means all entities identified as "Borrower" in the first paragraph of this Agreement, together with any successors, heirs, and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property, whether or not such entity assumes the Senior Note, provided that the term "Borrower" shall not include Senior Lender in the event that Senior Lender may acquire title to the Mortgaged Property. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Senior Security Instrument.

(d) "**Business Day**" means any day other than Saturday, Sunday or any other day on which Senior Lender or HUD is not open for business.

(e) "**Covenant Event of Default**" is defined in the Senior Security Instrument.

(f) "**Entity**" means an estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

(g) "**Monetary Event of Default**" is defined in the Senior Security Instrument.

**(h) "Non-Project Sources"** means any funds that are not derived from Project Sources.

**(i) "Project Sources"** means the Mortgaged Property (as defined in the Senior Security Instrument), any proceeds of the Senior loan, and any reserve or deposit made with Senior Lender or any other party as required by HUD in connection with the Senior loan.

**(j) "Senior Indebtedness"** means all present and future indebtedness, obligations, and liabilities of Borrower to Senior Lender under or in connection with the Senior loan or Senior Loan Documents.

**(k) "Senior Lender"** means the Entity named as such in the first paragraph on page 1 of this Agreement, its successors and assigns.

**(l) "Senior Loan Documents"** means the Senior Note, the Senior Security Instrument, and the Regulatory Agreement between Borrower and HUD, as such documents may be amended from time to time and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness.

**(m) "Senior Security Instrument Default"** means a "Monetary Event of Default" or a "Covenant Event of Default" as defined in the Senior Security Instrument.

**(n) "Subordinate Indebtedness"** means all present and future indebtedness, obligations, and liabilities of Borrower to Subordinate Lender under or in connection with the Subordinate Loan or the Subordinate Loan Documents.

**(o) "Subordinate Lender"** means the Entity named as such in the first paragraph on page 1 of this Agreement.

**(p) "Subordinate Loan Documents"** means the Subordinate Promissory Note, the Subordinate Deed of Trust (with Security Agreement and Assignment of Rents), the Construction Loan Agreement, the LURA (below defined), and all other documents (excluding the affordable restrictive covenants contained in Articles II and III of the LURA) at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as identified in Schedule B.

**(q) "Subordinate Loan Enforcement Action"** means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative (other than administrative action regarding income, rent and affordability restrictions under the Land Use Restriction Agreement by and between Subordinate Lender and Borrower dated of even date with the Subordinate Loan Documents pursuant to Chapter 2306 of the Texas Government Code), or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-

off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

**(r) "Subordinate Mortgage Default"** means any act, failure to act, event, conditions, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Lender to take a Subordinate Loan Enforcement Action.

**(s) "Surplus Cash"** is defined herein to mean the same as that term is defined in the Regulatory Agreement between Borrower and HUD.

## **2. Permission to Allow Mortgage Lien Against Mortgaged Property.**

Senior Lender agrees, subject to the provisions of this Agreement, to the Subordinate Mortgage and other recorded Subordinate Loan Documents against the Mortgaged Property (which are subordinate in all respects (excluding the affordable restrictive covenants contained in Articles II and III of the LURA) to the lien of the Senior Security Instrument) to secure Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are true and correct on the date of this Agreement. If any of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are not true and correct on such date, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

## **3. Borrower's and Subordinate Lender's Representations and Warranties.**

Borrower and, with respect to subsections (a) through (d) below, Subordinate Lender each make the following representations and warranties to Senior Lender:

**(a) Subordinate Loan Documents.** The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage.

**(b) Terms of the Subordinate Loan.** The original principal amount of the Subordinate Note is \$806,754.00. Interest on the Subordinate Note accrues monthly at the rate of 0% per annum. The Subordinate Note is due and payable in full on \_\_\_\_\_, \_\_\_\_\_, ("Maturity"). The principal of the Subordinate Note will be fully amortized at Maturity. The promissory note evidencing the Subordinate Note obligates Borrower to make monthly payments of \$2,240.98 beginning December 1, 2015 and on the same day of every succeeding month thereafter, subject to available Surplus Cash. As long as HUD is the insurer or holder of the Senior Note on FHA Project No. \_\_\_\_\_, any payments due from project income under the Subordinate Note shall be payable only (i) from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received

from Non-Project Sources. No prepayment of the Subordinate Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note.

**(c) Relationship of Borrower to Subordinate Lender.** Subordinate Lender is not an Affiliate of Borrower.

**(d) Term.** The term of the Subordinate Note matures on \_\_\_\_\_, and does not end before the term of the Senior Note.

**(e) Subordinate Loan Documents.** The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, HUD prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

**(f) Senior Loan Documents.** The executed Senior Loan Documents are the same forms as approved by HUD prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

#### **4. Deliveries.**

Borrower shall submit the following items to Senior Lender and HUD not later than ten (10) Business Days after the date of the initial disbursement of proceeds of the Subordinate Loan.

**(a) Title Evidence.** Evidence of title (title policy or title policy endorsement, as appropriate) insuring the lien of the Senior Security Instrument which insures that (i) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Mortgage, and (ii) this Agreement has been recorded among the applicable land records.

**(b) Certification.** A certification from Borrower and Subordinate Lender to HUD that the Subordinate Loan Documents do not contain any changes from the Subordinate Loan Documents submitted to, and approved by, HUD, before the date of this Agreement.

**(c) Loan Documents.** A complete set of the Subordinate Loan Documents.

#### **5. Terms of Subordination.**

**(a) Agreement to Subordinate.** Senior Lender and Subordinate Lender

agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects (excluding the affordable restrictive covenants set forth in Articles II and III of the LURA) to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Security Instrument, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property). Subordinate Lender agrees to extinguish and release its lien on any and all Mortgaged Property in the event Senior Lender, HUD, or a designee of either acquires title to the Mortgaged Property pursuant to a deed in lieu of foreclosure.

**(b) Subordination of Subrogation Rights.** Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

**(c) Payments Before Senior Security Instrument Default.** Until Subordinate Lender receives a default notice of a Senior Security Instrument Default from Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents provided that such payments are otherwise permitted under the terms of this Agreement.

**(d) Payments After Senior Security Instrument Default.** Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Security Instrument Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a default notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Project Sources on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) unless either (i) such payment is being made solely from Non-Project Sources or (ii) such payment is made with Senior Lender's prior written

consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Security Instrument Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 5 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new default notice from Senior Lender in accordance with the provisions of this Section 5(d).

**(e) Remitting Subordinate Loan Payments to Senior Lender.** If, after Subordinate Lender receives a default notice from Senior Lender in accordance with subsection (d) above, Subordinate Lender receives any payments under the Subordinate Loan Documents (other than payments permitted under subsection (d) above), Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, by warrant of the State of Texas, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 5, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Mortgage Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

**(f) Agreement Not to Commence Bankruptcy Proceeding.** Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any Bankruptcy Proceeding with respect to Borrower, without Senior Lender's prior written consent.

## **6. Default Under Subordinate Loan Documents.**

**(a) Notice of Default and Cure Rights.** Subordinate Lender shall deliver to Senior Lender a default notice within five Business Days in each case where Subordinate Lender has given a default notice to Borrower. Failure of Subordinate Lender to send a default notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the opportunity, but not the obligation, to cure any Subordinate Mortgage Default within 60 days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, subject to the limitations set forth in Section 6(b) below.

**(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.** If a Subordinate Mortgage Default occurs and is continuing, Subordinate Lender agrees that it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents with respect to the Mortgaged Property, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder without Senior Lender's prior written consent. However, the preceding sentence shall not (i) limit Subordinate Lender's right to bring an action seeking recovery solely from Non-Project Sources or (ii) preclude Subordinate Lender from exercising or enforcing all the rights available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable law to enforce covenants and agreements of Borrower relating to income, rent or affordability restrictions.

## **7. Default Under Senior Loan Documents.**

**(a) Notice of Default and Cure Rights.** Senior Lender shall deliver to Subordinate Lender a default notice within five Business Days in each case where Senior Lender has given a default notice to Borrower (provided that Senior Lender shall have no liability to Borrower, Subordinate Lender or to any other Entity for failure to timely give such notice). Failure of Senior Lender to send a default notice to Subordinate Lender shall not prevent the exercise of Senior Lender's right and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Borrower agrees that Subordinate Lender shall have the opportunity, but not the obligation, to cure either a Monetary Event of Default or a Covenant Event of Default within 30 days following the date of such notice, or any time prior to an assignment of the Senior Security Instrument from Senior Lender to HUD, whichever date is later. Subordinate Lender acknowledges that Senior Lender shall be entitled during such period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender shall have the opportunity to cure a Covenant Event of Default during such period described above so long as there is no Monetary Event of Default under the Senior Loan Documents. All amounts paid by Subordinate Lender to Senior Lender to cure any default under the Senior Loan Documents shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

**(b) Cross Default.** Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Security Instrument Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents.

## **8. Conflict.**

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this



Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; and (b) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be; give Borrower the right to notice of any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents, as applicable; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

**9. Rights and Obligations of Subordinate Lender under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.**

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

**(a) Protection of Security Interest.** Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Security Instrument Defaults pursuant to Section 7(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

**(b) Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Mortgaged Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

**(1)** Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by or with the written consent of Senior Lender; and

**(2)** all proceeds received or to be received on account of a Taking

or a Casualty, or both, shall be applied (to payment of the costs and expenses of repair and restoration and/or to payment of the Senior Security Instrument) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Security Instrument, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Security Instrument shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents. Any proceeds then remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents shall be paid by the Subordinate Lender to Borrower.

**(c) No Modification of Subordinate Loan Documents.** Borrower and Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents without Senior Lender's consent shall be void ab initio and of no effect whatsoever, to the extent allowed by law.

#### **10. Modification of Senior Loan Documents; Refinancing of Senior Indebtedness.**

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, provided however, there shall be no modification of the Senior Loan Documents without the consent of the Subordinate Lender if such modification would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.

Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness in accordance with Program Obligations (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Indebtedness, the Senior Note, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the indebtedness related to the refinance loan, the refinance note, the security instrument securing the refinance note, all documents evidencing, securing or

otherwise pertaining to the refinance note and the holder of the refinance note, provided however, there shall be no refinancing of the Senior Indebtedness without the consent of the Subordinate Lender if such refinancing would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.

#### **11. Default by Subordinate Lender or Senior Lender.**

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting Lender shall have the right to all available legal and equitable relief.

#### **12. Notices.**

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which Senior Lender or Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two Business Days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Lancaster Pollard Mortgage Company, LLC  
65 East State Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215  
Attention: Lisa Vecchietti, Vice President

With a copy to:

U.S. Department of Housing and Urban Development  
Director - Office of Multifamily Asset Management  
Room 6160  
451 Seventh Street, S.W.  
Washington, DC 20410

**SUBORDINATE LENDER:**

Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street, Austin, Texas 78701  
P. O. Box 13941  
Austin, Texas 78711  
Attention: Asset Management Division

All with a copy to: Director of Multifamily Finance

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

**13. General.**

**(a) Assignment/Successors.** This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of Senior Lender and Subordinate Lender.

**(b) No Partnership or Joint Venture.** Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of any other party hereto.

**(c) Senior Lender's and Subordinate Lender's Consent.** Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

**(d) Further Assurances; UCC Financing Statements.** Subordinate Lender, Senior Lender and Borrower each agree, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan Documents are subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement. Senior Lender is hereby authorized to file any and all UCC financing statement amendments required to reflect the priority of the Senior Indebtedness.

**(e) Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

**(f) Governing Law.** This Agreement shall be governed by the laws of the State in which the Mortgaged Property is located, except as, so long as the Senior loan is insured or held by HUD, and solely as to rights and remedies of HUD, federal jurisdiction may be appropriate pursuant to any federal requirements. The State courts, and with respect to HUD's rights and remedies, federal courts, and governmental authorities in the State in which the Mortgaged Property is located, shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Subordinate Loan Documents. To the extent allowed by law, Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

**(g) Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**(h) Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 5 hereof; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure; or (iv) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement. Notwithstanding the foregoing, in the event the Senior Indebtedness is refinanced, the term of this Agreement shall continue and the Subordinate Indebtedness and Subordinate Loan Documents shall be subordinate to any such indebtedness related to the refinance loan as provided in Section 10 above.

**(i) Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

**(j) Indemnification Provisions.** Notwithstanding anything to the contrary set forth in this Agreement or otherwise, in no event will HUD be responsible for any of Borrower's indemnification obligations set forth in the Subordinate Loan Documents.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the

Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**[SIGNATURES APPEAR ON SUCCEEDING PAGES]**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



Pine Lake Estates  
Nacogdoches, Texas  
FHA Project No. \_\_\_\_\_

SUBORDINATE LENDER:

Texas Department of Housing and Community Affairs,  
a public and official agency of the State of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
2016, by \_\_\_\_\_, \_\_\_\_\_ of the Texas Department of  
Housing and Community Affairs, a public and official agency of the State of Texas, on  
behalf of said agency.

\_\_\_\_\_  
NOTARY PUBLIC  
IN AND FOR THE STATE OF TEXAS

Notary's Name (Printed):

[SEAL]

\_\_\_\_\_



Pine Lake Estates  
Nacogdoches, Texas  
FHA Project No. \_\_\_\_\_

**BORROWER:**

**PINE LAKE APARTMENTS A LIMITED PARTNERSHIP,**  
a Texas limited partnership

By: IAHI-Pine, LLC,  
a Texas limited liability company,  
its general partner

By: Realtex Development Corporation,  
a Texas corporation  
its managing member

By: \_\_\_\_\_  
Name: Rick J. Deyoe  
Title: Managing Member

**STATE OF TEXAS       §**  
**§**  
**COUNTY OF DALLAS   §**

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Rick J. Deyoe, managing member of Realtex Development Corporation, a Texas corporation, Managing Member of IAHI-Pine, LLC, a Texas limited liability company, General Partner of Pine Lake Apartments a Limited Partnership, a Texas limited partnership, on behalf of said Partnership.

\_\_\_\_\_  
NOTARY PUBLIC  
IN AND FOR THE STATE OF TEXAS

Notary's Name (Printed):

[SEAL] \_\_\_\_\_

**Warning:**

**Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.**

## SCHEDULE A

Senior Indebtedness: that certain loan in the original principal amount of Three Million and 00/100 Dollars (\$3,000,000.00) from Senior Lender to Borrower.

Senior Note: that certain Note (HUD-94001M) in the original principal amount of Three Million and 00/100 Dollars (\$3,000,000.00) (and Rider 1 thereto) executed by Borrower in favor of Senior Lender, dated as of \_\_\_\_\_, 2016.

Senior Security Agreement: that certain Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (HUD-94000M) with Addendum (Texas) and Rider to Security Instrument for LIHTC Properties attached, if applicable, executed by Borrower in favor of Senior Lender dated as of \_\_\_\_\_, 2016.

And all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness.

EXHIBIT A

## EXHIBIT B

Subordinate Indebtedness: Subordinate HOME loan from Subordinate Lender in the original principal amount of Eight Hundred Six Thousand Seven Hundred Fifty Four Hundred and 00/100ths Dollars (\$806,754.00), evidenced by:

1. Architect Agreement dated May 23, 2014, executed by \_\_\_\_\_, a \_\_\_\_\_;
2. Construction Loan Agreement dated May 23, 2014, executed by Borrower and Subordinate Lender.
3. Contractor Agreement dated May 23, 2014, executed by \_\_\_\_\_.
4. "LURA" -- Land Use Restriction Agreement dated as of May 23, 2014, executed by Borrower and Subordinate Lender.
5. "**Subordinate Mortgage**" -- Subordinate Deed of Trust (with Security Agreement and Assignment of Rents) dated as of May 23, 2014, executed by Borrower for the benefit of Subordinate Lender.
6. "**Subordinate Note**" -- Subordinate Promissory Note in the stated amount of \$806,754.00, dated May 23, 2014, executed by Borrower to the order of Subordinate Lender.
7. UCC-1 Financing Statement to be recorded in \_\_\_\_\_ County, Texas with Borrower as debtor and Subordinate Lender and secured party.
8. UCC-1 Financing Statement to be recorded with the Texas Secretary of State with Borrower as debtor and Subordinate Lender as secured party.
9. And all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness.

Notwithstanding anything to the contrary set forth in the Subordination Agreement to which this Schedule B is attached, the affordable restrictive covenants contained in Article II and III of the LURA are not subordinate to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents.

**Exhibit B**

**15-Year Pro Forma**

Pine Lake Proforma 7-23-2016

**RENTAL HOUSING OPERATING PROFORMA**

**30 YEAR OPERATING PROFORMA**

INCOME	RENT UP PER % OF BODS	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10	YEAR 11	YEAR 12
POTENTIAL GROSS ANNUAL RENTAL INCOME		\$656,400	\$669,528	\$682,919	\$696,577	\$710,508	\$724,716	\$739,213	\$753,997	\$769,077	\$784,459	\$800,148	\$816,106
Secondary Income		30,000	30,000	31,212	31,836	32,473	33,122	33,785	34,461	35,150	35,863	36,590	37,344
POTENTIAL GROSS ANNUAL INCOME	\$0	\$686,400	\$700,128	\$714,131	\$728,413	\$742,981	\$757,841	\$772,998	\$788,458	\$804,227	\$820,312	\$836,738	\$853,450
Provision for Vacancy & Collection Loss/ 7%		(48,048)	(48,887)	(49,804)	(48,760)	(46,756)	(50,730)	(51,745)	(52,780)	(53,835)	(54,912)	(56,010)	(56,627)
Rental Concessions													
EFFECTIVE GROSS ANNUAL INCOME	\$0	\$640,452	\$653,261	\$666,326	\$679,653	\$693,246	\$707,111	\$721,253	\$735,678	\$750,392	\$765,399	\$780,707	\$845,063
<b>EXPENSES</b>													
General & Administrative Expenses		\$31,800	\$36,638	\$36,707	\$37,808	\$38,943	\$40,111	\$41,314	\$42,554	\$43,830	\$45,145	\$46,500	\$52,338
Management Fee		32,023	32,983	33,973	34,992	36,042	37,121	38,237	39,384	40,565	41,782	43,036	48,437
Payroll, Payroll Tax & Employee Benefits		102,400	105,472	108,636	111,895	115,252	118,710	122,271	125,935	129,717	133,609	137,617	154,889
Repairs & Maintenance		45,000	46,350	47,741	49,173	50,648	52,167	53,732	55,344	57,005	58,715	60,478	68,067
Electric & Gas Utilities		11,000	11,330	11,670	12,020	12,381	12,752	13,135	13,529	13,934	14,353	14,786	16,628
Water, Sewer & Trash Utilities		43,000	44,290	45,619	46,987	48,387	49,824	51,344	52,888	54,471	56,105	57,788	65,041
Annual Property Insurance/Premiums		30,000	30,900	31,827	32,782	33,766	34,778	35,822	36,896	38,003	39,143	40,317	45,378
Property Tax		40,000	41,200	42,436	43,709	45,020	46,371	47,762	49,195	50,671	52,191	53,757	60,504
Reserve for Replacements		30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000
Other Expenses - Supportive Services		12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
TOTAL ANNUAL EXPENSES	\$0	\$320,023	\$330,163	\$340,806	\$341,166	\$342,417	\$343,851	\$345,617	\$347,725	\$349,197	\$350,943	\$352,974	\$355,290
NET OPERATING INCOME	\$0	\$320,429	\$323,098	\$325,520	\$338,487	\$350,799	\$363,260	\$375,636	\$387,953	\$398,195	\$408,357	\$418,433	\$429,173
<b>DEBT SERVICING</b>													
1st Dept of Trust Annual Ln Pmt		(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)	(\$109,815)
HOME Funds (0% Interest)		(26,892)	(26,892)	(26,892)	(26,892)	(26,892)	(26,892)	(26,892)	(26,892)	(26,892)	(26,892)	(26,892)	(26,892)
AHF loan 0.5% Interest		0	0	0	0	0	0	0	0	0	0	0	0
Other Annual Required Payment - AHF													
NET CASHFLOW	\$0	\$60,722	\$66,391	\$69,911	\$71,579	\$74,091	\$76,541	\$78,929	\$81,246	\$83,487	\$85,649	\$87,726	\$95,066
Debt Coverage Ratio - 1st Item		1.53	1.55	1.58	1.58	1.59	1.61	1.62	1.64	1.65	1.66	1.67	1.72
Debt Coverage Ratio - All Items		1.32	1.34	1.35	1.36	1.38	1.39	1.40	1.41	1.42	1.44	1.45	1.48

Reserve for Payback - No Vacant Fire Certificate	\$81,722	\$130,113	\$198,124	\$270,763	\$344,794	\$421,337	\$500,286	\$581,511	\$664,999	\$750,668	\$838,574	\$928,747	\$1,031,147
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600 Congress Avenue, Suite 2200  
Austin, Texas 78701-3055  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Matthew Borah  
Direct Telephone: 512-305-4877  
Direct Fax: 512-391-4897  
mborah@lockelord.com

January 5, 2017

**VIA EMAIL: raquel.morales@tdhca.state.tx.us**

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

RE: Pine Lake Estates (the "**Development**")  
(TDHCA No. 13232)  
Amendment Request for Payment of HOME Loan from 75% of Surplus Cash

Dear Ms. Morales:

We serve as counsel for the above referenced Development. As such, we are submitting this amendment request on behalf of Pine Lake Apartments A Limited Partnership, a Texas limited partnership (the "**Owner**"), the owner of the Development, to request approval for the repayment of a subordinate HOME loan made by Texas Department of Housing and Community Affairs (the "**Department**") be limited to 75% of surplus cash from the Development.

The Owner has received a HOME loan from the Department in the amount \$806,754.00 (the "**HOME Loan**") as evidenced by that certain Subordinate Promissory Note dated as of May 23, 2014 (the "**HOME Note**"). The Owner has applied for financing through the Federal Housing Administration, utilizing the 223(f) PILOT program (the "**HUD Loan**"), which would require the Department to subordinate the HOME Loan to the HUD Loan pursuant to a Subordination Agreement. As you are aware, a requirement of the standard HUD form of Subordination Agreement is that the payments of any subordinate debt be limited to 75% of surplus cash from the Development. Lancaster Pollard, the lender for the HUD Loan, submitted a waiver request to HUD to revise the Subordination Agreement to permit the repayment of the HOME Loan from 100% of surplus cash. Attached hereto as Attachment 1 is a letter from Lancaster Pollard detailing their correspondence with HUD regarding their efforts to seek a waiver.

Despite the Development serving the senior community and persons with disabilities, being subject to a HAP Contract, and the HUD Loan utilizing the 223(f) PILOT program, all of which make this HUD Loan very appealing to HUD, they have refused the request to revise the Subordination Agreement to provide for the HOME Loan to be repaid from 100% of surplus cash. Attached hereto



January 5, 2017

Page 2

as Attachment 2 is email correspondence detailing HUD's reasoning for refusing to accept the waiver request.

Given that HUD is unwilling to revise its policy regarding payment of the HOME Loan, the Owner requests the Department approve a modification of the terms of the HOME Loan, the amendment and restatement of the HOME Note, and the execution of a Subordination Agreement to provide for the repayment of the HOME Loan be limited to 75% of surplus cash.

Pursuant to Section 10.901 of the Multifamily Rules, this amendment request does not require an amendment fee because the changes are with respect to a Direct Loan program. The Owner requests staff recommendation, in support of this request, to be considered at the next available TDHCA Board meeting.

If there are any questions or if further information is needed regarding the foregoing, please let us know. Thank you for your time and consideration.

Sincerely,



Matthew Borah

cc: Rick J. Deyoe  
Tiffany Cornelius  
Jeff Banker  
Orin Parvin  
Grant Blosser  
Cynthia Bast  
(via email)

**ATTACHMENT 1**

**Letter from Lancaster Pollard**

**(attached hereto)**

July 12, 2016

Mr. Rick Deyoe  
President  
Realtex Development  
1101 S Capital of Texas Hwy, Suite F200  
Austin, TX 78746

RE: Pine Lake Estates

Dear Mr. Deyoe:

The purpose of this correspondence is to outline the request of a waiver that was submitted to HUD regarding Pine Lake Estates.

Pine Lake Estates has applied for financing through the Federal Housing Administration (FHA), utilizing the 223(f) PILOT program. In addition to the FHA financing, the project has been awarded Low Income Housing Tax Credits (LIHTC's) and a HOME loan both through the Texas Department of Community Affairs (TDHCA).

One component of the requirement for the FHA loan is for the subordinate lender to sign a subordination agreement. As part of the subordination agreement, no more than seventy five percent (75%) of the projects cash flow can be made available for the projects subordinate debt service.

A condition of the HOME Loan is the project apply one hundred percent (100%) of the projects available cash flow be applied to the payment due on the HOME loan. This requirement does not comport with the requirements under the HUD subordination agreement.

A waiver request was made to HUD to increase the maximum funds available from 75% of available cash flow to 100%. This request was denied by HUD on December 23, 2016. HUD is still committed to processing the transaction, however, HUD will not entertain any additional requests for the increase.

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

Sincerely,



Jeff Banker  
Lancaster Pollard

**ATTACHMENT 2**

**E-Mail Correspondence from HUD**

**(attached hereto)**

David,

The emails below constitute my interaction with HQ regarding the waiver request for 100% surplus cash to pay subordinate debt. Please let us know as soon as you hear something back regarding this issue, keeping in mind the 2/2/17 deadline that I noted in my previous email (12/28/16). Thank you.

Sincerely,

Mike Buis

Acting Underwriting Branch Chief

U.S. Department of Housing and Urban Development

801 Cherry Street, Unit #45, Suite 2500

Fort Worth, TX 76102

Phone 817-978-5809

[mike.buis@hud.gov](mailto:mike.buis@hud.gov)

**From:** Arteaga, Elizabeth H

**Sent:** Friday, December 23, 2016 1:45 PM

**To:** Buis, Michael A <[Michael.A.Buis@hud.gov](mailto:Michael.A.Buis@hud.gov)>

**Cc:** Johnson, Cynthia H <[Cynthia.H.Johnson@hud.gov](mailto:Cynthia.H.Johnson@hud.gov)>; Bernaciak, Thomas A <[Thomas.A.Bernaciak@hud.gov](mailto:Thomas.A.Bernaciak@hud.gov)>

**Subject:** RE: Pine Lake Estates - 75% Surplus Cash

This transaction includes a requested mortgage amount of \$3 million and a HOME loan for approx. \$806,000 (which was received in 2014/2015 when the project was sub. Rehabbed).

The underwritten DSCR is approx. 2.09% and cash flow after debt service is approx. \$185,000.

If this is correct, then TDHCA can expect to be repaid over the specified term with 75% of the project's surplus cash- and I'm guessing even sooner.

Based on the lender's underwriting, I don't anticipate the Owner defaulting during the term of the loan (which TDHCA seems to be concerned about).

The lender states "HUD is requiring the Department to take a higher risk position *in favor of the developer/owner*, which we've accommodated by modifying our hard debt structured HOME Loan secondary debt to a surplus cash structure, but with payment from cashflow before any return to the owner."

The 75% of cash flow requirement is intended to maintain the borrower's long-term interest in the *project's* success.

I don't see a compelling reason to approve the waiver.

**From:** Buis, Michael A

**Sent:** Wednesday, December 21, 2016 3:09 PM

**To:** Arteaga, Elizabeth H <[Elizabeth.H.Arteaga@hud.gov](mailto:Elizabeth.H.Arteaga@hud.gov)>

**Cc:** Johnson, Cynthia H <[Cynthia.H.Johnson@hud.gov](mailto:Cynthia.H.Johnson@hud.gov)>

**Subject:** FW: Pine Lake Estates - HUD Questions

Liz,

I received some answers to my questions on Pine Lake Estates from the lender/TDHCA (see email below). They are still asking for a waiver for payment of the subordinate loan out of 100% of cash flow rather than 75% of cash flow. This may continue to be an issue on future applications wherein there is subordinate debt and TDHCA is involved, as they appear to be pretty much set in their desire to have the subordinate debt paid out of 100% of cash flow. Perhaps General Counsel from HQ could get together with TDHCA to come to some sort of an agreement on this issue? Anyway, I am sending you all of this information so that the Loan Committee Members may opine on this waiver one last time. Should they still not accept this waiver request, we can tell the lender to continue on to the next phase of getting TDHCA Board approval of 75% surplus cash flow for subordinate debt payments, or we could final reject the application all together.

The lender also provided the following back on October 20<sup>th</sup> concerning the age restriction issues that the property was facing:

"The project recently underwent an MOR inspection in September, which resulted in a finding of noncompliance with HUD guidelines because the property did not properly implement the elderly and disabled preference according to the current Tenant Selection Plan. As such, the MOR report indicated a necessary plan of corrective action that the property must implement within 30 days in order to regain compliance.

The borrower is currently working with their HUD Asset Manager, Deborah Talamantes, to implement this corrective action plan and bring the project

into compliance with all HUD tenant selection guidelines. While communication has been somewhat slow in recent weeks, we are still optimistic that this issue will be resolved in the near term via the prescribed remedies detailed in the MOR report findings. Accordingly, we would request that you allow for additional time so that the borrower can implement this corrective action and clear the issue with their Asset Manager at HUD. It is our understanding that these steps should allow the project to move forward towards closing the 223(f) PILOT transaction.”

Sincerely,

Mike Buis

Acting Underwriting Branch Chief

U.S. Department of Housing and Urban Development

801 Cherry Street, Unit #45, Suite 2500

Fort Worth, TX 76102

Phone 817-978-5809

[mike.buis@hud.gov](mailto:mike.buis@hud.gov)

**From:** Lisa Vecchietti

**Sent:** Wednesday, December 14, 2016 11:28 AM

**To:** [mike.buis@hud.gov](mailto:mike.buis@hud.gov); Raquel Morales <[raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)>

**Cc:** David Lacki <[dlacki@lancasterpollard.com](mailto:dlacki@lancasterpollard.com)>; Orin Parvin <[oparvin@lancasterpollard.com](mailto:oparvin@lancasterpollard.com)>; Grant Blosser <[gblosser@lancasterpollard.com](mailto:gblosser@lancasterpollard.com)>

**Subject:** Pine Lake Estates - HUD Questions

Mike,

Below are the questions you sent to Raquel Morales at TDHCA with answers that she has reviewed.

1. Would you be able to explain the importance of having TDHCA's subordinate debt subject to 100% of surplus cash flow? It is possible, though not guaranteed, that upon gaining a better understanding of TDHCA's position, we could approve this request. *The Department's liability to HUD should the owner/developer default on our HOME Loan secondary debt is 100% of the debt we've provided. HUD is requiring the Department to take a higher risk position in favor of the developer/owner, which we've accommodated by modifying our hard debt structured HOME Loan secondary debt to a surplus cash structure, but with a fixed payment from cash flow before a return to the*

*developer. Cash flow above this amount will still be available to the developer. This will provide the owner with the incentive to maintain the property in order to always be able to achieve maximum allowable rents.*

2. Have all similar deals, of which you are aware, been structured with 100% of cash flow going towards repayment of the HOME Loan?  
*The Department has closed on several transactions with subordination documents that specify a fixed payment either specifically identifying from 100% surplus cash or simply stating from surplus cash and being silent on the percentage. See list below. (However, this is the first PILOT transaction with a TDHCA HOME Loan.)*

*Palladium Van Alstyne – 113-35652 (closed in May 2016)*

*LAKE DALLAS – HUD Project No:113-35575*

*VAN ALSTYNE – HUD Project No:113-35595*

*Mission Village of Pecos -- HUD Project No: 113-35602*

*Mission Village of Jacksonville -- HUD Project No: 113-35630*

*Mission Village of Monahans -- HUD Project No: 113-35646*

3. What are the possible repercussions to TDHCA if 100% of surplus cash is not allowed?  
*The Department's liability to HUD should the owner/developer default on our secondary debt is 100% of the HOME Loan debt we've provided. HUD is requiring the Department to take a higher risk position in favor of the developer/owner, which we've accommodated by modifying our hard debt structured HOME Loan secondary debt to a surplus cash structure, but with payment from cashflow before any return to the owner.*
4. Have any transactions, for which this was not allowed (if any), failed to pay off the subordinate debt or defaulted in some way?  
*The lack of sufficient cash flow to pay the fixed debt service does not constitute an event of default regardless of the 75% or 100% of cash flow language. The only difference is in the case of default of the first lien if a foreclosure should occur then any prior payments at 75% would have allowed 25% to the owner who lost the property and a larger outstanding balance that has to be written off/repaid by the Department.*
5. Is 75% of surplus cash insufficient to cover the required/desired payments for the HOME loan? If so, is there a percentage somewhere in between 75% and 100% that would cover those estimated payments? We may be able to approve a waiver if something can be worked out wherein we can meet in the middle and the reasoning for the requested higher percentage can be justified.  
*The transaction will be underwritten by TDHCA to meet an overall minimum 1.15 DSCR based on projected net operating income, debt service from the proposed 1<sup>st</sup> lien FHA loan, and an annual debt service of \$26,892 for the HOME Loan. This means that the Department's underwriting factors in cash flow that will go to the owner which is the .15 of the 1.15 DCR and represents 15% of the total debt service. The HOME Loan payments are treated as hard debt regardless of the restructuring to be subordinate with payments from cashflow. The \$26,892 annual debt service represents 12% of the*



*TDHCA underwritten Net Operating Income of \$224,000 and 42% of the cashflow after payment of the 1<sup>st</sup> lien FHA loan all-in debt service estimated at \$160,687 annually at application.*

We would like to move forward with the application with the waiver request for payment of the subordinate loan out of 100% of cashflow rather than 75% of cashflow. Please let me know if you have any questions.

Thank you,

Lisa Vecchietti

*Vice President*

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**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**FEBRUARY 28, 2017**

Presentation, Discussion, and Possible Action regarding amendments to Direct HOME loan terms for Sunrise Townhomes (#13500)

**RECOMMENDED ACTION**

**WHEREAS**, Sunrise Townhomes (the “Development”) received a Direct Loan award of HOME funds in the form of a \$1,850,000 loan, secured by a second lien on the property, in 2014 to construct 36 units in Fredericksburg, Gillespie County;

**WHEREAS**, Tex. Gov’t Code §2306.142 provides the Board with the “specific duty and power to establish interest rates and amortization schedules for loans made or financed...” by the Department;

**WHEREAS**, the Department re-evaluated the first lien financing prior to HOME closing and last formally approved a financing structure that included (i) \$1,921,609 in priority permanent debt, (ii) interest rate at 5.00%, (iii) a 35 year amortization period (\$116,377 in annual debt service), and (iv) a 15 year loan term;

**WHEREAS**, the HOME loan terms were modified on October 24, 2014, to defer payment during the first twenty four (24) months of the development period;

**WHEREAS**, the Owner is now requesting to substitute for the permanent first lien financing a loan by Red Mortgage Company, LLC insured through the Federal Housing Administration (“FHA”) 223(f) Program that would (i) increase the permanent debt by \$630,691 to \$2,552,300, (ii) reduce the interest rate to 3.45%, and (iii) extend the loan term to 35 years for a new annual payment of \$134,628;

**WHEREAS**, the United States Department of Housing and Urban Development (“HUD”) includes, in its FHA Multifamily Accelerated Processing (“MAP”) Guide, that all subordinate debt in FHA insured developments must be repayable only from Cash Surplus (as defined for FHA purposes) after the deduction of certain expenses and first lien debt service and further restricts repayment of subordinate debt to be made from only 75% of such Cash Surplus;

**WHEREAS**, the Department’s rules regarding Amendments to Direct Loan Terms, under 10 TAC §13.12, require that post closing loan modifications requiring changes in the Department’s loan terms, lien priority, or amounts will generally only be considered as part of a work out arrangement or other condition intended to mitigate financial risk and will not require additional Board approval except where the post closing change could not have been anticipated prior to closing, which is not the case for this Development;

**WHEREAS**, 10 TAC §13.8(c)(2) allows for a Direct Loan to be structured as payable from surplus cash flow provided the first lien mortgage is a federally insured HUD or FHA mortgage and the debt coverage ratio, inclusive of the loan, continues to meet the Department's underwriting requirements;

**WHEREAS**, the Department has not previously accepted and HUD has not previously required or enforced the 75% Cash Surplus restriction in loan documents, loan modifications, or subordination agreements since this practice would have the effect of prioritizing a return to the owner ahead of debt service to the Department,

**WHEREAS**, HUD has rejected the sponsor lender's and Development Owner's requests to waive the 75% Cash Surplus requirement for this transaction;

**WHEREAS**, the 2013-1 NOFA references the Direct Loan Requirements at 10 TAC §10.307, which have since been relocated to Chapter 13, Multifamily Direct Loan Rule, but consistently in effect since prior to the time of NOFA release which provide for surplus cash to be available for debt service, and staff has interpreted this to mean all surplus cash, not some lesser percentage of surplus cash;

**WHEREAS**, the Direct Loan Requirements at 10 TAC §10.307 in place at the time of the NOFA release further specifically included that the Board may also approve cash flow loan structures on a case-by-case basis,

**WHEREAS**, in addition to the Development Owner's request that the Department allow the Department's existing subordinate loan to be restricted to 75% of the Cash Surplus available along with the other accommodations requested for their refinancing of the first lien (namely (i) increased debt in front of TDHCA debt, (ii) increased debt service in front of TDHCA debt service, and (iii) increased term of the TDHCA loan to match the first lien's maturity), the Development Owner has voluntarily agreed to provide a personal guarantee for the 100% repayment of the Direct Loan. Additionally, the Development owner is maintaining an estimated \$645,459 owner equity. As a HOME only transaction, there is no tax credit equity for other financial support. The increase in senior debt represents 34% of the outstanding Direct Loan amount;

**WHEREAS**, while the staff interpretation of the rule would lead to a conclusion that the restriction on a certain percentage of surplus cash is inconsistent with the terms of the NOFA, the owner has provided sufficient mitigation to support an alternative cash flow loan structure. Requiring full repayment of the Direct Loan in lieu of re-subordination would not be economically viable.

**NOW, therefore, it is hereby**

**RESOLVED**, that the request to modify the loan terms of the Department's existing subordinate loan to mature at the same time or within six months of the first lien's 35 year loan term, allow the Department's existing subordinate loan to be restricted to 75% of the Cash Surplus available, approve the new source of the first lien debt and re-subordinate the Department's loan for Sunrise Townhomes, as presented at this meeting, is approved. The approval recommendation is based, in part, on staff's determination that without the re-

subordination, the refinance as structured by the senior lender could not occur as there would be insufficient funds to either pay off the Department's loan or comply with HUD's surplus cash requirements. With respect to the reduced cash flow available for repayment and the increased debt senior to our loan, the development owner has provided extraordinary mitigation to reduce the increased risk associated with the new terms of the subordination by and among other things, agreeing to provide a personal guarantee of the entire Direct Loan; and

**FURTHER RESOLVED**, that the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

Sunrise Townhomes received a Direct Loan award of HOME funds in the amount of \$1,850,000 in 2014 to construct 36 units in Fredericksburg, Gillespie County. On January 12, 2017, the lender, Red Mortgage Capital, LLC, through its attorneys (Scott Crutchfield of GERMER PLLC) contacted the Department in connection with an upcoming HUD 223(f) refinance to request a second modification of the HOME loan terms to convert it a surplus cash note and extend the maturity date to coincide with the maturity date of the proposed HUD first lien loan.

The approved terms of the loan for Sunrise Townhomes were based on those available via the Notice of Funding Availability ("NOFA") open at the time of application, and the requested minimum 0% interest, 35 year amortization and 15 year loan term, subject to underwriting with a second lien priority on the property as collateral. The Owner has proposed an increase in the outstanding first lien debt of \$1,921,609 to \$2,552,300 and converting the note on the HOME loan to a surplus cash flow note. In addition to the increased senior debt amount, despite its reduced interest rate (from 5.00% to 3.45%), the debt service would also increase from \$116,377 to \$125,695.

Construction of the development has been completed and the development is operating largely as anticipated except that the cost increase experienced during construction exceeds the amount of developer fee available in the transaction. It should be noted that the Owner has not increased the developer fee as a result of the increased development costs. Based on the analysis performed in conjunction with this request, REA staff concludes that the Development is financially feasible at a DCR within the range of underwriting tolerance, with a structure that would have been consistent with the NOFA and the rules at the time of award (10 TAC §13.12(7)). However, if the Department's note is not re-subordinated the Owner would no longer have sufficient sources of funds, outside of injecting more equity to repay the debt to make the transaction economically viable under a refinance. This condition exists even if 100% of the developer fee was deferred and the FHA loan was resized to absorb the remainder of the Department's loan. While the Owner's request was not presented as a work, out any decision by the Department to not re-subordinate in this instance could lead to the need to treat this development as a workout in the near future. In the alternative, the Owner has already provided non- tax credit equity in an amount more than the developer fee and is now willing to provide a guarantee of the entire Direct Loan which will help to mitigate financial risk to the Department.

The 2013-1 NOFA references the Direct Loan Requirements (10 TAC §10.307) in effect at the time of NOFA release, which provided for debt service subordinate to an FHA loan to be "payable from surplus

cash flow.” Staff has interpreted the plain meaning of this provision to mean that all surplus cash flow would be available for debt service, not a certain percentage of surplus cash. This is consistent with other surplus cash notes modified by the Department in recent years where a HUD loan was introduced.

The Board has, on a case by case basis, reviewed for approval or denial requests for re-subordination pursuant to a revised, larger than originally anticipated, first lien. In cases where a re-subordination is requested and the first lien debt amount is equal to or less than the original first lien debt amount, the re-subordination is almost always approved since the new lender can typically get an assignment of the original lenders debt instrument. In all prior cases where the permanent first lien was being refinanced with FHA funding, the Department’s position was to approve the shift from a hard second lien payment to a soft Cash Surplus payment where repayment of the Department’s subordinate loan would be made from 100% of the Cash Surplus. This is the first instance where FHA has indicated they would not continue with the transaction unless the Department limited its loan repayment to only 75% of the Cash Surplus. Restricting the repayment of the Department funds in such a way would put the return interests of equity and/or the Owner ahead of the Department, which is contrary to the traditional waterfall of operating income in the banking industry and limits or delays the Department’s ability to recycle HOME funds into other affordable housing transactions.

Staff would generally recommend denial of the requested modification of loan terms and re-subordination of the Department’s loan for Sunrise Townhomes because of the 75% of cash surplus limit being implemented by HUD, but in this instance the financial need for the re-subordination as proposed (absent the 75% limitation) is supported and the Owner is proposing to provide the Department with extraordinary mitigation including a guarantee of the full Direct Loan payment and therefore per 10 TAC §10.307(a)(3) that the financial risk (associated with the greater first lien debt and 75% limit on surplus cash flow) is outweighed by the need for the proposed housing (in the form of ongoing financial viability), and it is recommended that this approval be expressly limited to the facts presented in this case without creating precedence.



**Addendum to Underwriting Report**

TDHCA Application #: **13500** Program(s): **HOME**

**Sunrise Townhomes**

Address/Location: Southeast Corner of Sunrise Street and South Creek Street

City: Fredericksburg County: Gillespie Zip: 78624

Analysis Purpose: 1st Addendum to Prior Report

APPLICATION HISTORY	
Report Date	PURPOSE
02/24/17	Re-Subordination of HOME loan to HUD 223(f) Loan
04/08/14	HOME Closing
01/16/14	Initial Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
HOME Activity Funds	\$1,850,000	0.00%	35	15	\$1,850,000	0.00%	35	35	2nd

**CONDITIONS STATUS**

- Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the terms of TDHCA funds may be warranted.

**Status:** Ongoing

**ANALYSIS**

Applicant wants to refinance their existing \$1.906M senior debt with a HUD 223(f) loan that will be increased to \$2.552M to cover HUD closing costs, fees and unpaid General Contractor costs. Accordingly, Applicant has requested approval of the continued subordination of the \$1,850,000 TDHCA HOME loan to the first lien senior debt that is being provided thru the Mason Joseph Company. As a result of the senior debt becoming a HUD 223(f) insured loan, the TDHCA HOME loan will now be required to become a Cash Flow loan, with the Department agreeing to accept loan payments from any Surplus Cash after the HUD loan payments are made.

In addition to the second lien becoming a cash flow loan in order to meet HUD's requirements, Applicant is also working with HUD which is requiring more HOME restricted units beyond those proposed to the Department at original underwriting of the HOME loan application. At original application, Applicant proposed 20 market rate units and 16 HOME units. Now, Applicant is proposing to HUD to restrict an additional 13 HOME units with a corresponding reduction in market rate units to 7 from 20 to meet HUD's requirements for the 223(f) loan approval. The restriction of the additional units between Applicant and HUD will not change the Department's LURA which will still be based on a restriction of a minimum 16 HOME units.

An analysis was completed based upon the Financing Plan Sources and Uses provided by Mason Joseph Company for refinancing of existing senior debt of \$1,906,372 plus HUD closing costs and fees of \$158,886 and unpaid General Contractor Costs of \$486,385. The development's operations have stabilized and has reached 99% occupancy. The analysis was based upon current rents containing 20 market rate units and also on Applicant's more restrictive proposed rents (for the purpose of obtaining the HUD 223(f) loan) using only 7 market rate units, at the proposed interest rate and terms of the first lien HUD 223(f) insured loan; however, original proforma expenses (with an adjustment to replacement reserves and management fees) were used rather than actual expenses. Based upon the aforementioned, the development will remain financially feasible and is fully repayable with the DCR moving from 1.28 to 1.22. The term of the TDHCA HOME loan should however, be extended from 15 years as is currently approved to 35 years to match the maturity of the HUD loan.

Underwriter:	<u>D.P. Burrell</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

**UNIT MIX/RENT SCHEDULE**  
*Sunrise Townhomes, Fredericksburg, HOME #13500*

LOCATION DATA	
CITY:	Not Listed
COUNTY:	Gillespie
PROGRAM REGION:	9
PIS Date:	After 1/18/2013
IREM REGION:	

UNIT DISTRIBUTION						
# Beds	# Units	% Total		Income	# Units	% Total
Eff				30%	2	5.6%
1				40%		
2	20	55.6%		LH/50%	2	5.6%
3	16	44.4%		HH/60%		
4				MR	7	19.4%
<b>TOTAL</b>	<b>36</b>	<b>100.0%</b>		<b>TOTAL</b>	<b>36</b>	<b>100.0%</b>

Applicable Programs
HOME

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjustment	0%
Applicable Fraction	
APP % Acquisition	
APP % Construction	
Average Unit Size	1,211 sf

**UNIT MIX / MONTHLY RENT SCHEDULE**

HTC		HOME (Rent/Inc)		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC 00%		30%/30%	\$453	2	2	2	1,085	\$453	\$98	\$355	\$0	\$0.33	\$355	\$710	\$602	\$301	\$0.28	(\$54)	\$301	0.28	\$0
TC 00%		LH/50%	\$756	2	2	2	1,085	\$756	\$98	\$658	\$0	\$0.61	\$658	\$1,316	\$1,208	\$604	\$0.56	(\$54)	\$604	0.56	\$0
TC 00%		HH/60%	\$928	12	2	2	1,085	\$928	\$98	\$830	\$0	\$0.76	\$830	\$9,960	\$9,960	\$830	\$0.76	\$0	\$1,169	1.08	\$339
TC 00%		MR	\$1,169	4	2	2	1,085	\$1,169	\$0	\$1,169	\$0	\$1.08	\$1,169	\$4,676	\$4,676	\$1,169	\$1.08	\$0	\$1,200	1.11	\$31
TC 00%		HH/60%	\$1,193	11	3	2	1,376	\$1,193	\$125	\$1,068	\$0	\$0.78	\$1,068	\$11,748	\$10,659	\$969	\$0.70	(\$99)	\$969	0.70	\$0
TC 00%		HH/60%	\$1,193	1	3	2	1,262	\$1,193	\$125	\$1,068	\$0	\$0.85	\$1,068	\$1,068	\$969	\$969	\$0.77	(\$99)	\$969	0.77	\$0
TC 00%		HH/60%	\$1,193	1	3	2	1,376	\$1,193	\$125	\$1,068	\$0	\$0.78	\$1,068	\$1,068	\$969	\$969	\$0.70	(\$99)	\$969	0.70	\$0
TC 00%		MR		3	3	2	1,376	\$1,353		\$1,353	\$0	\$0.98	\$1,353	\$4,059	\$4,059	\$1,353	\$0.98	\$0	\$1,400	1.02	\$47
<b>TOTALS/AVERAGES:</b>				<b>36</b>			<b>43,602</b>				<b>\$0</b>	<b>\$0.79</b>	<b>\$961</b>	<b>\$34,605</b>	<b>\$33,102</b>	<b>\$920</b>	<b>\$0.76</b>	<b>(\$42)</b>	<b>\$1,040</b>	<b>\$0.86</b>	<b>\$120</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$415,260</b>	<b>\$397,224</b>
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**STABILIZED PROFORMA**

*Sunrise Townhomes, Fredericksburg, HOME #13500*

STABILIZED FIRST YEAR PRO FORMA														
COMPARABLES		APPLICANT				PRIOR REPORTS		TDHCA				VARIANCE		
Database	Other	% EGI	Per SF	Per Unit	Applicant 2017 Rents	Applicant Original	TDHCA 2013	TDHCA Feb 2017	Per Unit	Per SF	% EGI	%	\$	
<b>POTENTIAL GROSS RENT</b>			\$0.79	\$961	\$415,260	\$383,256	\$381,240	\$397,224	\$920	\$0.76		-4.5%	(\$18,036)	
NSF Fees, Late Fees, Damages				\$6.00	\$2,592	2,592						0.0%	(2,592)	
Forfeited Deposits				\$5.00	\$2,160	2,160						0.0%	(2,160)	
Application Fees, Vending				\$4.00	\$1,728	1,728						0.0%	(1,728)	
Total Secondary Income				\$15.00			6,480	\$6,480	\$15.00			100.0%	6,480	
<b>POTENTIAL GROSS INCOME</b>	\$ -				\$421,740	\$389,736	\$387,720	\$403,704				-4.5%	(\$18,036)	
Vacancy & Collection Loss				7.5% PGI	(31,631)	(29,230)	(29,079)	(30,278)	7.5% PGI			-4.5%	1,353	
Non-Rental Units/Concessions					-							0.0%	-	
<b>EFFECTIVE GROSS INCOME</b>	\$ -				\$390,110	\$360,506	\$358,641	\$373,426				-4.5%	(\$16,683)	

General & Administrative	\$23,717	\$659/Unit	18,180	2.06%	\$0.18	\$223	\$8,030	\$8,030	\$15,030	\$15,030	\$418	\$0.34	4.02%	-46.6%	(7,000)
Management	\$23,630	6.8% EGI	10,458	4.62%	\$0.41	\$501	\$18,025	\$18,025	\$17,932	\$18,671	\$519	\$0.43	5.00%	-3.5%	(646)
Payroll & Payroll Tax	\$37,379	\$1,038/Unit	36,656	7.23%	\$0.65	\$783	\$28,203	\$28,203	\$32,203	\$32,203	\$895	\$0.74	8.62%	-12.4%	(4,000)
Repairs & Maintenance	\$24,609	\$684/Unit	19,815	5.07%	\$0.45	\$549	\$19,765	\$19,765	\$19,800	\$19,800	\$550	\$0.45	5.30%	-0.2%	(35)
Electric/Gas	\$17,863	\$496/Unit	6,732	1.92%	\$0.17	\$208	\$7,500	\$7,500	\$4,860	\$4,860	\$135	\$0.11	1.30%	54.3%	2,640
Water, Sewer, & Trash	\$23,785	\$661/Unit	10,488	3.59%	\$0.32	\$389	\$14,000	\$14,000	\$14,000	\$14,000	\$389	\$0.32	3.75%	0.0%	-
Property Insurance	\$12,708	\$0.29/sf	7,477	1.95%	\$0.17	\$211	\$7,613	\$7,613	\$7,613	\$7,613	\$211	\$0.17	2.04%	0.0%	-
Property Tax 1.7949	\$22,080	\$613/Unit	19,727	5.77%	\$0.52	\$625	\$22,490	\$22,490	\$22,080	\$22,080	\$613	\$0.51	5.91%	1.9%	410
Reserve for Replacements	\$16,674	\$463/Unit	-	2.31%	\$0.21	\$250	\$9,000	\$9,000	\$9,000	\$10,800	\$300	\$0.25	2.89%	-16.7%	(1,800)
<b>TOTAL EXPENSES</b>	\$ 129,533		34.51%	\$3.09	\$3,740	\$ 134,626	\$134,626	\$142,518	\$ 145,057	\$4,029	\$3.33	38.84%	-7.2%	\$ (10,431)	
<b>NET OPERATING INCOME ("NOI")</b>			65.49%	\$5.86	\$7,097	\$255,484	\$225,880	\$216,123	\$228,369	\$6,344	\$5.24	61.16%	11.9%	\$27,114	

<b>CONTROLLABLE EXPENSES</b>	\$3,538/Unit	\$2,552/Unit		\$2,153/Unit		\$77,498/Unit	\$85,893/Unit		\$2,386/Unit
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LONG TERM OPERATING PROFORMA													
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40	
<b>EFFECTIVE GROSS INCOME</b>	\$373,426	\$380,895	\$388,513	\$396,283	\$404,209	\$446,279	\$492,728	\$544,011	\$600,633	\$663,147	\$732,168	\$808,372	
LESS: TOTAL EXPENSES	145,057	149,222	153,508	157,919	162,459	187,219	215,806	248,819	286,948	330,994	381,883	440,686	
<b>NET OPERATING INCOME</b>	<b>\$228,369</b>	<b>\$231,673</b>	<b>\$235,004</b>	<b>\$238,363</b>	<b>\$241,750</b>	<b>\$259,060</b>	<b>\$276,922</b>	<b>\$295,193</b>	<b>\$313,685</b>	<b>\$332,153</b>	<b>\$350,285</b>	<b>\$367,686</b>	
LESS: DEBT SERVICE	187,486	187,486	187,486	187,486	187,486	187,486	187,486	187,486	187,486	187,486	187,486	187,486	
<b>NET CASH FLOW</b>	<b>\$40,883</b>	<b>\$44,187</b>	<b>\$47,519</b>	<b>\$50,878</b>	<b>\$54,264</b>	<b>\$71,575</b>	<b>\$89,436</b>	<b>\$107,707</b>	<b>\$126,199</b>	<b>\$144,667</b>	<b>\$162,800</b>	<b>\$180,201</b>	
<b>CUMULATIVE NET CASH FLOW</b>	\$40,883	\$85,071	\$132,589	\$183,467	\$237,731	\$560,739	\$972,001	\$1,473,865	\$2,067,831	\$2,754,298	\$3,532,239	\$4,398,824	
<b>DEFERRED DEVELOPER FEE BALANCE</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<b>DCR ON UNDERWRITTEN DEBT (Must-Pay)</b>	1.22	1.24	1.25	1.27	1.29	1.38	1.48	1.57	1.67	1.77	1.87	1.96	
<b>EXPENSE/EGI RATIO</b>	38.84%	39.18%	39.51%	39.85%	40.19%	41.95%	43.80%	45.74%	47.77%	49.91%	52.16%	54.52%	

**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Sunrise Townhomes, Fredericksburg, HOME #13500*

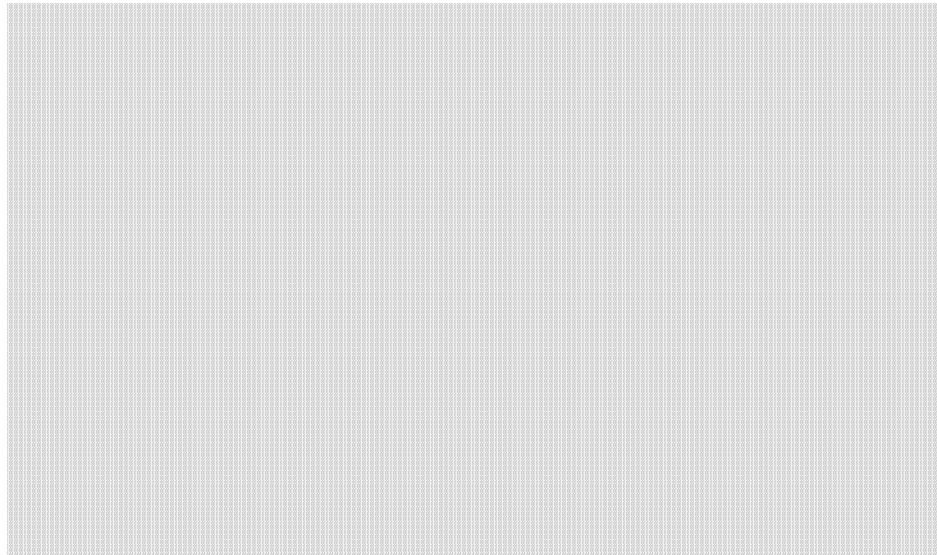
DEBT / GRANT SOURCES																	
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									AS UNDERWRITTEN DEBT/GRANT STRUCTURE								
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Applicant - Original	TDHCA - Original	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App													DCR	LTC
Mason Joseph	0.35%	1.70	1.90	\$134,628	3.45%	35	35	\$2,552,300	\$1,921,609	\$1,921,609	\$2,552,300	35	35	3.45%	134,628	1.70	49.3%
TDHCA HOME Loan		1.22	1.36	\$52,857	0.00%	35	35	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000	35	35	0.00%	52,857	1.22	35.8%
<b>CASH FLOW DEBT / GRANTS</b>																	
Subcontractor Services and Materials		1.22	1.36		0.00%	0	0	\$92,500	\$92,500	\$92,500	\$92,500	0	0	0.00%		1.22	1.8%
<b>TOTAL DEBT / GRANT SOURCES</b>				\$187,486				\$4,526,911	\$3,864,109	\$3,864,109	\$4,526,911				\$187,486		87.5%
<b>NET CASH FLOW</b>		\$40,883	\$67,998											<b>NET OPERATING INCOME</b>	\$228,369	\$40,883	<b>NET CASH FLOW</b>

EQUITY SOURCES														
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE								
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Applicant - Original	TDHCA - Original	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Totals	
													#DIV/0!	
Cash Equity - Limited Partners		12.5%			\$645,477	\$645,477	\$645,459	\$645,459			12.5%			
Deferred Developer Fees	Deferred Developer Fees	0.0%	(0% Deferred)		\$0	\$0	\$0	\$0	(0% Deferred)		0.0%		\$561,838	
Additional (Excess) Funds Req'd		0.0%			\$0	\$0	\$0	\$0			0.0%		\$972,001	
<b>TOTAL EQUITY SOURCES</b>		12.5%			\$645,477	\$645,477	\$645,459	\$645,459			12.5%		Cash Flow after Deferred Fee: \$972,001	
<b>TOTAL CAPITALIZATION</b>					\$5,172,388	\$4,509,586	\$4,509,568	\$5,172,370						

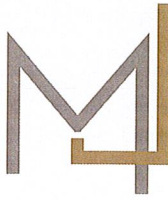
DEVELOPMENT COST / ITEMIZED BASIS													
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS					COST VARIANCE			
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	Applicant - Original	TDHCA - Original	Total Costs	Eligible Basis		%	\$			
							New Const. Rehab	Acquisition					
Land Acquisition			\$9,250 / Unit	\$333,000	\$333,000	\$332,982	\$332,982	\$9,250 / Unit		0.0%	\$18		
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$0	\$0	\$ / Unit	\$0	0.0%	\$0		
Off-Sites			\$ / Unit	\$0	\$0	\$0	\$0	\$ / Unit		0.0%	\$0		
Sitework			\$7,972 / Unit	\$287,000	\$287,000	\$287,000	\$287,000	\$7,972 / Unit		0.0%	\$0		
Site Amenities			\$2,806 / Unit	\$101,031	\$58,200	\$58,200	\$101,031	\$2,806 / Unit		0.0%	\$0		
Building Costs			\$63.82 /sf	\$77,297/Unit	\$2,782,709	\$2,481,251	\$2,782,709	\$77,297/Unit	\$63.82 /sf	0.0%	\$0		
Contingency			2.52%	2.52%	\$80,005	\$80,005	\$80,005	2.52%	2.52%	0.0%	\$0		
Contractor's Fees			11.49%	11.49%	\$373,354	\$373,354	\$373,354	11.49%	11.49%	0.0%	\$0		
Indirect Construction	0		\$6,483 / Unit	\$233,400	\$233,400	\$233,400	\$6,483 / Unit		\$0	0.0%	\$0		
Developer's Fees	\$0		14.35%	14.35%	\$561,838	\$561,838	\$561,838	14.35%	14.35%	0.0%	\$0		
Financing	0		\$9,585 / Unit	\$345,051	\$186,165	\$186,165	\$345,051	\$9,585 / Unit		0.0%	\$0		
Reserves			\$2,083 / Unit	\$75,000	\$75,000	\$75,000	\$2,083 / Unit			0.0%	\$0		
<b>UNADJUSTED BASIS / COST</b>		\$0	\$4,478,337	\$143,677 / Unit	\$5,172,388	\$4,509,586	\$4,669,195	\$5,172,370	\$143,677 / Unit	\$4,478,337	\$0	0.0%	\$18
Acquisition Cost for Identity of Interest Seller													
Contingency			\$0										
Contractor's Fee			\$0										
Interim Interest			\$0										
Developer's Fee	\$0	\$0			\$0								
<b>ADJUSTED BASIS / COST</b>		\$0	\$4,478,337	\$143,677/unit	\$5,172,370			\$5,172,370	\$143,677/unit	\$4,478,337	\$0	0.0%	\$0
<b>TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>					\$5,172,370								

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Sunrise Townhomes, Fredericksburg, HOME #13500*



DIRECT CONSTRUCTION COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Townhome	43,602 SF	\$56.66	2,470,551
Adjustments				
Exterior Wall Finish	1.75%		0.99	\$43,235
	0.00%		0.00	0
9 ft. ceilings	3.25%		1.84	80,293
Roofing			0.00	0
Subfloor			(2.75)	(119,906)
Floor Cover			2.68	116,853
Breezeways	\$0.00	0	0.00	0
Balconies	\$23.10	3,650	1.93	84,315
Plumbing Fixtures	\$1,125	68	1.75	76,500
Rough-ins	\$495	36	0.41	17,820
Built-In Appliances	\$2,675	36	2.21	96,300
Exterior Stairs	\$2,125	0	0.00	0
Heating/Cooling			2.06	89,820
Enclosed Corridors	\$41.17	0	0.00	0
Carports	\$11.39	24,000	6.27	273,360
Garages		0	0.00	0
Comm &/or Aux Bldgs	\$0.00	0	0.00	0
Elevators		0	0.00	0
<b>Other:</b>			0.00	0
Other: fire sprinkler	\$1.52	43,602	1.52	66,275
<b>SUBTOTAL</b>			<b>75.58</b>	<b>3,295,417</b>
Current Cost Multiplier	1.02		1.51	65,908
Local Multiplier	0.87		(9.83)	(428,404)
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>			<b>67.27</b>	<b>\$2,932,921</b>
Plans, specs, survey, bldg perm	3.90%		(2.62)	(\$114,384)
Contractor's OH & Profit	11.50%		(7.74)	(337,286)
<b>NET DIRECT CONSTRUCTION COSTS</b>		\$68,924/unit	\$56.91/sf	\$2,481,251



MASON JOSEPH COMPANY, INC.

February 15, 2017

Raquel Morales  
Director of Asset Management  
Texas Department of Housing and Community Affairs  
211 E. 11<sup>th</sup> Street  
Austin, Texas 78701

Re: Sunrise Apartments  
Fredericksburg, Texas

Dear Raquel,

We respectfully request that TDHCA consider this request to waive the requirement that 100% of the Surplus Cash from the above captioned project be used to service the HOME loan.

As you know, HUD allows 75% of surplus cash to be used to service secondary debt. The remaining 25% can be used at the discretion of the borrower entity. We are an authorized HUD multifamily lender. In accordance with our underwriting which was approved by HUD the following represents the economics:

\$199,161 Net Operating Income  
131,962 Debt Service of HUD Insured Loan  
67,199 Surplus Cash

\$50,399 75% of Surplus Cash

\$52,857 Debt Service of HOME Loan

The required amount to service the HOME Loan is 78.7% of Surplus Cash.

In order to mitigate the difference in 75% and 78.7% of Surplus Cash to service the HOME Loan, a principal of the borrower, G. Granger MacDonald is willing to personally guarantee that the borrower's 25% discretionary portion of Surplus Cash will be used to fund the "gap".

We are hopeful that the TDHCA staff and Board take into consideration that the funding of the proposed HUD insured loan will result in a stable debt structure for the next 35 years thereby eliminating the potential future interest-rate increases that could jeopardize the viability of Sunrise Apartments. The stabilized debt structure would assist in preserving the



affordability component for the constituent Low Income, Very Low Income and Extremely Low Income families. The HUD loan is fully amortizing.

Thank you very much for your consideration.

Sincerely,

Randall H. Mason  
President and Authorized HUD Underwriter

**From:** [Randy Mason](#)  
**To:** [Raquel Morales](#)  
**Cc:** "[Scott Crutchfield \(scrutchfield@germer.com\)](#)"; "[Susan Mireles](#)"  
**Subject:** Sunrise Apartments Fredericksburg, Texas  
**Date:** Monday, January 23, 2017 12:14:13 PM  
**Attachments:** [Sunrise Amendment.pdf](#)  
[Sunrise Accepted Amended Firm Commitment.pdf](#)  
[Red Rate Lock Confirm Letter Sunrise.pdf](#)

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Raquel,

Attached is the accepted HUD Commitment along with the signature page. Red Capital is the GNMA issuer and we have agreed to transfer the HUD commitment to them. Attached is their rate lock confirmation. The due date for the HUD loan closing is 2/20 (without extension penalty). We understand that the Board meeting is the 23<sup>rd</sup>. We appreciate your work (and others from TDHCA) to do everything possible to get this item on the agenda for the 23<sup>rd</sup>.

Thank you,

Randy Mason  
President  
Mason Joseph Company, Inc.  
211 North Loop 1604 East, Suite 140  
San Antonio, Texas 78232  
(210) 402-6161 x101  
(210) 501-0785 fax  
(210) 289-4415 cell  
[randy@masonjosephco.com](mailto:randy@masonjosephco.com)  
[www.masonjosephco.com](http://www.masonjosephco.com)



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
Southwest Multifamily Regional Center  
801 Cherry Street, Unit #45, Suite 2500  
Fort Worth, TX 76102

Multifamily Customer Service Telephone Line 1-800-568-2893  
[www.hud.gov](http://www.hud.gov)

January 6, 2017

**Randall H. Mason**  
President  
211 N. Loop 1604 East, Suite 140  
San Antonio, TX 78232

**SUBJECT: Sunrise Townhomes**  
**FHA 115-11252**  
**223(F) - Refinance**  
**Fredericksburg, Texas**

Dear Mr. Mason:

Enclosed is the Amended Firm Commitment to Insure Upon Completion, for the subject project in the amount of **\$2,552,300**.

Please acknowledge receipt and acceptance of this Commitment by having both the mortgagor and mortgagee sign on page 12. Within 3 to 5 business days, you will be contacted by your assigned Closing Coordinator to discuss the next steps and logistics of the closing process. The fully executed copy must be returned to the assigned Closing Coordinator within ten business days, along with the lender's attorney contact information. Amendment and extension requests, if any, must also be forwarded to the assigned Closing Coordinator prior to submitting your closing documents.

We look forward to the Final Endorsement of this project. If you have any questions, please email Tiffoney Pierre at [Tiffoney.a.pierre@HUD.gov](mailto:Tiffoney.a.pierre@HUD.gov)

Sincerely,

A handwritten signature in cursive script that reads "Art Wells".

Art Wells  
Production Division Branch Chief  
Fort Worth Regional Office

**Enclosures:**

<b>Amended Firm Commitment</b>
<b>HUD-92438</b>
<b>HUD-92264</b>
<b>HUD-92264A</b>

# Underwriting Summary Report

U.S. Department of Housing  
and Urban Development  
Office of Housing

Date: 1/6/17

1. Name of Project: <b>Sunrise Townhomes</b>	2. Location of Project: <b>705 South Creek Street Fredricksburg (Gillespie County) TX, 78624</b>
3. Project Number: <b>115-11252</b>	

FINDINGS:  
I. Rejection recommended for the following reasons:

**Part II: Commitment recommended as follows:**

1. Section of the Act <b>223(f) Refinance</b>	2. Mortgage Amount <b>2,552,300</b>	3. Interest Rate(s) a. (For Use with 5a, 5b, 5c, below) <b>3.450% Note</b> b. (For Use with 5d below)
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4. First Payment is due on the first day of the

( **2nd** ) month after the date of the mortgage

5. Payment Provisions

a. Combination declining annuity - First payment to principal \_\_\_\_\_ accelerating at \_\_\_\_\_ until \_\_\_\_\_  
The \_\_\_\_\_ 0 \_\_\_\_\_ installment and all subsequent \_\_\_\_\_ accelerating at \_\_\_\_\_

b. Accelerating curtail declining annuity - First payment \_\_\_\_\_ accelerating at \_\_\_\_\_

c. Level annuity - **420** payments of **\$10,474.61** to principal and interest

d.

6. Maturity date

**34 years** **11 months** after first payment to principal (one month less than term of mortgage)

7. Assurance of Completion (List any special requirements)

8. Subject to Requirements as follows:

a. Cost of equipping and renting, etc. (Working Capital) **\$ -**

b. Funds over and above mortgage proceeds required **\$ 657**. May be reduced by up to **\$** \_\_\_\_\_  
(Information only - On the basis of HUD estimated cost of **\$ 2,551,643** less mortgage amount of **\$ 2,552,300**).

c. Deposit of additional funds at closing in the event construction requirements under contract documents exceeds the sum of the proceeds of the mortgage and the cash required under "b." above.

d. Escrow deposit for Offsite requirements estimated to cost \_\_\_\_\_

9. Anticipated Operating Deficit:

escrow **\$ 0** for **0** months. (Period to run from date of final endorsement)

10. Reserve for Replacements

**\$ 10,800.00** per annum  
or **\$ 900.00** per month

1. Inspection Fee <b>\$ 1,500.00</b>	12. Commitment Term (Insurance of Advances) <b>60</b> days	13. Commitment Expiration Date (Insurance upon Completion) <b>2/18/2017</b>	14. Commitment Fee <b>\$ 7,656.90</b>
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15. Special Commitments (add to Commitment):

**See Commitment for Special Conditions**

Signature, Mortgage Credit Project Manager & Date:

X   
Tiffoney A Pierre, Underwriter

Concurrence by the Director, Housing Development Division & Date:

X  1/6/17  
Art Wells, Production Branch Chief



**COMMITMENT for Insurance Upon Completion  
Pursuant to Section 223(f)**

**OFFICE OF HOUSING  
Multifamily Production**

**U.S. Department of Housing  
and Urban Development**

**WARNING:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

FHA Project No.:	<u>115-11252</u>
Project Name:	<u>Sunrise Townhomes</u>
Project Address:	<u>705 South Creek Street</u>
	<u>Fredericksburg, TX 78624</u>

Mason Joseph Company, Inc.  
("Lender")

Fredericksburg Sunrise Townhomes, LP  
("Borrower")

211 N. Loop 1604 East, Suite 140  
San Antonio, Texas 78232  
("Lender Address")

2915 Fall Creek Road  
Kerrville, Texas 78028  
("Borrower Address")

We understand that you, as Lender, have agreed to make a loan to Borrower (the "Loan") in an amount not exceeding the Maximum Loan Amount (defined below), evidenced by a note (the "Note") to be secured by a security instrument (the "Security Instrument") covering real

property as shown on the legal description of the property attached hereto as **Exhibit A** (“**Project**”).

It is your intention to present the said Note and Security Instrument to the U.S. Department of Housing and Urban Development (“**HUD**”) for mortgage insurance under the provisions set forth in Section(s) \_\_\_\_\_ of the National Housing Act (“**NHA**”) and the Regulations thereunder now in effect (the “**Regulations**”).

HUD hereby agrees to insure said Note and Security Instrument under the provisions of the NHA and Regulations upon the following conditions, all of which must be satisfied before this commitment letter (hereinafter referred to as the “**Commitment**”) is enforceable against HUD.

Lender and Borrower expressly acknowledge and agree that each numbered item contained in this Commitment, including those in **Exhibit B**, is an independent condition that must be satisfied before HUD is legally obligated to accept the Note and Security Instrument for mortgage insurance. The HUD act that signifies its acceptance of said Note and Security Instrument for mortgage insurance is the “**Initial/Final Endorsement**” or “**Endorsement.**”

The conditions contained herein may include various references to the *Multifamily Accelerated Processing Guide* (the “**MAP Guide**”), the *Federal Housing Administration Multifamily Program Closing Guide* (the “**FHA Closing Guide**”), and HUD “**Program Obligations**” (as defined in the Security Instrument). All applicable requirements of the MAP Guide, FHA Closing Guide, and Program Obligations are hereby incorporated by reference.

The definition of each capitalized term used in this Commitment is indicated with quotation marks, and preceded or followed by data, information, narrative, or reference to another document.

<b>FHA Project No.</b>	115-11252	
<i>To be insured under Section 207 pursuant to Section 223(f) of the NHA.</i>		
<b>“Amended Firm Commitment Effective Date”</b>	January 6, 2017	
<b>“Firm Commitment Term”</b>	60	<i>Days. February 20, 2017</i>
<b>“Maximum Loan Amount”</b>	\$2,552,300	
	Two Million Five Hundred-Fifty Two Thousand Three Hundred Dollars	
<b>“Initial MIP Payment Amount”</b>	\$8,933	
<b>“MIP Percentage Rate”</b>	.35%	<i>% Per Annum</i>

<b>“Section 50 Signatories”</b>	Fredericksburg Sunrise Townhomes GP, LLC and T. Justin MacDonald.
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<b>“Permanent Financing”</b>		
<b>“Permanent Interest Rate”</b>	3.45	<i>% Per Annum</i>
<b>“Amortization Period”</b>	420	<i>Months</i>
<b>“Initial Principal Payment Month”</b>	2nd	<i>Months after Date of Note Endorsement</i>
<b>“Principal and Interest Payment Amount”</b>	\$10,474.61	<i>Per Month</i>

<b>“Secondary Financing”</b>		
<b>“Secondary Financing Source(s)”</b>	HOME Funds/TDHCA \$1,836,786	[NUMERIC DOLLAR AMOUNT OR N/A]
<b>“Bridge Loan”</b>	[Source Name or N/A]	[NUMERIC DOLLAR AMOUNT OR N/A]

<b>“Survey”</b>	8/31/2016
	Jeff Boerner

<b>“Reserves, Insurance and Escrows”</b>		
<b>“Initial Reserve for Replacement Deposit Amount”</b>	\$10,800	<i>Prior to Closing</i>
<b>“Annual Reserve for Replacement Amount”</b>	\$10,800	<i>Per Year</i>
<b>“Monthly Reserve for Replacement Payment Rate”</b>	\$900	<i>Per Month</i>
<b>“Critical Repair Costs”</b>	\$0	
<b>“Non-Critical Repair Cost”</b>	\$0	
<b>Non-Critical Repair Escrow</b>	\$0	
<b>“Latent Defect Assurance Amount”</b>	NA	

“Inspection Fee Amount”	\$1,500
“Exam Fee Amount”	\$7,657
“Flood Insurance”	NOT REQUIRED
“Property Insurance Coverage Amount”	NA
“Estimated Replacement Cost Value”	\$4,020,996
“Required Property Insurance Deductible”	NA

“Initial Operating Deficit”	NA	
“Operating Deficit Period”	<u>NA</u>	<i>Months after the date of Final Endorsement</i>
“Short-Form Cost Certification”	N/A	

<b>“ADDITIONAL &amp; DEAL-SPECIFIC CONDITIONS”</b>	
Additional & Deal-Specific Conditions are identified in Exhibit B	SEE EXHIBIT B

## I. UNIFORM CONDITIONS - FIRM COMMITMENT

1. **Firm Commitment Acceptance.** The Borrower’s and Lender’s acceptance of the Commitment must be evidenced by the return of a fully executed copy to the Commissioner on or before ten (10) business days from the “Firm Commitment Effective Date.”
  
2. **Firm Commitment Term.** This Commitment shall expire after the “Firm Commitment Term” unless extended by HUD, excepting any conditions that must be satisfied prior to Initial/Final Endorsement, as discussed below. Upon such expiration, all rights and obligations of the respective parties shall cease, and pursuant to 24 C.F.R. § 200.47, HUD shall not insure the Note and Security Instrument. Prior to any extension of this Commitment, HUD may, at its option, reexamine this Commitment to determine whether it shall be extended in the same amount, or shall be amended to include a lesser amount. The Firm Commitment Term shall commence as of the date HUD executed this Commitment.
  - (a) **Reopening of Expired Firm Commitment.** A request for the reopening of this Commitment received within ninety (90) days of its expiration must be accompanied by the reopening fee of \$.50 per \$1,000 of the amount of the expired commitment.

3. **No Material Adverse Change.** Prior to Initial/Final Endorsement, the Lender must certify that there has been no material adverse change to the: (a) underwriting assumptions stated on the attachments to this Commitment; (b) financial condition or creditworthiness of the Borrower, or principals thereof; (c) Borrower's ability to perform its obligations or responsibilities under the loan documents; or (d) Project; and no event has occurred or circumstances exist that may result in such material adverse effect.
4. **Third Party Updates.** HUD may require submission of updated third-party reports and underwriting, which will be subject to HUD review and approval, to extend this Commitment beyond its original expiration. HUD may elect to not insure the Note and Security Instrument as a consequence of any material adverse change to such reports or underwriting.
5. **Compliance with Laws and HUD Requirements.** The Borrower, Lender, and Project comply with all applicable federal housing statutes and regulations. All certificates, documents and agreements required by this Commitment and required for closing are on HUD forms or, if no HUD form is available, must be approved by HUD. The closing procedures and requirements in the FHA Closing Guide are followed, including procedures for changes to closing documents when requested. To the extent any condition references a specific form number, HUD may require the use of any renumbered, successor, or otherwise formally updated version.
6. **HUD Review.** HUD reserves the right to examine the Lender's file materials related to the underwriting of the Note and Security Instrument at any time during the ten (10) -year period following Initial/Final Endorsement. If there is evidence of fraud or misrepresentation by the Lender, HUD reserves its legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements. The Lender agrees to retain, in accessible files, all materials related to the underwriting of the Note and Security Instrument for a period of ten (10) years, even though the Note and Security Instrument itself may be sold to another entity.
7. **Draft Closing Documents.** Draft closing documents, conforming to the terms of this Commitment, must be submitted not less than ten (10) business days prior to Initial/Final Endorsement. After review, the place and date of the closing will be designated, at which time the documents and exhibits in final form shall be delivered to HUD for approval. This Commitment and exhibits referred to herein, and the statute and applicable regulations constitute the entire agreement among the parties, and the signature of the Borrower and Lender below hereof evidences acceptance of the terms.
8. **Closing Statement Certification.** Upon closing, the Lender must submit a certified loan closing statement signed by the Lender and Borrower that itemizes the disbursement of Loan proceeds and Borrower's cash contribution, if any. The statement regarding the disbursements must be specific and list the amounts to be paid to satisfy the Borrower's obligations for: (1) existing or other indebtedness in a refinancing transaction, (2) repairs, (3) discounts, (4) financing fees, (5) legal expenses, (6) organizational expenses, (7) title and recording costs, and (8) any Lender required escrows for GNMA, taxes, or insurance. The

certified closing statement signed by the Borrower and Lender must include the following certification:

WARNING: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

9. **Electronic Documents.** Acceptance of this Commitment includes the Lender's agreement to provide, within five (5) business days after closing, a CD or USB flash drive containing electronic copies of the fully executed and otherwise collected closing documents. The CD or USB flash drive should be submitted to the assigned HUD closing coordinator and the HUD closing attorney.

#### UNIFORM CONDITIONS - SECURITY

10. **Form of the Note and Security Instrument.** The Note and Security Instrument to be insured shall be in the form prescribed by HUD for use in connection with loans insured under the NHA in the locality in which the property is situated.
11. **First Lien Security Interest.** The Borrower and Lender, as applicable, shall provide a security agreement, UCC financing statements, and such other documents as required under State law, granting Lender and HUD a perfected first lien security interest in the UCC Collateral (as that term is defined in the Security Instrument, form HUD-94000M) for the duration of the insured Note and Security Instrument (subject only to liens for taxes and assessments that are not delinquent).
12. **Title Policy.** Prior to Initial/Final Endorsement, the Borrower shall present to HUD an ALTA Loan title policy and title policy endorsements in conformity with the FHA Closing Guide in effect on the date of this Commitment which shows title to the property (or, if approved by HUD, a leasehold estate therein) vested in the Borrower free of all exceptions to title (either junior or prior to said Security Instrument except said Security Instrument and such other exceptions to title as are specifically determined to be acceptable by HUD) on the date of Initial/Final Endorsement. Said title policy shall (i) by its terms inure to the benefit of the Lender and/or the U.S. Department of Housing and Urban Development, as their interests may appear.
13. **Survey.** If required by HUD prior to Initial/Final Endorsement, and again prior to Final Endorsement, the Borrower shall present to HUD an ALTA/NSPS Survey of the Project and Surveyor's Report dated within 120 days of the closing, in form and substance satisfactory to HUD.

14. **Principal & Interest Payments.** Upon Initial/Final Endorsement, the Lender shall pay to HUD, in advance, the “Mortgage Insurance Premium Initial Payment,” which is calculated by multiplying the “Mortgage Insurance Premium Percentage Rate (MIP Rate)” by the principal amount of the Loan. The effective MIP rate is published annually in the Federal Register. The Lender shall continue to make mortgage insurance premium payments thereafter as required by the aforesaid Regulations.
15. **Secondary Financing.** All financing arrangements (other than the Note and Security Instrument and any other note and security instrument insured by HUD), including repayment obligations and other secondary financing, and occupancy restrictions, must be fully disclosed to and approved in writing by HUD prior to the date of this Commitment, and must comply with HUD’s legal and administrative secondary financing requirements applicable to loans insured under the Section of the NHA applicable to the Note and Security Instrument, and must also comply with all HUD closing forms for subordinate financing and use restrictions, as applicable.
16. **Changes in Tax Credit Allocation or Other Governmental Assistance.** Pursuant to Form HUD-2880 (OMB control number 2510-0011), this Commitment is based on Borrower certifications regarding the absence or use of Tax Credits or Other Government Assistance. Any change to the Borrower’s financial position relating to Tax Credits or Other Government Assistance must be reflected in an updated Form HUD-2880. HUD reserves the right to unilaterally alter any and all of its underwriting determinations, and/or revise the terms of this Commitment or Regulatory Agreement in accordance with the change in Tax Credit Allocation or Other Governmental Assistance.

#### UNIFORM CONDITIONS - AUTHORITY & OWNERSHIP

17. **Borrower Authority.** The Borrower must possess the powers necessary for meeting all the requirements of HUD for insurance of the Note and Security Instrument. Prior to Initial/Final Endorsement, there shall be delivered to HUD and the Lender (a) copies of ownership entity documentation that complies with applicable requirements of HUD, including a copy of the instrument under which the Borrower entity is created, together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the other closing documents, and (b) a Regulatory Agreement in the form prescribed by HUD for use in connection with loans insured under the NHA (the “Regulatory Agreement”).
18. **Section 50 Signatory.** Section 50 of the Regulatory Agreement shall apply to the individuals or entities identified above as “Section 50 Signatories.” It is a condition of this Commitment that none of the Section 50 Signatories may withdraw or be substituted without HUD’s prior written approval. The continued involvement of the Section 50 Signatories shall be clearly documented as appropriate in the relevant organizational documents.
19. **Changes in Ownership/Financial Support.** HUD has materially relied on the representations made in the firm commitment application as to the identity of all ownership

entities and Project Principals, and individuals related to the transaction. It is a condition of this Commitment that any change to such ownership entities, including principals thereof, requires a written request to HUD for written approval of the change. All changes to the ownership entity, and principals thereof, shall be subject to HUD's credit review and previous participation clearance prior to Initial/Final Endorsement, as applicable. Additionally, the withdrawal of any individual/firm relied on for financial capacity prior to Initial/Final Endorsement requires prior approval by HUD.

20. **Previous Participation (2530) Review.** Any individuals and entities in control of the Project are subject to a previous participation review as set forth in 24 C.F.R. part 200, subpart H (as may be amended from time to time) and other Program Obligations ("**Previous Participation**").

Any individual or entity who is subject to the Previous Participation regulations but who has not already received Previous Participation approval or who may later become involved with the Project, is subject to said Previous Participation review, mortgage credit review, and Office of Foreign Assets Control (OFAC)/Terrorism checks and verifications as required by the U.S. Patriot Act, prior to Initial/Final Endorsement.

A closing date shall not be set until appropriate clearance and HUD approval is obtained for all participants. Previous Participation Certifications may be submitted to HUD electronically via the Active Partners Performance System (APPS) or via paper form HUD-2530 (OMB control number 2502-0118). For those principals who opt to file a paper form HUD-2530, these participants must register at Business Partner Registration HUD Multifamily and create a baseline in APPS prior to closing. To register, and for more information, please visit:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/apps/appsmfhm](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/apps/appsmfhm).

21. **Assignment & Transfer.** Attention is directed to the Regulations covering the assignment or the transfer of the insured Note and Security Instrument, in whole or in part, and the transfer of the rights, privileges, and obligations under the contract of mortgage insurance.

## UNIFORM CONDITIONS - PROJECT

22. **Property Insurance Coverage.** Prior to issuance of the Permission to Occupy or prior to Endorsement as applicable, the Borrower must provide evidence of all required insurance in conformance with Program Obligations. Property insurance, including fire and other property insurance as required by the Security Instrument, shall be in full force and effect and coverage must equal the minimum "**Property Insurance Coverage Amount,**" which is the lesser of 80% of "**Estimated Replacement Cost Value**" or the balance of the insured mortgage with a deductible that equals the "**Required Property Insurance Deductible Amount.**" Upon Endorsement, the Borrower must be current with respect to all payments required by the Note and Security Instrument, including all deposits required to be made with the Lender for mortgage insurance premiums, fire and other property insurance premiums, ground rents, water rates, taxes and other assessments.



23. **Flood Insurance.** If the property is located in an area of special flood hazards in which flood insurance is available under the National Flood Insurance Act, evidence of flood insurance is required prior to Initial/Final Endorsement.
24. **Reserve for Replacement.** The Regulatory Agreement shall provide, among other things, for the establishment of a reserve fund for replacements (the “**Reserve Fund for Replacements**”) under the control of the Lender by payment of the “**Annual Reserve Fund for Replacement Amount,**” to be accumulated monthly at the “**Monthly Reserve Fund for Replacement Payment Rate,**” commencing on the date of the first payment to principal as established in the Note and Security Instrument, unless a later date is agreed upon by HUD. In addition to the Annual Reserve Fund for Replacement Amount, there shall be an initial deposit in the amount of not less than the “**Initial Reserve for Replacement Deposit Amount**” made to the Reserve Fund for Replacements by the Borrower at the time of Initial/Final Endorsement. If applicable, attached hereto as **Exhibit D**, is the Reserve for Replacement Funding Schedule which supports the per annum and initial deposits to the Reserve for Replacements. The Annual Reserve Fund for Replacement Amount shall be subject to change in accordance with Program Obligations.
25. **Capital Needs Assessment.** In connection with the Reserve Fund for Replacements, the Lender shall obtain a new Capital Needs Assessment (“**CNA**”) for HUD to evaluate on or before the ten (10) year anniversary date of the latest CNA. A new CNA will be provided every ten (10) years thereafter. The cost of each such CNA report may be paid from the Reserve Fund for Replacements.

## II. PROGRAM CONDITIONS (Section 223(f))

1. **Note.** The Note shall bear interest at the rate of the “**Permanent Interest Rate**” payable on the first day of each month on the outstanding balance of principal. The first repayment of principal (commencement of amortization) shall be due not later than the first day of the second month following the date of Initial/Final Endorsement. The Note shall be payable on a level annuity basis in the amount identified above as the “**Principal and Interest Payment Amount**” for the number of months identified above as the “**Amortization Period.**” The maturity and final payment date shall be on the “**Maturity Date,**” which shall be the first day of the final month in the Amortization Period.

*NOTE: Any change in the interest rate may require reprocessing of the insurance application and amendment of this Commitment prior to Endorsement.*

2. **Transfer of Escrows.** At Endorsement, funds held in Lender escrow accounts, including those for taxes and insurance, shall be transferred to the new Lender, to the extent necessary to fund escrows required by the Security Instrument.
3. **Request for Endorsement of Credit Instrument.** Prior to Endorsement, the Lender must provide the *Request for Endorsement of Credit Instrument Certificate of Lender, Borrower*

and General Contractor (HUD-92455M) (OMB control number 2502-0598) certifying to the priority of the Security Instrument and other matters set forth therein. The Certificate shall itemize the charges made by the Lender in connection with the transaction and shall evidence the collection, by the Lender or its nominee, from the Borrower of funds to be applied to funding requirements listed in Exhibit B, Additional Conditions, if applicable.

4. **No Unpaid Obligations.** The Borrower shall also furnish satisfactory proof that there exist no unpaid obligations contracted in connection with the Loan transaction, the purchase of the Project or refinancing of existing indebtedness, or the completion of any repairs, except such obligations as may be approved by HUD.
5. **Outstanding Debt.** The Lender shall provide an aged schedule of Account Payables. Prior to Endorsement, the Borrower must provide a certification that all past due accounts payables and outstanding liabilities for project operating expenses have been cleared, released, and/or otherwise fully satisfied, per MAP Guide, Chapter 8.
6. **Inspection Fee.** Upon Endorsement, the Lender shall also pay to HUD an inspection fee equal to the “**Inspection Fee Amount**” set forth above.
7. **Examination Fee.** Prior to Endorsement, the Lender shall also pay to HUD an exam fee equal to the “**Exam Fee Amount**” set forth above.
8. **Initial Service Charge.** The Borrower shall not be required to pay the Lender an initial service charge in excess of two percent (2%) of the original amount of the Security Instrument.
9. **Assurance of Permanent Financing.** Prior to endorsement, the Lender must provide HUD with a commitment for a permanent loan or other firm written assurance demonstrating that permanent financing will be available at the rate shown in the firm commitment application. The form of assurance must address, but is not limited to the: (1) source of financing; (2) term; (3) interest rate; (4) extension provisions; (5) dates for delivery of the permanent mortgage; and (6) any conditions that are, will be part of, or will impact on the permanent financing arrangements.
10. **Utility Access.** Evidence satisfactory to HUD shall be submitted prior to Endorsement showing that adequate sewer, water, gas and electrical facilities (as applicable) have been or will timely be fully installed. All off-site facilities or utilities required in connection with the repairs shall be included in such evidence.
11. **Rent Roll.** The Borrower must submit a certified rent roll, dated within thirty (30) days of closing, detailing the occupancy level at the Project. If HUD determines the updated rent roll shows a significant change in occupancy from that which was assumed in underwriting, this Commitment shall be of no force and effect and will be canceled by HUD.

12. **Management Agent.** The Project Owner's/Management Agent's Certification must be approved prior to scheduling Initial/Final Endorsement.
13. **Meeting with Account Executive.** The Borrower and, if applicable, the Management Agent shall schedule a meeting with the Asset Management Account Executive to discuss items relative to operations. Please contact the Closing Coordinator in order to connect with the appropriate Account Executive.
14. **Short Form Cost Certification.** The Lender must submit a complete modified form of cost certification (HUD Form 2205-A, *Borrower's Certificate of Actual Cost*) (OMB control number 2502-0044) ("Short Form Cost Certification") for review fifteen (15) days prior to Initial/Final Endorsement, unless the Loan is equal to or less than eighty percent (80%) of value of the Project.

*[Balance of page intentionally left blank]*

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
acting by and through the **Secretary:**

By:  Date: 01/06/2017  
Kenneth Cooper  
Production Division Director

This Commitment, including the Exhibit B conditions, is hereby accepted by the undersigned, and we hereby agree to be bound by the terms hereof. Each signatory below hereby certifies such signatory's statements and representations contained in this Commitment and all supporting documentation provided by such signatory are true, accurate, and complete. This Commitment has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

BORROWER:

Fredericksburg Sunrise  
Townhomes, LP

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

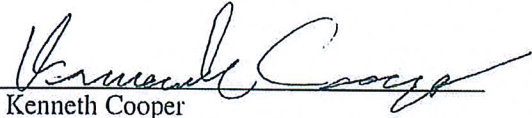
LENDER:

Mason Joseph Company, Inc.

Date: \_\_\_\_\_

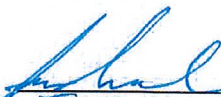
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
acting by and through the **Secretary:**

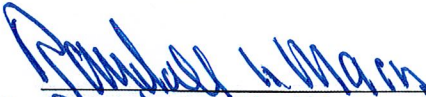
By:  Date: 01/09/2017  
Kenneth Cooper  
Production Division Director

This Commitment, including the Exhibit B conditions, is hereby accepted by the undersigned, and we hereby agree to be bound by the terms hereof. Each signatory below hereby certifies such signatory's statements and representations contained in this Commitment and all supporting documentation provided by such signatory are true, accurate, and complete. This Commitment has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

BORROWER: Fredericksburg Sunrise  
Townhomes, LP

Date: 01/09/2017  
By:   
Name: T. Justin MacDonald  
Title: Managing General Partner

LENDER: Mason Joseph Company, Inc.

Date: 1/9/17  
By:   
Name: Randall H. Mason  
Title: President

**CONFIRMATION LETTER**

December 22, 2017

Fredericksburg Sunrise Townhomes, L.P.  
C/o T. Justin MacDonald  
2915 Fall Creek Road  
Kerrville, Texas 78028

Re: Sunrise Apartments  
Fredericksburg, TX

Dear Mr. McDonald:

Red Mortgage Capital, LLC ("RMC") is pleased to advise you that the Pricing Terms described on Exhibit A have been confirmed pursuant to your Rate Lock Letter dated December 22, 2016.

Closing on the Loan must now occur not later than the Closing Deadline set forth on Exhibit A. Please see the Lender's Commitment and the Rate Lock Letter for an explanation of the forfeitures and liabilities you will incur if you fail to close the Loan by the Closing Deadline.

Sincerely,

**Red Mortgage Capital, LLC**



By: \_\_\_\_\_  
James F. Croft, Senior Managing Director

cc: Randy Mason, Mason Joseph Company, Inc.  
David Joseph, Mason Joseph Company, Inc.  
Scott C. Crutchfield, Germer PLLP, Lender Legal  
Accounting, RMC

ATTACHMENT A  
TO RATE LOCK LETTER

- Lender: Mason Joseph Company, Inc.
- Project Name: Sunrise Apartments
- FHA Project Number: 115-11252
- Project location: Fredericksburg, TX
- Type of Project: Rent Restricted Apartments
- Borrower: Fredericksburg Sunrise Townhomes, L.P.
- FHA Program: 223(f) Refinance
- Loan Amount: \$2,552,300+/- 5%
- Mortgage Term: 420 months
- Amortization Period: 420 months
- Interest Rate: 3.45% (does not include M.I.P.)
- Interest Rate Convention: 30/360
- Final Endorsement Deadline Date: February 20, 2017 (the "Closing Deadline")
- Prepayment Penalty: The Loan may be prepaid immediately following Final Endorsement at 10.0% in years 1 and 2, at 8% in year 3, declining 1.0% per year thereafter.
- Final Endorsement Deadline Date And Extension Fees: The Final Endorsement Deadline Date can be extended, at the sole discretion of the Lender and subject to the provisions of the Loan Commitment, up to two (2) extensions of 30 days each for an extension fee equal to three-eighths of one percent (0.375%) of the Loan Amount for each 30 day extension. After two extensions, our obligation to fund the Loan on these terms shall terminate.
- Good Faith Deposit Required: 0.50% (\$12,761.50)

**From:** Scott Crutchfield [<mailto:scrutchfield@germer.com>]

**Sent:** Thursday, January 12, 2017 7:00 PM

**To:** Dee Patience

**Cc:** 'ljones@macdonald-companies.com'; 'gmacdonald@macdonald-companies.com'; 'tjmacdonald@macdonald-companies.com'; Randy Mason ([randy@masonjosephco.com](mailto:randy@masonjosephco.com)); 'Dolores Seabolt'; [sschulte@macdonald-companies.com](mailto:sschulte@macdonald-companies.com); Susan Mireles; [sschulte@macdonald-companies.com](mailto:sschulte@macdonald-companies.com); Dwaine Machann ([dwainemachann47@gmail.com](mailto:dwainemachann47@gmail.com))

**Subject:** Sunrise Townhomes, Fredericksburg, Texas - TDHCA HOME Loan

Dee:

We represent Red Mortgage Capital, LLC in connection with an upcoming HUD-insured 223(f) refinance transaction on Sunrise Townhomes, located in Fredricksburg, Texas. I understand that you are the TDHCA Asset Manager for this property. Construction of the project was funded, in part, by a “conventional” (i.e. not HUD-insured) loan, and also by funds from a HOME Loan in the original principal sum of \$1,850,000.00 from TDHCA to the Owner, which is secured by a Subordinate Lien Deed of Trust. **I understand that representatives of the Owner have discussed certain details of this transaction with certain TDHCA officials, however, this can be considered our initial request for document review by TDHCA.**

I have attached the following documents in connection to that transaction:

1. HOME Note - \$1,850,000.00 from TDHCA to Fredericksburg Sunrise Townhomes, L.P. (the “Owner”);
2. Subordinate Lien Deed of Trust, securing payment of the HOME Note;
3. Subordination Agreement, between TDHCA, the Owner, and the senior construction lender, Security State Bank & Trust;
4. First Modification Agreement – extending the maturity date by 6 months, and extending the deferred payment by an additional 6 months; and
5. HOME LURA

**Second Modification Agreement:** I realize that this transaction will require a “Second Modification Agreement” in order to “convert” the HOME Note to a Surplus Cash Note, and to extend the Maturity Date so as to coincide with the maturity date of the new HUD-insured Note. I would prefer to defer to TDHCA Counsel regarding the form and terms of that Second Modification Agreement, **so I have not included a draft in this e-mail**, as I do not know all of the applicable terms to include.

**The main purpose of this e-mail is to initiate our request that TDHCA subordinate its existing HOME Loan to our new HUD-insured Loan, and to the extent necessary, modify and extend the HOME Loan as discussed above. Please advise of any additional steps we must take, or if there is anyone else at TDHCA to whom I should direct this e-mail.**

Thanks, and we look forward to working with you again.

Scott C. Crutchfield  
**GERMER PLLC**  
550 Fannin, Suite 400  
Beaumont, Texas 77701



Ph: (409) 654-6700  
Fax: (409) 835-2115  
Direct No.: (409) 813-8073

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6b

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**FEBRUARY 28, 2016**

Presentation, Discussion and Possible Action on revisions to the 2016 State of Texas National Housing Trust Fund Allocation Plan and directing that it be published in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, on January 30, 2015, the U.S. Department of Housing and Urban Development (“HUD”) published an interim rule for the National Housing Trust Fund (“NHTF”) for states to implement the program;

**WHEREAS**, on March 12, 2015, Governor Abbott designated the Department as the state agency responsible for the administration of funds provided through NHTF;

**WHEREAS**, on May 5, 2016, HUD published the formula allocation amounts for NHTF, followed by guidance on how to submit the Allocation Plan;

**WHEREAS**, in addition to the Allocation Plan, HUD required that Substantial Amendments be made to both the State of Texas 2015-2019 Consolidated Plan and the 2016 One Year Action Plan (“OYAP”), to include NHTF activities;

**WHEREAS**, in July 2016, the Department developed the draft 2016 State of Texas NHTF Allocation Plan, draft Substantially Amended 2015-2019 Consolidated Plan, and draft Substantially Amended 2016 OYAP, which reported on the intended use of NHTF funds received by the State of Texas from HUD for Program Year (“PY”) 2016, beginning on February 1, 2016, and ending on January 31, 2017;

**WHEREAS**, on September 8, 2016, the Governing Board of the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) approved for release to HUD the 2016 State of Texas NHTF Allocation Plan, Substantially Amended 2015-2019 Consolidated Plan, and Substantially Amended 2016 OYAP;

**WHEREAS**, on October 27, 2016, HUD disapproved the Department’s Allocation Plan, and staff has been working since that time to draft a plan that will be acceptable; and

**WHEREAS**, through correspondence with HUD staff over the past few months, the Department has concluded that inclusion of rehabilitation as an eligible activity under NHTF is no longer an option, thereby triggering this proposed substantial amendment to the plan;

**NOW, therefore, it is hereby**

**RESOLVED**, that revisions to the 2016 NHTF Allocation Plan in the form presented to this meeting, is hereby approved for release for public comment;

**FURTHER RESOLVED**, that corrective edits, as needed, will be made in the Substantially Amended 2015-2019 Consolidated Plan, and Substantially Amended 2016 OYAP; and

**FURTHER RESOLVED**, that the Executive Director and his designees are each hereby authorized, empowered and directed, for and on behalf of the Department, to cause notice of the revised 2016 State of Texas NHTF Allocation Plan to be published in the *Texas Register* and, in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable.

### **BACKGROUND**

The Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) prepared the draft 2016 State of Texas NHTF Allocation Plan (“Plan”) in July 2016, in accordance with 24 CFR §91.320, which included a draft Substantially Amended 2015-2019 Consolidated Plan and a draft Substantially Amended 2016 OYAP. The draft Plan was published in the *Texas Register* and public comment was received through August 15, 2016. The Department received comments from several nonprofit organizations that may be impacted by the Plan. No changes were made to the Plan as a result of comments received.

The Plan reflected the intended uses of NHTF funds received by the State of Texas from HUD in Program Year 2016. The Program Year began on February 1, 2016, and ended on January 31, 2017. The Plan also illustrates the State’s strategies in addressing the priority needs and specific goals and objectives identified in the 2015-2019 State of Texas Consolidated Plan and 2016 OYAP.

Upon approval by the Board, the Plan and all other required amendments and attachments were submitted to HUD electronically on September 14, 2016, and subsequently disapproved by HUD on October 27, 2016. The Department submitted corrective documentation on December 9, 2016, and had a conference call with HUD on December 22, 2016, in which HUD indicated that all of the corrective documentation would have to be incorporated into the 2016 One Year Action Plan and the Consolidated Plan. Conforming changes would also have to be incorporated into the 2017 One Year Action Plan, which has not yet been submitted to HUD. HUD requested that the Department be more explicit in its Maximum Per-Unit Development Subsidy Limits, Refinancing of Existing Debt Requirements, and Rehabilitation Standards Requirements, while also requesting that the Department’s inspection checklist be submitted to verify Uniform Physical Condition Standards protocol is being met. HUD requested that these further corrections be made within 30 days of the initial December 9, 2016, corrective action deadline as required in 24 CFR §91.500(d). Department staff requested an extension on January 4, 2017, to which HUD responded with a letter on January 5, 2017, allowing the Department 60 days to submit corrective documentation.

On February 10, 2017, Department staff had a conference call with HUD staff, during which Department staff expressed concerns related to the level of analysis that would be required to achieve maximum per-unit subsidy limits for NHTF that would take into account the “actual costs of developing non-luxury housing” for the entire state. Department staff also expressed concerns

related to the requirements for establishing rehabilitation standards – solely for NHTF – that were above and beyond the requirements for any other multifamily program that TDHCA administers.

This left the Department in the unfortunate position of deciding whether to take out rehabilitation as an eligible activity or amending its Uniform Multifamily Rules. The Department is proposing to eliminate rehabilitation as an eligible activity for the 2016 NHTF Allocation Plan in order to more quickly access the funds.

Based on further guidance from HUD, the Department has also edited its plan to clarify that the Department will not use 2016 funds for homeownership housing and will not permit refinancing of existing debt. Additionally, relevant sections of the Uniform Multifamily Rules (10 TAC Chapter 10) and Multifamily Direct Loan Rule (10 TAC Chapter 13) have been incorporated into the plan. Corresponding changes will be made to the 2016 One Year Action Plan and 2015-2019 Consolidated Plan.

Regarding the maximum per-unit subsidy limits, HUD staff said that an analysis of development costs in metro vs. non-metro areas of the state may be sufficient, and that one set of maximum per-unit subsidy limits may be sufficient if the analysis provided a reasonable basis for that conclusion. The Department has done that analysis for new construction and determined that construction costs are relatively comparable across the state.

Regarding the rehabilitation standards, when Department staff indicated that rehabilitation may be prohibited in the state's Allocation Plan as a result of the excessive level of detail needed to satisfy HUD's requirements, HUD staff stated that other states has also opted to not use NHTF for rehabilitation. They offered to informally re-review our rehabilitation requirements to determine if they meet the requirements of 24 CFR 93.301(b)(1). HUD staff contacted the Department on February 14, 2017, having determined that the level of detail regarding rehabilitation standards and the Department's Uniform Multifamily Rules were insufficient to meet their requirements for this fund source.

Upon approval by the Board, the revised Plan will be available for public comment on the TDHCA Public Comment Center at <http://www.tdhca.state.tx.us/public-comment.htm> and on TDHCA's Multifamily Direct Loan website at: <http://www.tdhca.state.tx.us/multifamily/home/index.htm>. The public comment period will be open from March 1, 2017 through March 30, 2017.

The final version of the Plan, including all public comment received and staff's reasoned response, is intended to be presented to the board for approval in April 2017, and will be re-submitted to HUD after final approval.

**ATTACHMENT A:** State of Texas National Housing Trust Fund Allocation Plan

## II. GRANTEE INFORMATION

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State:

Texas

FY 2016 HTF Allocation Amount:

\$4,789,477



Updated February 2017

## III. CONSOLIDATED PLAN REQUIREMENTS

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### Citizen Participation Plan

The consolidated plan regulation at § 91.115 requires the State to include HTF in its citizen participation plan. Essentially, before adopting a consolidated plan, the State is required to adopt a citizen participation plan that describes the process for providing and encouraging citizens to participate in the development of the consolidated plan, the amendments to the consolidated plan and the performance report (CAPERS). For the purposes of HTF, the State is required to make the following information available to the public:

- the amount of HTF assistance the State expects to receive,
- the range of activities the State may undertake, including the estimated amount that will benefit extremely low-income households, and
- the State's plans to minimize displacement of persons and to assist any persons displaced.

If the State already conducted its citizen participation and included HTF in any citizen participation it performed for the other HUD formula grant programs, then the State does not need to conduct additional citizen participation for HTF. If the State has not yet conducted citizen participation or did not include HTF in the citizen participation it performed for other HUD formula grant programs, then it must conduct citizen participation to include HTF as part of its consolidated plan.

### Consolidated Plan Screen(s) To Revise

The following screen in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- ES-05 / AP-05 Executive Summary:** § 91.320(b)- The Executive Summary includes seven narratives: (1) Introduction; (2) Summary of Objectives and Outcomes; (3) Evaluation of Past Performance; (4) Summary of the Citizen Participation and Consultation Process; (5) Summary of Public Comments; (6) Summary of Comments Not Accepted; (7) Summary.

- PR-15 Citizen Participation:** § 91.115 and § 91.300(c)- revise this screen to provide a summary of the citizen participation efforts made for HTF, including efforts to broaden public participation, a summary of citizen comments or views on the plan, and a written explanation of comments not accepted and the reasons why these comments were not accepted.

#### **IV. STRATEGIC PLAN REQUIREMENTS**

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The State must amend the affordable housing section of the strategic plan to include specific objectives that describe proposed accomplishments the State hopes to achieve and must specify the number of extremely low-income families to which the State will provide affordable housing to (homeownership- § 93.302; rental- § 93.304) over a specific period of time. The State can complete this requirement by including HTF on the **SP-45 Goals screen**.

**Note: Directions on how to amend a plan are included at the end of this document.**

**Reminder:** 100 percent of FY 2016 HTF funds must benefit extremely low-income households; a minimum of 80 percent must be used for rental housing; up to 10 percent may be used for homeownership housing; up to 10 percent may be used for administrative costs.

#### **Strategic Plan Screen(s) To Revise**

In addition to updating the affordable housing section of the strategic plan, the following screens in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- SP-10 Geographic Priorities:** § 91.315(a)(1)- revise this screen to discuss how investments are allocated geographically.
- SP-25 Priority Needs:** § 91.315(a)(2)- revise this screen to indicate the general priorities for allocating investment of available resources among different needs.
- SP-30 Influence of Market Conditions:** § 93.315(b)- revise this screen to describe how the characteristics of the housing market influenced the State's decisions regarding allocation priorities among the types of housing assistance.
- SP-35 Anticipated Resources:** § 91.315(a)(4); § 91.320(c)(1) and (2)- revise this screen to identify the federal, state, local, and private resources expected to be available to the State to address priority needs and specific objectives identified in the strategic plan. Specifically, the State should add a program to this screen by



selecting “Add” in the *Action* column. This will open the **SP-36 Add Anticipated Resource** screen. The State should select “Other” in the *Anticipated Resource* field and enter “Housing Trust Fund” in the *Other Funding Source* field. The State should also select the “public - federal” radio button in the “Source” field and complete the rest of the fields on this screen for its HTF program.

- SP-45 Goals:** § 91.315(a)(4) and § 91.315 (b)(2)- revise this screen to summarize the State’s priorities and the specific goals it intends to initiate and/or complete within the term of the strategic plan. The State must also ensure its five year goals include any accomplishments due to HTF funds and must also enter the number of extremely low-income families to which the State will provide assistance with its HTF funds.

## V. ANNUAL ACTION PLAN REQUIREMENTS

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The State must include HTF in its annual action plan or amend the plan to include HTF information as required in § 93.320(k)(5). The action plan must include an HTF allocation plan that describes the distribution of HTF funds, and establishes the application requirements and selection criteria of applications submitted by eligible recipients that meet the State’s priority housing needs.

### Annual Action Plan Screen(s) To Revise

The following screens in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- AP-15 Expected Resources:** § 91.320(c)(1) and (2)- revise this screen to provide a concise summary of the federal resources expected to be available. The HTF resources added to the **SP-35 Anticipated Resources** screen will carry over to this screen.
- AP-20 Annual Goals and Objectives:** § 91.320(c)(3) and (e)- revise this screen to summarize the specific goals the State intends to initiate and/or complete within the term of the program year. Any HTF related goals and objectives entered on the **SP-45 Goals** screen will carry over to this screen.
- AP-25 Allocation Priorities:** § 91.320(d)- revise this screen to describe the reasons for the State’s allocation priorities and how the proposed distribution of funds will address the priority needs and goals of the strategic plan.

- AP-30 Method of Distribution:** § 91.320(d) and (k5)- revise this screen to include a description of its method(s) for distribution for the “Other – Housing Trust Fund” selection based on the entry made on the **SP-35 Anticipated Resources** screen.
- AP-50 Geographic Distribution:** § 91.320(f)- revise this screen to describe the geographic areas of the state in which it will direct assistance during the ensuing program year and provide rationale for its priorities in allocating investment geographically.
- AP-55 Affordable Housing:** § 91.320(g)- revise this screen to specify goals for the number of homeless, non-homeless, and special needs households to be provided affordable housing within the program year.
- AP-65 Homeless and Other Special Needs Activities:** § 91.320(h)- revise this screen to describe how HTF will help to address the State’s one-year goals and actions for reducing and ending homelessness, if applicable.
- AP-75 Barriers to Affordable Housing:** § 91.320(i)- revise this screen to describe how HTF will help with any actions the State’s will take during the next year to reduce barriers to affordable housing, if applicable.
- AP-85 Other Actions:** § 91.320(j)- revise this screen to describe how HTF will help with any actions the State will take during the next year to carry out the following strategies outlined in the consolidated plan:
  - Foster and maintain affordable housing;
  - Evaluate and reduce lead-based paint hazards;
  - Reduce the number of poverty-level families;
  - Develop institutional structure; and
  - Enhance coordination.

In addition, the State must identify obstacles to meeting underserved needs and propose actions to overcome those obstacles using HTF funds, if applicable.

**HTF Funding Priorities-§ 91.320(k)(5)(i)**

The State is responsible for distributing HTF funds throughout the State according to its housing priority needs. In addition to revising the **AP- 30 Method of Distribution** screen in IDIS, the State must respond to the following questions.

1. Will the State distribute HTF funds through grants to subgrantees? If yes, describe the method for distributing HTF funds through grants to subgrantees and how the State will make those funds available to units of general local governments. If no, state N/A. Please attach response if you need additional space.

N/A

2. Will the State distribute HTF funds by selecting applications submitted by eligible recipients? If yes, describe the eligibility requirements for applicants as defined in § 93.2- definition of recipient. If no, state N/A. Please attach response if you need additional space.

The state will distribute NHTF funds to eligible recipients as described in applicable sections of the Texas Department of Housing and Community Affairs ("TDHCA" or "Department") rules at Chapter 10 of the Texas Administrative Code, Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applicants (10 TAC §10.201 through 207), as amended and in effect at application, which sets forth the minimum requirements for applicant eligibility to participate in TDHCA Multifamily programs.

The Department will require evidence of experience and capacity through the Experience Requirement at 10 TAC §10.204(6), as amended and in effect at application.

**HTF Funding Priorities Question 2: Eligible Applicants:** §93.2; Page 4 of Notice-CPD-16-07  
*Guidance for HTF Grantees on FY 2016 HTF Allocation Plans*

The State of Texas will distribute FY 2016 Housing Trust Fund (“HTF”) Program funds by selecting applications submitted by eligible recipients as defined in §93.2 (definition of recipient) through the Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications provisions found in Chapter 10 of the Texas Administrative Code (“TAC”), Subchapter C (10 TAC §§10.201 through 10.207). The State of Texas will not limit recipients to a specific category such as nonprofits. Please see the table below for the requirements in §93.2 and the corresponding requirements found in state rules at 10 TAC Chapter 10.

<i>Recipient requirements in §93.2</i>	State Rules
<p>(1) Make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities</p> <p>(3) Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs;</p>	<p><b>10 TAC §10.204. Required Documentation for Application Submission.</b> The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.</p> <p><b>(1) Certification, Acknowledgement and Consent of Development Owner.</b> A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified.</p> <p>(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.</p> <p>(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov’t Code, Chapter 552, and the Texas Public</p>

	<p>Information Act.</p> <p>(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.</p> <p>(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.</p> <p>(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.</p> <p>(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.</p> <p>(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.</p> <p>(H) The Development Owner will comply with any and all notices required by the Department.</p> <p>(I) If the Development has an existing LURA with the</p>
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Department, the Development Owner will comply with the existing restrictions.

**(2) Applicant Eligibility Certification.** A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; (B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

**(3) Architect Certification Form.** The certification, addressing all of the accessibility requirements, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §2306.6730)

## **10 TAC §13.1**

### **13.1 Purpose**

(a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants

	<p>issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act and the implementing regulations 24 CFR Part 91, Part 92, and Part 93 as they may be applicable to a specific fund source. The Department is authorized to administer HOME funds pursuant to Tex Gov't Code §2306.111. Tex Gov't Code Chapter 2306, Subchapter I, Housing Finance Division: This Chapter is not applicable to the State Housing Trust Fund or Section 811.</p> <p>(b) General. This Chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this Chapter, Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), and Chapter 10 of this Title (relating to Uniform Multifamily Rules). Chapter 11 of this Title (relating to Housing Tax Credit Program Qualified Allocation Plan ("QAP")) and Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. Any conflict with rule of other programs or with federal regulations will be resolved on a case by case basis, that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility.</p> <p>(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications). In no instance will the Department consider waiver request that would violate federal program requirements or state or federal statute.</p>
<p>(2) Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;</p> <p>(4) Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to:</p> <p>(i) Own, construct, or rehabilitate, and manage and operate an</p>	<p><b>10 TAC §10.204. Required Documentation for Application Submission.</b></p> <p><b>(6) Experience Requirement.</b> Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014, 2015 or 2016 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.</p> <p>(A) A natural Person, with control of the Development</p>



<p>affordable multifamily rental housing development; or</p> <p>(ii) Design, construct, or rehabilitate, and market affordable housing for homeownership.</p> <p>(iii) Provide forms of assistance, such as down payments, closing costs, or interest rate buydowns for purchasers.</p>	<p>through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:</p> <p>(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;</p> <p>(ii) AIA Document G704--Certificate of Substantial Completion;</p> <p>(iii) AIA Document G702--Application and Certificate for Payment;</p> <p>(iv) Certificate of Occupancy;</p> <p>(v) IRS Form 8609 (only one per development is required);</p> <p>(vi) HUD Form 9822;</p> <p>(vii) Development agreements;</p> <p>(viii) Partnership agreements; or</p> <p>(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.</p> <p>(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.</p> <p>(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing noncompliance that has not been or is not being corrected with reasonable due diligence.</p> <p>(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.</p> <p>(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.</p> <p><b>(7) Financing Requirements.</b></p> <p>(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total</p>
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	<p>Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.</p> <p>(i) Financing is in place as evidenced by:</p> <p>(I) a valid and binding loan agreement; and</p> <p>(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;</p> <p>(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:</p> <p>(I) have been signed by the lender;</p> <p>(II) be addressed to the Development Owner or Affiliate;</p> <p>(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;</p> <p>(IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;</p> <p>(V) include all required Guarantors, if known;</p> <p>(VI) include the principal amount of the loan;</p> <p>(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and</p> <p>(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or</p>
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	<p>(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.</p> <p>(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.</p> <p>(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.</p> <p>(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from</p>
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	<p>a syndicator that, at a minimum, includes:</p> <ul style="list-style-type: none"><li>(i) an estimate of the amount of equity dollars expected to be raised for the Development;</li><li>(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;</li><li>(iii) pay-in schedules;</li><li>(iv) anticipated developer fees paid during construction; (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and</li><li>(vi) include an acknowledgement of the amounts and terms of all other anticipated sources of funds.</li></ul> <p>(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.</p> <p><b>(8) Operating and Development Cost Documentation.</b></p> <p>(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.</p> <p>(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.</p> <p>(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any</p>
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	<p>expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.</p> <p>(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90 percent of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60 percent of the Area Median Income.</p> <p>(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.</p> <p>(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.</p> <p>(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact</p>
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	<p>pattern of the Development matches the fact pattern in PLR 200916007.</p> <p>(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.</p> <p>(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:</p> <p>(i) at least one of the items identified in subclauses (I) - (IV) of this clause:</p> <p>(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;</p> <p>(II) the two (2) most recent consecutive annual operating statement summaries;</p> <p>(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or</p> <p>(IV) all monthly or annual operating summaries available; and</p> <p>(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;</p> <p>(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application;</p> <p>(§2306.6705(6))</p> <p>(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))</p> <p>(v) any documentation necessary for the Department to</p>
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	<p>facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and (vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))</p>
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3. Will the State distribute HTF funds by selecting application submitted by eligible recipients? If yes, describe all the criteria that will be used to select applications and the relative importance of these criteria. At a minimum, as required in § 91.320(k)(5)(i), the selection criteria must include:

- Priority based upon geographic diversity
- Applicant's ability to obligate HTF funds
- Applicant's ability to undertake eligible activities in a timely manner
- For rental housing, the extent to which the project has Federal, State or local project-based rental assistance so rents are affordable to extremely low-income families
- For rental housing, the duration of the units' affordability period
- The merits of the application in meeting the State's priority housing needs (please describe)
- The extent to which application makes use of non-federal funding sources
- Other (please describe). Please attach response if you need additional space.

Priority based upon geographic diversity

As described in SP-10 Geographic Priorities The Texas NHTF will distribute NHTF funds through a competitive NOFA process. The funds will initially be available geographically, based on the proportion of Extremely Low Income Renter households to the total population of Renter Households in each of thirteen State Service Regions. A minimum will be calculated for each region as a ratio of the available allocation divided by thirteen, and available competitively within each region prior to collapse into a statewide competition.

Applicant's ability to obligate HTF funds

The applicant's experience in completion of similar projects, as evidence by TDHCA's Experience Requirement, along with the ability to present a complete application package are threshold requirements that indicate the ability to timely obligate NHTF funds.

Applicant's ability to undertake eligible activities in a timely manner

Application criteria including readiness to proceed as evidenced by site control, appropriate zoning, architectural plans, and evidence of financing will be considered.

For rental housing, the extent to which the project has Federal, State or local project-based rental assistance so rents are affordable to extremely low-income families

Of highest priority in the evaluation of applications will be the creation of new units serving ELI households that would not otherwise exist. While the availability of project-based rental assistance will be considered, only applications that demonstrate the ability to meet Underwriting requirements will be funded.

For rental housing, the duration of the units' affordability period

The minimum 30-year affordability period will be secured with a Land Use Restriction Agreement ("LURA") as a threshold requirement. While Applications that propose a longer affordability period could have a scoring advantage, they still must provide evidence of feasibility for the entire affordability period.

(continued on page 13)



The merits of the application in meeting the State's priority housing needs

The TX NHTF will prioritize housing needs of Extremely Low Income Households in accordance with the Analysis of Impediments and the high opportunity measures of the Texas Qualified Allocation Plan.

The extent to which application makes use of non-federal funding sources

The proportion of leveraged of non-federal fund sources in relation to the NHTF funds requested will be part of the scoring criteria for competitive applications. Applications with the highest proportionate leverage will have an advantage in scoring.

**HTF Funding Priorities Question 3: Relative Importance of Selection Criteria:**

§91.320(k)(5)(i); Pages 4-5 of Notice-CPD-16-07 *Guidance for HTF Grantees on FY 2016 HTF Allocation Plans*

The first priority, geographic distribution, will utilize a regional allocation formula (“RAF”), ensuring that within each of thirteen designated service regions there will be an allocable portion of such funds prioritized to eligible applicants in each such region.

The State of Texas will consider Geographic Diversity, Ability to Enter into a Commitment for HTF Funds/Timeliness, Project Based Rental Assistance (PBRA), Affordability Period, Leveraging, and Merits of the application in meeting the State’s priority housing needs equally as threshold criteria. No scoring will be used in any of these factors in evaluating an application.

**Geographic Diversity:** The State of Texas will rely on 10 TAC §13.4(b) in making funds available geographically based on the proportion of ELI renter households to the total population of renter households in each of the thirteen State Service Regions for at least the first 30 days after the Notice of Funding Availability (“NOFA”) is published in the Texas Register. Thereafter, consideration of geographic diversity will not be a factor in evaluating applications. Please see attached Regional Allocation amounts as well as a map of the Uniform State Service Regions.

10 TAC §13.4(b) Regional Allocation. All funds in the annual NOFA will be initially allocated to regions and potentially subregions based on a Regional Allocation Formula (“RAF”) within the set-asides. The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date the NOFA is published in the Texas Register.

(1) After expiration of the period during which funds are reserved in regions under the RAF, funds collapse but may still be available within set-asides as identified in the NOFA but for an additional period not less than 15 days. All Applications received prior to these first two collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, or funded.

(2) Funds remaining after expiration of set-asides, which have not been requested in the form of a complete application, will be available statewide on a first-come first-served basis to Applications submitted after the collapse dates.

(3) In instances where the RAF would result in regional allocations insufficient to fund an application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board.

**Ability to Enter into a Commitment for HTF funds/Timeliness:** The State of Texas will assess an applicant’s experience in completion of similar projects, as evidenced by TDHCA’s Experience Requirement in 10 TAC §10.204(6), which is mentioned in the table HTF Funding Priorities Question 2 above, along with the ability to present a complete application package as threshold

requirements. Additionally, readiness to proceed as evidenced by site control, appropriate zoning, architectural plans, and evidence of financing will be evaluated as threshold criteria as well. Since all of these items are threshold criteria, they will not be subject to point distribution/weighting; rather, these items are binary in that either the applicant submits these items with the application or they do not.

**Project-Based Rental Assistance (PBRA):** The State of Texas will consider PBRA to the extent that the existence of it allows or the lack of it does not allow an application to meet TDHCA's underwriting requirements. There will be no point distribution/weighting of this item. 1011 TAC §13.8 from the Multifamily Direct Loan Rule and 10 TAC §§10.301 through .306 of the Uniform Multifamily Rule will comprise TDHCA's underwriting requirements. Please see attached [attach documents]

**Affordability Period:** The State of Texas will not prioritize applicants that propose affordability requirements in excess of 30 years. However, applicants also requesting 9% Housing Tax Credits are incentivized to commit to a longer affordability period in accordance with 10 TAC §11.9(e)(5) of the Qualified Allocation Plan, which states: In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

**Leveraging:** Generally, the State of Texas prefers applications proposing developments utilizing the highest proportion of non-federal contributions, but will not evaluate HTF applications based on this preference if HTF is the only source of funds that the application is requesting. Applications layered with 9% Housing Tax Credits will be subject to scoring in 10 TAC §11.9(e)(4), which states:

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph: (i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or (ii) If the Housing Tax Credit funding request is less than seven (7) eight (8) percent of the Total Housing Development Cost (3 points); or (iii) If the Housing Tax Credit funding request is less than eight (8) nine (9) percent of the Total Housing Development Cost (2 points); or (iv) If the Housing Tax Credit funding request is less than nine (9) ten (10) percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or

award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

Additionally, §13.6(d) of the Multifamily Direct Loan Rule prioritizes applications that meet a lower per-unit subsidy limit, thereby requiring less HTF funding:

(d) Subsidy per Unit. An application that caps the per unit subsidy limit (inclusive of match) for all Direct Loan units regardless of unit size at:

(1) \$100,000 per MFDL unit (4 points).

(2) \$80,000 per MFDL unit (8 points).

(3) \$60,000 per MFDL unit (10 points).

**Merits of the application in meeting the State's priority housing needs:** The State of Texas will prioritize HTF funding for the needs of ELI households in accordance with its Analysis of Impediments (AI) and high opportunity measures of the QAP. Goal No. 1 of the AI states: "Create greater mobility and improve housing opportunities for low income households and members of protected classes. §13.6(a) of the Multifamily Direct Loan Rule allows for HTF applicants to claim points as follows: "(a) Applicants eligible for points under 10 TAC §11.9(c)(4) related to the Opportunity Index (7 points)." 10 TAC §11.9(c)(4) states:

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) A Proposed Development is eligible for a maximum of seven (7) up to two (2) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An application that meets the foregoing criteria may qualify for five (5) additional points up to (for a maximum of seven (7) points) for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in clauses (1I) through (15XIII) of this subparagraph.

(I) The Development site is located less than 1/2 mile on an accessible route from a public park with an accessible playground, both of which meet 2010 ADA standards (1 point)

(II) The Development Site is located less than 1/2 mile on an accessible route from Public Transportation with a route schedule that provides regular service to employment and basic services. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (1 point)

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items (1 point)

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility The Development is located within 3 miles of a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician specialty offices are not considered in this category (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or prekindergarten (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local data sources (1 point)

(VII) The development site is located within 1 mile of a public library (1 point)

(VIII) The Development Site is located within 5 miles of a University or Community College campus. To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. Universities and Community Colleges must have a physical location within the required distance; online-only institutions do not qualify under this item (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate (1 point)

(X) Development site is within 2 miles of a government-sponsored museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an

organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value (1 point)

(XI) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(XII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(XIII) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1I) through (13XII) of this subparagraph.

(I) The Development site is located within 2 miles 4 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items (1 point)

(II) The Development is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category (1 point)

(III) The Development Site is within 3 miles 4 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or prekindergarten (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local data sources (1 point)

(V) The development site is located within 3 miles 4 miles of a public library (1 point)

(VI) The development site is located within 3 miles 4 miles of a public park (1 point)

(VII) The Development Site is located within 7 miles 15 miles of a University or Community College campus (1 point)

(VIII) The Development Site is located within 5 miles of a retail shopping center with XX square feet of stores (1point)

(IXVIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate (1 point)

(XIX) Development site is within 2 miles 4 miles of a government-sponsored museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value (1 point)

(XIX) Development site is within 1 mile 3 miles of an indoor recreation facility available to the public (1 point)

(XIIIXI) Development site is within 1 mile 3 miles of an outdoor recreation facility available to the public (1 point)

(XIIIXII) Development site is within 1 mile 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

**Other Criteria Evaluated in Applicant Selection:** All threshold and scoring criteria listed in the 2017 Multifamily Direct Loan Rule (10 TAC Chapter 13) will be applicable to Housing Trust Fund applicants.

**Recipient Application Requirements- § 91.320(k)(5)(ii)**

1. Will the State require that all recipient applications contain a description of the eligible activities to be conducted with HTF funds as required in § 93.200- Eligible activities?

Yes

No

2. Will the State require that each eligible recipient certify that housing assisted with HTF funds will comply with HTF requirements?

Yes

No

**Performance Goals and Benchmarks- § 91.320(k)(5)(iii)**

The plan must include performance goals and benchmarks against which the State will measure its progress, consistent with the State’s goals established at § 91.315(b)(2). To comply with this requirement, the State will include HTF housing goals in the housing table on the **SP-45 Goals** and **AP-20 Annual Goals and Objectives** screens in the eCon Planning Suite consolidated plan template in IDIS.

**VI. OTHER REQUIREMENTS**

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**Maximum Per-unit Development Subsidy Amount- § 91.320(k)(5) and § 93.300(a)**

The State must establish its own maximum limitations on the total amount of HTF funds that can be invested per-unit for development of non-luxury housing. The limits must be reasonable, based on actual costs, and adjusted for the number of bedrooms and geographic location of the project. The State may choose to develop its own limits or adopt limits used in other federal programs such as HOME or Low-Income Housing Tax Credit and must submit them with its HTF allocation plan. The State must submit a description of how the HTF maximum per-unit development subsidy amounts were established or a description of how existing limits developed for another program and being adopted for HTF meet the HTF requirements.

Indicate below what maximum per-unit development subsidy limits the State will use for its FY 2016 HTF program.

- State developed its own maximum per-unit development subsidy limits and the limits are attached.

- State adopted limits used in other federal programs and the limits are attached.



**Maximum Per-unit Development Subsidy Amount-** §91.320(k)(5) and §93.300(a)

After reviewing the costs per unit on 39 projects that have received HOME funds – as both the only source of Department funding and as a gap financing source on 9% and 4% Housing Tax Credit-layered projects – over the past several years, the Department has found the following:

	Total Cost Per Unit (total development costs divided by total number of units)	HOME Cost Per HOME Unit (HOME funds invested divided by number of HOME units)
Urban New Construction Average	\$155,381	\$83,680
Rural New Construction Average	\$148,907	\$94,195

These projects were subject to Section 234 Condominium Housing Limits (formerly 221d3 Maximum Per Unit Subsidy Limits) with the applicable base city high cost percentages applied.

Given this fact, Texas will **not** establish its own maximum limitations on the total amount of NHTF funds that can be invested on a per-unit basis for the development of nonluxury housing. Texas will use the Section 234 Condominium Housing Limits with the applicable base high cost percentage applied for NHTF – as illustrated in the tables below – in the same way that these limits are used for HOME funds. Utilizing the same per-unit subsidy limits across all of the Department’s Multifamily Direct Loan funding sources (HOME, NHTF, and TCAP Repayment Funds) will allow for an easier application and review process that will preserve the Department’s ability to award funds based on what is available rather than prescribe a funding source at the time of application. Additionally, these per-unit subsidy limits accurately reflect what the Department has observed in the market regarding construction costs; no area of the state seems immune from the increasing construction costs.

Bedrooms	Elevator served?	N
0	\$	118,563
1	\$	136,703
2	\$	164,869
3	\$	211,037
4	\$	235,104

Elevator served?	Y
\$	124,770
\$	143,031
\$	173,924
\$	225,002
\$	246,983

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* January 19, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:**

Thann Young, Office of Rural Housing and Economic Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7240, Washington, DC 20410; email Thann Young at [Thann.Young@hud.gov](mailto:Thann.Young@hud.gov) or telephone 202–708–2290. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Indian Community Capital Initiative.

*OMB Approval Number:* 2506—New.

*Type of Request:* New Collection.

*Form Numbers:* SF 424; HUD 424CB; HUD 424–CBW; SF–LLL; HUD 2880; HUD 2990; HUD 2991; HUD 2993; HUD 2994A; HUD 27061; and HUD 27300.

*Description of the need for the information and proposed use:* The Indian Community Capital Initiative

(ICCI) is a collaborative effort among three federal agencies—the Department of Housing and Urban Development (HUD), the Department of the Treasury—Community Development Financial Institutions Fund (CDFI Fund), and the Department of Agriculture—Rural Development (USDA–RD). The ICCI’s goal is to increase access to capital for business lending and economic development and entrepreneurship for Federally recognized Indian tribes.

Federally recognized Indian tribe means any tribal entity eligible to apply for funding and services from the Bureau of Indian Affairs by virtue of its status as an Indian tribe. The list of Federally recognized Indian tribes can be found in the notice published by the Department of the Interior on January 14, 2015 (Federal Register/Vol. 80, No. 9/Wednesday, January 14, 2015/ Notices).

*Respondents (i.e. affected public):* Public.

*Estimated Number of Respondents:* 566.

*Estimated Number of Responses:* 566.

*Frequency of Response:* 1.

*Average Hours per Response:* 7211.

*Total Estimated Burdens:*

	Respondents	Annual responses	Total responses	Burden per response	Total annual hours	Burden cost per instrument
HUD–424CB .....	566	1	566	3.12	1,766	44,150
HUD–424CBW .....	566	1	566	3.12	1,766	44,150
HUD–2880 .....	566	1	566	2.0	1,132	28,300
HUD–2990 .....	566	1	566	0	0	0
HUD–2991 .....	566	1	566	0	0	0
HUD–2993 .....	566	1	566	0	0	0
HUD–2994A .....	566	1	566	.5	283	7,075
HUD–27061 .....	566	1	566	1.0	566	14,150
HUD–27300 .....	566	1	566	3.0	1,698	42,450
Total .....	5,094	.....	5,094	.....	7,211	180,275

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through

the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 4, 2015.

**Harriet Tregoning,**

*Principal Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 2015–29461 Filed 11–17–15; 8:45 am]

**BILLING CODE 4210–67–P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR–5886–N–01]

**Annual Indexing of Basic Statutory Mortgage Limits for Multifamily Housing Programs**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 206A of the National Housing Act, HUD has adjusted the Basic Statutory Mortgage Limits for Multifamily Housing Programs for Calendar Year 2015.

**DATES:** Effective date: January 1, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Daniel J. Sullivan, Deputy Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 402-6130 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** The FHA Down Payment Simplification Act of 2002 (Pub. L. 107-326, approved December 4, 2002) amended the National Housing Act by adding a new Section 206A (12 U.S.C. 1712a). Under Section 206A, the following are affected:

- I. Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));
- II. Section 213(b)(2)(A) (12 U.S.C. 1715e (b)(2)(A));
- III. Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k (d)(3)(B)(iii)(I));
- IV. Section 221(d)(4)(ii)(I) (12 U.S.C. 1715l(d)(4)(ii)(I));
- V. Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and
- VI. Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

The Dollar Amounts in these sections are the base per unit statutory limits for FHA's multifamily mortgage programs collectively referred to as the 'Dollar Amounts,' they are adjusted annually (commencing in 2004) on the effective date of the Consumer Financial Protection Bureau's adjustment of the \$400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA) (Pub. L. 103-325, approved September 23, 1994). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) as applied by the Bureau of Consumer Financial Protection for purposes of the above-described HOEPA adjustment.

HUD has been notified of the percentage change in the CPI-U used for the HOEPA adjustment and the effective date of the HOEPA adjustment. The percentage change in the CPI-U is 2.0% and the effective date of the HOEPA adjustment is January 1, 2014. The Dollar Amounts have been adjusted correspondingly and have an effective date of January 1, 2015.

The adjusted Dollar Amounts for Calendar Year 2015 are shown below:

**BASIC STATUTORY MORTGAGE LIMITS FOR CALENDAR YEAR 2015***Multifamily Loan Program*

- Section 207—Multifamily Housing
- Section 207 pursuant to Section 223(f)—Purchase or Refinance Housing
- Section 220—Housing in Urban Renewal Areas

Bedrooms	Non-Elevator	Elevator
0 .....	\$50,164	\$57,886
1 .....	\$55,569	\$64,832
2 .....	\$66,376	\$79,497
3 .....	\$81,813	\$99,566
4+ .....	\$92,622	\$112,581

- Section 213—Cooperatives

Bedrooms	Non-Elevator	Elevator
0 .....	\$54,364	\$57,886
1 .....	\$62,683	\$65,583
2 .....	\$75,598	\$79,749
3 .....	\$96,766	\$103,170
4+ .....	\$107,803	\$113,251

- Section 234—Condominium Housing

Bedrooms	Non-Elevator	Elevator
0 .....	\$55,474	\$58,378
1 .....	\$63,962	\$66,923
2 .....	\$77,140	\$81,377
3 .....	\$98,742	\$105,276
4+ .....	\$110,002	\$115,560

- Section 221(d)(4)—Moderate Income Housing

Bedrooms	Non-Elevator	Elevator
0 .....	\$49,924	\$53,928
1 .....	\$56,671	\$61,822
2 .....	\$68,501	\$75,176
3 .....	\$85,980	\$97,251
4+ .....	\$97,156	\$106,754

- Section 231—Housing for the Elderly

Bedrooms	Non-Elevator	Elevator
0 .....	\$47,465	\$53,928
1 .....	\$53,062	\$61,822
2 .....	\$63,364	\$75,176
3 .....	\$76,255	\$97,251
4+ .....	\$89,650	\$106,754

- Section 207—Manufactured Home Parks per Space—\$23,030

Dated: November 9, 2015.

**Edward L. Golding,**

*Principal Deputy Assistant Secretary for Housing.*

[FR Doc. 2015-29469 Filed 11-17-15; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[FWS-R8-FHC-2015-N217:  
FXFR1334088TWG0W4-123-FF08EACT00]

**Trinity River Adaptive Management Working Group; Public Meeting**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a public meeting of the Trinity River Adaptive Management Working Group (TAMWG). The TAMWG is a Federal advisory committee that affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

**DATES:** *Public meeting:* TAMWG will meet from 9:30 a.m. to 4:30 p.m. Pacific Time on Thursday, December 10, 2015. *Deadlines:* For deadlines on submitting written material, please see "Public Input" under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held at the Trinity River Restoration Program Office, 1313 South Main Street, Weaverville, CA 96093.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Polos, by mail at U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; by telephone at 707-822-7201 or by email at [joe\\_polos@fws.gov](mailto:joe_polos@fws.gov) or Elizabeth W. Hadley, Redding Electric Utility, by mail at 777 Cypress Avenue, Redding, CA 96001; by telephone at 530-339-7308 or by email at [ehadley@reupower.com](mailto:ehadley@reupower.com). Individuals with a disability may request an accommodation by sending an email to either point of contact.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Trinity River Adaptive Management Working Group will hold a meeting.

**Background**

The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the TMC. The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

November 18, 2015

MORTGAGEE LETTER 2015-28

TO: ALL FHA APPROVED MULTIFAMILY MORTGAGEES

SUBJECT: Annual Base City High Cost Percentage and High Cost Area Revisions  
for 2015

Maximum mortgage amounts were revised by the Consolidated Appropriations Act, 2008 (Public Law 110-161, approved December 26, 2007) (FY 2008 Appropriations Act). Section 221 of the General Provisions of Title II of Division K of the FY 2008 Appropriations Act revises the statutory exceptions to maximum mortgage amounts for the FHA Multifamily Housing Programs, listed in Section 221 of the FY 2008 Appropriations Act, by (1) substituting 170 percent for the 140 percent exception of any geographical area, and (2) substituting 215 percent for 170 percent as the maximum exception allowed for a specific project. Accordingly, the statutory revision allows the Secretary to grant exceptions to maximum mortgage limits for certain Multifamily Housing Programs by (1) up to 170 percent, (equivalent to a 270 percent multiplier) in geographical areas where cost levels so require or (2) up to 170 percent, or 215 percent in High Cost Areas, (equivalent to a 315 percent multiplier) where necessary on a project-by-project basis.

The law does not determine which areas are to be considered "High Cost Areas." Accordingly, the Office of Multifamily Production has developed a list of High Cost Areas for 2015. The threshold for a High Cost Area has been set for all areas (Special Limit Areas excepted) with a "calculated" High Cost Percentage (HCP) of 281.70 or greater, but because of the statutory cap of 170% or 270 multiplier, some localities have a higher HCP but still have the 270 multiplier.

The attached designated Annual Base City High Cost Percentages and High Cost Areas are effective January 1, 2015.

## **SPECIAL LIMIT AREAS**

Guam, the U.S. Virgin Islands, and the states of Alaska and Hawaii are Special Limit areas. Care should be taken to ensure that the appropriate limits are used for corresponding programs. The HCP for Special Limit Areas is 405%.

## **Paperwork Reduction Act**

There are no information collection requirements in this Notice and therefore the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

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Edward L. Golding  
Principal Deputy Assistant Secretary

Attachment

**FHA MULTIFAMILY STATUTORY MORTGAGE PROGRAMS**  
**BASE CITY HIGH COST PERCENTAGES**

Effective January 1, 2015

<b><u>Boston MA Hub</u></b>	270%	<b><u>Detroit MI Hub</u></b>	270%
Hartford CT	270%	Grand Rapids MI	246%
Bangor ME	270%		
Manchester NH	270%	<b><u>Minneapolis MN Hub</u></b>	270%
Providence RI	270%	Milwaukee WI	270%
Burlington VT	270%		
		<b><u>Fort Worth TX Hub</u></b>	217%
<b><u>New York NY Hub</u></b>	270%	Little Rock AR	217%
Buffalo NY	270%	New Orleans LA	221%
Albany NY	270%	Shreveport LA	216%
		Albuquerque NM	247%
<b><u>Philadelphia PA Hub</u></b>	270%	Dallas TX	217%
Charlestown WV	270%	Houston TX	213%
Camden NJ	270%	Lubbock TX	209%
Newark NJ	270%	San Antonio TX	193%
Pittsburg PA	270%		
Wilmington DE	270%	<b><u>Kansas City MO Hub</u></b>	270%
		Des Moines IA	217%
<b><u>Baltimore MD Hub</u></b>	270%	Topeka KS	238%
Washington DC	270%	St. Louis MO	270%
Richmond VA	265%	Omaha NE	228%
		Oklahoma City OK	230%
<b><u>Greensboro NC Hub</u></b>	239%	Tulsa OK	226%
Columbia SC	244%		
		<b><u>Denver CO Hub</u></b>	270%
<b><u>Atlanta GA Hub</u></b>	258%	Helena MT	251%
Louisville KY	245%	Fargo ND	248%
Knoxville TN	227%	Sioux Falls SD	234%
Memphis TN	219%	Salt Lake City UT	266%
Nashville TN	223%	Casper WY	261%
San Juan PR	270%		
US Virgin Isl. (spec limit)	405%	<b><u>Los Angeles CA Hub</u></b>	270%
		Santa Ana CA (LA)	270%
<b><u>Jacksonville FL Hub</u></b>	250%	San Diego CA	270%
Birmingham AL	221%		
Jackson MS	217%	<b><u>San Francisco CA Hub</u></b>	270%
Miami FL	256%	Phoenix AZ	254%
Tampa FL	268%	Sacramento CA	270%
		Honolulu HI (spec limit)	405%
<b><u>Chicago IL Hub</u></b>	270%	Las Vegas NV	270%
Springfield IL	270%		
Indianapolis IN	251%	<b><u>Seattle WA Hub</u></b>	270%
		Anchorage AK (spec limit)	405%
<b><u>Columbus OH Hub</u></b>	256%	Boise ID	270%
Cleveland OH	270%	Portland OR	270%
Cincinnati OH	245%	Spokane WA	270%

**Note:** Offices with a “calculated” HCP of 281.70 (before the statutory cap of 270) or higher are designated “High Cost Areas” and are shaded. The Multifamily for Tomorrow (MFT) Transformation will be effective for all Hubs after Wave 5 is complete for the Western Region in approximately Summer of 2016. The next Mortgagee Letter on this topic will reflect the MFT changes with respect to the new organizational structure.

**Andrew Sinnott**

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**From:** Jennifer Molinari  
**Sent:** Tuesday, December 15, 2015 11:31 AM  
**To:** Megan Sylvester; Abigail Versyp; Andrew Sinnott  
**Cc:** Marni Holloway  
**Subject:** FW: HUD Publishes New 2015 Limits for HOME Maximum Per-Unit Subsidies

This may be the only approval response we get. I don't think we need to press this since Ellen approved in May, and we acknowledged that we knew the percentage went down to 217% (below). Let's run with this.

*Jennifer Molinari*

HOME Single Family Division Director  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.2224  
Fax: 512.475.1671

**About TDHCA**

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or the [Learn about Fair Housing in Texas](#) page.

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**From:** Eberlein, Stephen L [<mailto:stephen.l.eberlein@hud.gov>]  
**Sent:** Monday, December 14, 2015 2:41 PM  
**To:** Jennifer Molinari  
**Cc:** Melendez, Ellen M  
**Subject:** RE: HUD Publishes New 2015 Limits for HOME Maximum Per-Unit Subsidies

That is what the HOME Fire says.

Stephen Eberlein  
Program Manager, Team 1  
817.978.5956 - office  
817.978.5573 - fax  
[stephen.l.eberlein@hud.gov](mailto:stephen.l.eberlein@hud.gov)

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning)

"Note: This message is intended solely for the use of addressee. The information contained herein is purely advisory in nature and does not constitute an official position on the subject matter. In order to obtain an official opinion on a subject a signed written request should be submitted to this office."

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**From:** Jennifer Molinari [<mailto:jennifer.molinari@tdhca.state.tx.us>]  
**Sent:** Monday, December 14, 2015 2:16 PM  
**To:** Melendez, Ellen M; Eberlein, Stephen L  
**Cc:** Brooke Boston; Marni Holloway; Abigail Versyp; Andrew Sinnott; Megan Sylvester  
**Subject:** HUD Publishes New 2015 Limits for HOME Maximum Per-Unit Subsidies

Good afternoon Ellen & Steve.

Pursuant to HOME Fire Vol. 12 Number 1, we are requesting confirmation that we can use the 217% high cost adjustment to the 234 limits effective November 18, 2015 for the State of Texas.

<https://www.hudexchange.info/news/hud-publishes-new-2015-limits-for-home-maximum-per-unit-subsidies/>

<https://www.hudexchange.info/resources/documents/HOMEfires-Vol12-No1-Use-of-Base-City-High-Cost-Percentage-to-Determine-the-HOME-Maximum-Per-Unity-Subsidy.pdf>

Please let me know if you have any questions.

Thanks,

*Jennifer Molinari*

HOME Single Family Division Director  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.2224  
Fax: 512.475.1671

**About TDHCA**

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**Andrew Sinnott**

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**From:** Melendez, Ellen M [Ellen.M.Melendez@hud.gov]  
**Sent:** Monday, July 13, 2015 8:51 AM  
**To:** Andrew Sinnott  
**Subject:** RE: HUD Publishes HOMEfires Vol. 12 No. 1: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME

Andrew,

We've received confirmation from OAHF that the state may use the HCP of 218% for units throughout the state.

Ellen

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**From:** Melendez, Ellen M  
**Sent:** Friday, July 10, 2015 3:17 PM  
**To:** Andrew Sinnott  
**Subject:** RE: HUD Publishes HOMEfires Vol. 12 No. 1: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME

We're double checking with HQs, will let you know as soon as we hear back.

Ellen

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**From:** Andrew Sinnott [<mailto:andrew.sinnott@tdhca.state.tx.us>]  
**Sent:** Thursday, July 09, 2015 4:31 PM  
**To:** Melendez, Ellen M  
**Subject:** RE: HUD Publishes HOMEfires Vol. 12 No. 1: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME

Thanks, Ellen. So just to confirm our conversation earlier today, it would be permissible for TDHCA to use the 218% high cost adjustment to the 234 Condominium Housing limits for HOME developments throughout Texas, correct?

**Andrew Sinnott**

Multifamily Loan Program Specialist  
512.475.0538

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b), there are important limitations and caveats (Also see 10 TAC §10.2(b)).*

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**From:** Melendez, Ellen M [<mailto:Ellen.M.Melendez@hud.gov>]  
**Sent:** Thursday, July 09, 2015 8:39 AM  
**To:** [andrew.sinnott@tdhca.state.tx.us](mailto:andrew.sinnott@tdhca.state.tx.us)  
**Subject:** FW: HUD Publishes HOMEfires Vol. 12 No. 1: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME

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**From:** HUD Exchange Mailing List [<mailto:news@mail.hudexchange.info>]  
**Sent:** Monday, June 08, 2015 10:54 AM  
**To:** Melendez, Ellen M  
**Subject:** HUD Publishes HOMEfires Vol. 12 No. 1: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME

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## **HUD Publishes HOMEfires Vol. 12 No. 1: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME**

HUD has published [HOMEfires Vol. 12 No. 1: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME](#).

This issue of HOMEfires explains whether the Office of Community Planning and Development (CPD) within a HUD Field Office can allow a HOME participating jurisdiction (PJ) that is not listed on the published list of “Base City High Cost Percentages” to use the high-cost percentage of its HUD Multifamily Hub to determine the maximum per-unit subsidy limits for HOME.



Visit the HUD Exchange at <https://www.hudexchange.info>

**Rehabilitation Standards - § 91.320(k)(5)(iv) and § 93.301(b)**

If the State intends to use its HTF funds for housing being rehabilitated, it must establish rehabilitation standards that all HTF-assisted housing undergoing rehabilitation must meet at the time of project completion in accordance with § 93.301(b). The standards must provide enough details on what work is required, how that work should be performed and what materials should be used. The State's standards may refer to applicable codes or may establish requirements that exceed the minimum requirements of the codes. At a minimum, the rehabilitation standards must address:

- Health and safety;
- Major systems;
- Lead-Based Paint;
- Accessibility;
- Disaster Mitigation;
- State and local Codes, Ordinances, and Zoning Requirements; and
- Inspectable Areas and Observable Deficiencies from HUD's Uniform Physical Condition Standards identified by HUD as applicable to HTF-assisted housing.

Indicate below if the State will use HTF funds for rehabilitation of housing.

The State plans to use HTF funds for the rehabilitation of housing and has attached its rehabilitation standards.

The State will not use HTF funds for rehabilitation of housing.

Change as of  
February 2017

**Resale and/or Recapture Provisions- § 91.320(k)(5)(v) and § 93.304(f)**

If the State intends to use HTF funds to assist first-time homebuyers, it must set forth the guidelines for resale or recapture and obtain HUD specific, written approval, as required in § 93.304(f). Approval of the consolidated plan or annual action plan under § 91.500 or the failure to disapprove the consolidated plan or annual action plan does not satisfy the requirement for specific HUD approval for resale or recapture guidelines.

Indicate below if the State intends to use HTF funds for first-time homebuyers.

The State will use HTF funds to assist first-time homebuyers and has attached the applicable resale/recapture provisions.

The State will not use HTF funds to assist first-time homebuyers.

TDHCA may develop a first-time homebuyer program for NHTF in future, but that use is not contemplated immediately. If there is sufficient funding and demand in the future to implement an NHTF Homebuyer program, the State will develop the required specific provisions at that time and submit them for approval.

**HTF Affordable Homeownership Limits- § 91.320(k)(5)(vi) and § 93.305**

HTF funds may only be invested for the provision of modest housing for homeownership. This means the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area for newly constructed or standard housing. If the State plans to use HTF funds for homebuyer assistance, and does not use the HTF affordable homeownership limits established by HUD, it must determine 95 percent of the median purchase price for single family housing for designated areas across the State. If the State will determine its own affordable homeownership limits, it must determine the limits using the methodology described in § 93.305(a)(2).

Indicate below if the State will use HTF funds for homeownership housing and what affordable homeownership limits it will use.

- The State will use HTF funds for homeownership housing and will use the HUD issued limits.
- The State will use HTF funds for homeownership housing and has determined its own affordable homeownership limits and the limits are attached.

The State will not use HTF funds for homeownership housing.

**State Limited Beneficiaries or Preferences- § 91.320(k)(5)(vii)**

The State may limit the beneficiaries or give preferences to a particular segment of the extremely low-income population only if described in the action plan. Any limitation or preference must not violate non-discrimination requirements at § 93.350 and the State must not limit or give preferences to students. The State may also allow rental housing owners to limit tenants or give a preference in accordance with § 93.303(d)(3), only if such limitation or preference is described in the action plan.

Indicate below if the State will limit beneficiaries or give preferences to a particular segment of the extremely low-income population.

- The State will limit beneficiaries and/or give preferences to the following segments of the extremely low-income population. The groups listed have also been identified in the action plan.
- The State will not limit beneficiaries and/or give preferences to any segments of the extremely low-income population.

In accordance with  
AP-25 of 2016 One  
Year Action Plan

## Refinancing of Existing Debt- § 91.320(k)(5)(viii) and § 93.201(b)

If the State will use HTF funds for refinancing of existing debt, it must establish refinancing guidelines and include them in its consolidated plan. The State's refinancing guidelines must describe the conditions under which it will refinance existing debt. At a minimum, the guidelines must demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing. Refinancing of existing debt is only eligible if it is necessary to reduce the overall housing costs and to make the housing more affordable.

Indicate below if the State will permit the refinancing of existing debt.

- The State will permit the refinancing of existing debt and the conditions under which the State will refinance existing debt are attached.

The State will not permit the refinancing of existing debt.

← Change as of February 2017

## VII. GRANTEE CERTIFICATIONS

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In addition to submitting an HTF allocation plan, the State must submit all the required certifications identified at § 91.225 (for new action plans). If the State is amending the action plan to include HTF, it must resubmit the following certification to include HTF:

- Consistency with plan** The jurisdiction must submit a certification that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan. Where the HOPWA funds are to be received by a city that is the most populous unit of general local government in an EMSA, it must obtain and keep on file certifications of consistency from the authorized public officials for each other locality in the EMSA in which housing assistance is provided. HTF must be included in this certification.

## VIII. REQUIRED FORMS

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In addition to submitting an HTF allocation plan, the State must submit and/or complete the following standard forms for its HTF program.

- Standard form- 424: [Application for Federal Assistance](#) (§ 91.320(a))
- Standard form- 1199 A : [Direct Deposit Sign up Form](#)

Other Documents Provided to HUD in Response to Disapproval Letter

10 TAC Chapter 10 - <http://www.tdhca.state.tx.us/multifamily/docs/17-UniformMFRules-10TAC10SubA-CG.pdf> and <http://www.tdhca.state.tx.us/readocs/17-10TAC-Ch10-SubD.pdf>

10 TAC Chapter 11 - <http://www.tdhca.state.tx.us/multifamily/docs/17-QAP.pdf>

10 TAC Chapter 13 - <http://www.tdhca.state.tx.us/multifamily/docs/17-MF-DirectLoanRule10TAC13.pdf>

Uniform State Service Region Map - <http://www.tdhca.state.tx.us/multifamily/docs/09-RefMan-UniformStateSvcRegions.pdf>

NHTF Allocation Formula (on the following page)

Region	ELI Households	Renter Households	NHTF Allocation factor	Allocation percentage	Regional Allocation
1	37,634	112,270	0.335209762	7%	\$ 313,467.38
2	22,745	65,051	0.349648737	8%	\$ 326,969.81
3	294,445	997,313	0.295238305	6%	\$ 276,088.55
4	47,315	121,225	0.39030728	8%	\$ 364,991.16
5	38,480	84,870	0.453399317	10%	\$ 423,990.92
6	274,230	873,781	0.313842942	7%	\$ 293,486.45
7	83,445	300,955	0.277267366	6%	\$ 259,283.24
8	52,515	163,380	0.321428571	7%	\$ 300,580.06
9	98,375	304,465	0.323107746	7%	\$ 302,150.32
10	32,510	101,091	0.321591437	7%	\$ 300,732.37
11	89,360	159,810	0.559164007	12%	\$ 522,895.50
12	21,096	68,077	0.309884396	7%	\$ 289,784.67
13	37,070	103,138	0.359421358	8%	\$ 336,108.56
Total	1,129,220	3,455,426	4.609511225	100%	\$ 4,310,529.00

Texas Allocation: \$ 4,310,529.00

ELI Households source: 2009-2013 CHAS, Table 7

Renter households source: 2015 ACS 5-yr, Table B25009

Updated February 2017 to reflect increased NHTF Allocation amount for Program Year 2016

**ATTACHMENT B:** February 14, 2017 email from HUD

**From:** Huber, Peter H [<mailto:Peter.H.Huber@hud.gov>]  
**Sent:** Tuesday, February 14, 2017 3:07 PM  
**To:** Marni Holloway; Andrew Sinnott  
**Cc:** Henley, Shirley J; Eberlein, Stephen L; Jensen, Gerald R; Sardone, Virginia; Owusu, Henrietta R; Moore, Tiffani C; Thompson, Diane A  
**Subject:** HTF allocation plan

Ms. Holloway,

I apologize for missing last Friday's conference call. HUD appreciated the opportunity to discuss your concerns regarding the State of Texas' HTF allocation plan. After additional discussion of your concerns regarding the rehabilitation standards at §93.301(b), specifically the submission of the UPCS inspection protocol, HUD maintains that TDHCA must comply with the requirement to submit a UPCS protocol to receive approval to use its HTF allocation for rehabilitation. We acknowledge that we did not anticipate the degree to which compliance with this requirement would cause significant challenges for HTF grantees and are discussing ways to ease the administrative burden on our HTF grantees caused by this requirement in the future.

However, until HUD can engage in rulemaking to make changes to the current HTF interim rule requirements, we must enforce all requirements consistently and fairly for all grantees.

We look forward to the resubmission of the Texas HTF allocation plan.

If you have any additional questions, please do not hesitate to contact the Ft. Worth Regional HUD Office.

Peter

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