

# **BOARD BOOK OF JANUARY 17, 2019**



**J. B. Goodwin, Chair**

**Leslie Bingham Escareño, Vice-Chair**

**Paul Braden, Member**

**Asusena Reséndiz, Member**

**Sharon Thomason, Member**

**Leo Vasquez, III, Member**

## Texas Department of Housing and Community Affairs

### PROGRAMMATIC IMPACT IN FISCAL YEAR 2017

The Texas Department of Housing and Community Affairs (“TDHCA”) is the State of Texas’ lead agency responsible for affordable housing and administers a statewide array of programs to help Texans become more independent and self-sufficient. Short descriptions and key impact measures for these programs – including the total number of households/individuals to be served and total funding either administered or pledged for Fiscal Year 2017 (September 1, 2016, through August 31, 2017) – are set out below:

#### **Multifamily New Construction & Rehabilitation:**

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

**Total Households Served: 9,225**  
**Total Funding: \$927,431,360\***

#### **Single Family Homebuyer Assistance, New Construction, Rehabilitation, Bootstrap, and Contract for Deed:**

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

**Total Households Served: 326**  
**Total Funding: \$17,323,164**

#### **Single Family Homeownership Program:**

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

**Total Households Served: 5,870**  
**Total Funding: \$870,405,445**

#### **Rental Assistance:**

Provides rental, security, and utility deposit assistance through HOME Tenant Based Rental Assistance, and rental assistance payments through HUD Section 8 Housing Choice Vouchers and Section 811 Project Based Rental Assistance.

**Total Households Served: 1,678**  
**Total Funding: \$13,668,121**

#### **Weatherization Assistance Program:**

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

**Total Households Served: 3,349**  
**Total Funding: \$24,379,360**

#### **Homelessness**

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

**Total Individuals Served: 36,555**  
**Total Funding: \$15,009,483**

#### **Comprehensive Energy Assistance Program:**

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

**Total Households Served: 134,465**  
**Total Funding: \$94,482,215**

#### **Community Services Block Grant:**

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

**Total Individuals Served: 492,727**  
**Total Funding: \$31,237,527**

Sources: this data comes from the TDHCA 2018 State Low Income Housing Plan and Annual Report draft. Multifamily New Construction & Rehab data come from the most recent award logs from FY2017 for 4%, 9%, and Direct Loan Applications. Because Multifamily logs are updated on a monthly basis to reflect the changing status of Applications, this impact statement will also be updated on a monthly basis.

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

\*FY2017 data for the Multifamily program is artificially low, largely due to federal tax reform’s timing effects on 4% housing tax credit developments. A significant amount of 4% activity was delayed into the 4 months after FY2017 (Sept., Oct., and Nov., and Dec.).



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

**A G E N D A  
8:00 AM  
JANUARY 17, 2019**

**Dewitt C. Greer State Highway Building  
Ric Williamson Hearing Room  
125 E. 11th Street  
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

**J.B. Goodwin, Chair**

CERTIFICATION OF QUORUM

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

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

**CONSENT AGENDA**

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

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

**EXECUTIVE**

- a) Presentation, discussion, and possible action on Board meeting minutes summary for November 8, 2018

**J. Beau Eccles**  
General Counsel

**LEGAL**

- b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related properties, Cottonwood Apartments (HTC 12048/ HOME 1001677 / CMTS 544) and Elmwood Apartments (HTC 12045 / HOME 1001679 / CMTS 1130)
- c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Oak Timbers Ennis (HTF 85004 / CMTS 2679)
- d) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Coppertree Village (HTC 70131 / CMTS 931)
- e) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Harmon Elliott Senior Citizens Complex (HTF 355007 / CMTS 2642)
- f) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Sutton Oaks II (HTC 12004 / CMTS 4853)

**Jeffrey T. Pender**  
Deputy General Counsel

**COMMUNITY AFFAIRS**

g) Presentation, discussion, and possible action regarding authorization to release a Notice of Funding Availability for Program Year 2019 Community Services Block Grant Discretionary funds for education and employment initiatives for Native American and migrant seasonal farm worker populations

**Michael DeYoung**  
Director of  
Community Affairs

**BOND FINANCE**

h) Presentation, discussion, and possible action on Resolution No. 19-023 authorizing the filing of one or more applications for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds and containing other provisions relating to the subject

**Monica Galuski**  
Director of  
Bond Finance

i) Presentation, discussion, and possible action regarding site eligibility under 10 TAC §11.101(a)(2)(E) relating to Undesirable Site Features and an Inducement Resolution No. 19-026, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Application for 2019 Private Activity Bond Authority for Lago de Plata (#19600) in Corsicana

**Teresa Morales**  
Manager of  
Multifamily Bonds

**MULTIFAMILY FINANCE**

j) Presentation, discussion, and possible action regarding site eligibility under 10 TAC §11.101(a)(2) relating to Undesirable Site Features and 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for Residences of Stillwater in Georgetown

**Teresa Morales**  
Manager of  
Multifamily Bonds

k) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer

18456	Jackie Robinson Memorial Apartments	El Paso
19408	Mission Trails at Camino Real	San Marcos

**OCI/HTF/NSP DIVISION**

l) Presentation, discussion, and possible action to authorize the issuance of an amended 2018 Amy Young Barrier Removal Program Notice of Funding Availability and publication of the Notice of Funding Availability in the *Texas Register*

**Raul Gonzales**  
Director of  
OCI/HTF/NSP

**HOUSING RESOURCE CENTER**

m) Presentation, discussion, and possible action on a minor amendment of the 2018 State of Texas Consolidated Plan: One-Year Action Plan

**Elizabeth Yevich**  
Director of  
Housing Resource Center

**ASSET MANAGEMENT**

n) Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit, Housing Trust Fund, and HOME Land Use Restriction Agreements for Clifton Manor Apartments I and II (HTC #05236, HTF #1000422, and HOME #1000434)

**Rosalio Banuelos**  
Director of  
Asset Management

o) Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Land Use Restriction Agreement for Town Parc at Tyler (HTC #02110)

**RULES**

p) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10 Subchapter F and an order adopting new 10 TAC Chapter 10 Subchapter F, concerning Compliance Monitoring, with changes, and directing their publication for adoption in the *Texas Register*

**Patricia Murphy**  
Director of  
Compliance

**CONSENT AGENDA REPORT ITEMS**

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

a) TDHCA Outreach Activities, (December-January)

**Michael Lyttle**  
Director of  
External Affairs



- b) Report regarding a request for a permitted exception to the federal regulation of conflict of interest, found at 24 CFR §570.489(h), for the Neighborhood Stabilization Program

**J. Beau Eccles**  
General Counsel

**ACTION ITEMS**

**ITEM 3: BOND FINANCE**

- a) Presentation, discussion, and possible action on Resolution No. 19-022 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Residential Mortgage Revenue Bonds, Series 2019A, approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject
- b) Presentation, discussion, and possible action on Resolution No. 19-025 authorizing the form and substance of amendments to the Residential Mortgage Revenue Bond Trust Indenture, authorizing the execution of an Amended and Restated Residential Mortgage Revenue Bond Trust Indenture and other documents and instruments relating to the foregoing, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject
- c) Presentation, discussion, and possible action on Resolution No. 19-024 authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 92, approving the form and substance of the program manual and program summary, authorizing the execution of documents and instruments necessary or convenient to carry out Mortgage Credit Certificate Program 92, and containing other provisions relating to the subject
- d) Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds Series 2019 Resolution No. 19-021 and a Determination Notice of Housing Tax Credits for McMullen Square Apartments in San Antonio

**Monica Galuski**  
Director of  
Bond Finance

**Teresa Morales**  
Manager of  
Multifamily Bonds

**ITEM 4: COMPLIANCE**

- a) Presentation, discussion, and possible action on initiation of proceedings to remove the eligible entity status of Galveston County Community Action Council, Inc. and terminate the 2019 Community Services Block Grant contract and future funding
- b) Presentation, discussion, and possible action regarding termination of Program Year 2019 Low Income Home Energy Assistance Program Comprehensive Energy Assistance Program award to Galveston County Community Action Council, Inc.; award of 24.99% of the Program Year 2019 Comprehensive Energy Assistance Program awards for each of the specific service areas covered by Galveston County Community Action Council, Inc., to alternate providers; the commencement of the 30-day notification period required by Tex. Gov't Code §2105.203 and §2105.301; and the authorization of staff to identify a provider, through release and subsequent award of a Request for Application or through a direct designation, to temporarily and permanently administer the Comprehensive Energy Assistance Program in Brazoria, Fort Bend, Galveston, and Wharton counties (the areas served by Galveston County Community Action Council, Inc.)

**Ernest Hunt**  
Director of  
Subrecipient Monitoring

**ITEM 5: MULTIFAMILY FINANCE**

- a) Presentation, discussion, and possible action on a request for changes to Direct Loan terms

**Andrew Sinnott**  
MF Loan Programs  
Administrator

17511

AHA! at Briarcliff

Austin

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

### **EXECUTIVE SESSION**

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

**J.B. Goodwin**  
Chair

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;

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;

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;

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

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

### **OPEN SESSION**

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

### **ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](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 Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five (5) days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five (5) days before the meeting so that appropriate arrangements can be made.

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

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

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

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

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

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

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

# CONSENT AGENDA

1a

**BOARD ACTION REQUEST**

**BOARD SECRETARY**

**JANUARY 17, 2019**

Presentation, discussion, and possible action on Board meeting minutes summary for November 8, 2018

**RECOMMENDED ACTION**

Approve the Board meeting minutes summary for November 8, 2018.

**RESOLVED**, that the Board meeting minutes summary for November 8, 2018, is hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
November 8, 2018**

On Thursday, the eighth day of November 2018, at 8:03 a.m., the regular meeting of the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) was held in Hearing Room E2.026 of the Texas Capitol Extension, 1100 Congress Avenue, Austin, Texas.

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

- J.B. Goodwin
- Leslie Bingham-Escareño
- Paul A. Braden
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as secretary.

1) The Board unanimously approved the Consent Agenda as presented.

2) At 8:05 a.m., the Board Executive Director Committee went into Executive Session and reconvened in open session at 8:40 a.m. No action was taken in Executive Session except for deliberations on personnel matters pursuant to Texas Government Code §551.074.

3) Chairman Goodwin exercised his discretion on the order of the agenda to announce that Action items 3(a) – Presentation, discussion, and possible action to grant certain authority to the Director of Administration and designating an Acting Director; and 3(b) – Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions in this regard, would be taken up at the end of the meeting.

4) Action Item 3(c) – Presentation, discussion, and possible action on initiation of proceedings to remove the eligible entity status of Cameron and Willacy Counties Community Projects, Inc. and terminate CSBG contracts and funding – was presented by Patricia Murphy, TDHCA Director of Compliance. The Board unanimously approved staff recommendation to initiate the proceedings as outlined.

5) Action Item 4 – Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the

Governor in accordance with Tex. Gov't Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan (which will incorporate into Chapter 11 substance from the Uniform Multifamily Rules being repealed from 10 TAC Chapter 10, Subchapters A, B, C, D, and G), and, upon action by the Governor, directing its publication in the *Texas Register* – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Tim Irvine, TDHCA Executive Director. Following public comment (listed below), the Board unanimously approved staff recommendation for the repeal of the current rules and approval to publish the new, draft rules.

- Walter Moreau, Foundation Communities, provided comment on the draft rules
- Janine Sisak, Texas Affiliation of Affordable Housing Providers, provided comment on the draft rules
- Audrey Martin, Texas Affiliation of Affordable Housing Providers, provided comment on the draft rules
- Kathryn Saar, LHA Inc., provided comment on the draft rules

6) Action Item 5(a) – Presentation, discussion, and possible action on staff determinations regarding Undesirable Neighborhood Characteristics for Multifamily Direct Loan Application for 18503 Eastern Oaks Apartments, Austin – was presented by Ms. Holloway with additional information from Mr. Irvine. Following public comment (listed below), the Board voted unanimously to find the site as eligible.

- Jennifer Hicks, True Casa Consulting, testified in support of the site being found eligible
- Ashley Jackson, Eastern Oaks resident, testified in support of the site being found eligible
- Robert Onion, Housing Authority of Travis County, testified in support of the site being found eligible
- Eddie Karam, Housing Authority of Travis County board, read a letter into the record from Michelle Wallace, Austin Independent School District, in support of the site being found eligible
- Cynthia Bast, Locke Lord attorney representing the applicant, testified in support of the site being found eligible
- Gerald Cichon, Housing Authority of the City of El Paso, testified in support of the site being found eligible
- Tim Alcott, San Antonio Housing Authority, testified in support of the site being found eligible

7) Action Item 5(b) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds for 18407 Sphinx at Sierra Vista Senior Villas, Fort Worth – was presented by Ms. Holloway with additional information from Mr. Irvine and Tom Cavanaugh, TDHCA Real Estate Analysis Division.



Following public comment (listed below), the Board unanimously approved staff recommendation as amended.

- Jay Oji, applicant, testified in support of staff recommendation
- Bill Fisher, Sonoma Housing, testified in support of staff recommendation

8) Action Item 3(a) – Presentation, discussion, and possible action to grant certain authority to the Director of Administration and designating an Acting Director – was presented by Chairman Goodwin. The Board unanimously approved a motion to grant authority to the Director of Administration to serve as executive director while the existing executive director is on leave and that the Director of Administration be named Acting Director as of December 1, 2018.

9) Action Item 3(b) – Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions in this regard – was presented by David Cervantes, Director of Administration. The Board unanimously approved staff recommendation to adopt the resolution.

10) During the Public Comment portion of the meeting, there were a series of presentations and resolutions read in honor and recognition of Mr. Irvine who is retiring from state government effective November 30, 2018.

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

There being no further business to come before the Board, the meeting adjourned at 10:23 a.m. The next meeting is set for Thursday, December 6, 2018.

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Secretary

Approved:

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Chair

1b

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related properties, Cottonwood Apartments (HTC 12048/ HOME 1001677 / CMTS 544) and Elmwood Apartments (HTC 12045 / HOME 1001679 / CMTS 1130)

**RECOMMENDED ACTION**

**WHEREAS**, Cottonwood Apartments, owned by PK Cottonwood Apartments, LP (Cottonwood Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, Elmwood Apartments, owned by PK Elmwood Apartments, LP (Elmwood Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, Cottonwood Owner and Elmwood Owner are related entities, ultimately controlled by Ronald Potterpin (collectively known as Owner);

**WHEREAS**, on November 27, 2018, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$2,000, with \$500 to be paid within 30 days of signature and the remaining \$1,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before April 17, 2019;

**WHEREAS**, unresolved compliance findings include failure to certify to regular, continuous, and substantial participation in the development, operation and ownership of the project by a Historically Underutilized Business (HUB). At the time that the LURAs for the above properties were signed, the HUB was National Urban Construction Inc, controlled by Michael Sowell, its president; and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$2,000, subject to partial forgiveness as outlined above, for noncompliance at

Cottonwood Apartments and Elmwood Apartments, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

## BACKGROUND

PK Cottonwood Apartments, LP (Cottonwood Owner) is the owner of Cottonwood Apartments (Cottonwood), a low income apartment complex composed of 24 units, located in San Patricio County. Records of the Texas Secretary of State lists Ronald Potterpin as the Director and Manager of its general partner, M&A Cottonwood GP, LLC. CMTS lists Mr. Potterpin as the primary contact(s) for Owner. The property is self-managed via PK Housing and Management Company, with Shanna Spurgeon listed as its primary contact. The onsite manager is Bonnette Ennix.

PK Elmwood Apartments, LP (Elmwood Owner) is the owner of Elmwood Apartments (Cottonwood), a low income apartment complex composed of 24 units, located Leon County. Records of the Texas Secretary of State lists Ronald Potterpin as the Director and Manager of its general partner, M&A Elmwood GP, LLC. CMTS lists Mr. Potterpin as the primary contact(s) for Owner. The property is self-managed via PK Housing and Management Company, with Shanna Spurgeon listed as its primary contact. The onsite manager is Elizabeth Thomas.

Cottonwood is subject to two Land Use Restriction Agreements (collectively, LURAs), signed in 2013 in consideration for a HOME loan in the amount of \$340,810 and an annual housing tax credit allocation in the amount of \$193,506, to acquire, rehabilitate and operate Cottonwood.

Elmwood is also subject to two Land Use Restriction Agreements (collectively, LURAs), signed in 2013 in consideration for a HOME loan in the amount of \$369,733 and an annual housing tax credit allocation in the amount of \$205,380, to acquire, rehabilitate and operate Elmwood.

Neither Cottonwood nor Elmwood have been referred for an administrative penalty previously, and this is the first informal conference for this ownership group, however, the ownership group has been referred for an administrative penalty for other properties. Those referrals were all closed with full corrections, but the recent referral for related property, North Court Village (HTC 11004 / CMTS 4772) was closed with a warning letter in October of 2017, indicating that any future referrals for that property or any related properties would result in mandatory consideration by the Enforcement Committee unless deemed unnecessary by the Committee Secretary. Additionally, multiple file monitoring violations remain unresolved for Cottonwood and Elmwood.

The following compliance violations identified during 2018 were referred for an administrative penalty and have been resolved:

1. Failure to maintain complete written tenant selection criteria at Elmwood;
2. Failure to maintain compliant Affirmative Marketing Plan and evidence of associated marketing efforts at Elmwood; and
3. Failure to provide evidence that required supportive services were being provided at Elmwood.

The following compliance violations identified during 2018 were referred for an administrative penalty and are unresolved:

1. Failure to provide evidence of regular, continuous, and substantial participation in the development, operation, and ownership of Cottonwood by a HUB; and
2. Failure to provide evidence of regular, continuous, and substantial participation in the development, operation, and ownership of Elmwood by a HUB.

Representatives for Cottonwood Owner and Elmwood Owner (collectively, Owner), participated in an informal conference with the Enforcement Committee on November 27, 2018, and agreed to sign an Agreed Final Order with the following terms:

1. A \$2,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$500 portion of the administrative penalty on or before February 16, 2019;
3. Owner must address the remaining file monitoring violations as indicated in the exhibits to the Agreed Final Order, and submit full documentation to TDHCA on or before April 17, 2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$1,500 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$2,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
PK COTTONWOOD APARTMENTS, LP	§	TEXAS DEPARTMENT OF
WITH RESPECT TO COTTONWOOD	§	HOUSING AND COMMUNITY
APARTMENTS (HTC # 12048 / HOME #	§	AFFAIRS
1001677 / CMTS # 544) AND	§	
PK ELMWOOD APARTMENTS, LP WITH	§	
RESPECT TO ELMWOOD APARTMENTS	§	
(HTC 12045 / HOME 1001679 / CMTS	§	
1130)		

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 17<sup>th</sup> day of January, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **PK COTTONWOOD APARTMENTS, LP**, a Texas limited partnership (Cottonwood Owner) and **PK ELMWOOD APARTMENTS, LP**, a Texas limited partnership (Elmwood Owner) (to be collectively known as Respondent).

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

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

**WAIVER**

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

## **FINDINGS OF FACT ("FOF")**

### **Jurisdiction:**

1. During 2012, Cottonwood Owner was awarded HOME funds in the amount of \$340,810, and an allocation of Low Income Housing Tax Credits, in an annual amount of \$193,506, to acquire and rehabilitate Cottonwood Apartments (Cottonwood) (HTC 12048/ HOME 1001677 / CMTS 544).
2. During 2012, Elmwood Owner was awarded HOME funds in the amount of \$369,733, and an allocation of Low Income Housing Tax Credits, in an annual amount of \$205,380, to acquire and rehabilitate Elmwood Apartments (Elmwood) (HTC 12045 / HOME 1001679 / CMTS 1130).
3. Cottonwood Owner signed two land use restriction agreements (collectively Cottonwood LURAs) regarding the Property. The first was a HOME Land Use Restriction Agreement (Cottonwood HOME LURA), dated as of April 5, 2013, and filed of record at Document Number 626659 of the Official Public Records of Real Property of San Patricio County, Texas (San Patricio Records). The second was a Declaration of Land Use Restrictive Covenants / Land Use Restriction Agreement for Low Income Housing Credits (Cottonwood HTC LURA), dated as of December 5, 2013, and filed of record at Document Number 633859 of the San Patricio Records.
4. Elmwood Owner signed two land use restriction agreements (collectively Elmwood LURAs) regarding the Property. The first was a HOME Land Use Restriction Agreement (Elmwood HOME LURA), dated as of April 17, 2013, and filed of record at Document Number 00396452 of the Official Public Records of Real Property of Leon County, Texas (Leon Records). The second was a Declaration of Land Use Restrictive Covenants / Land Use Restriction Agreement for Low Income Housing Credits (Elmwood HTC LURA), dated as of November 15, 2013, and filed of record at Document Number 00402201 of the Leon Records.
5. Respondent is subject to the regulatory authority of TDHCA.

*[remainder of page intentionally blank]*



Compliance Violations<sup>1</sup>:

6. An on-site monitoring review was conducted at Cottonwood on March 6, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a June 21, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to provide evidence of regular, continuous, and substantial participation in the development, operation, and ownership of Cottonwood by a Historically Underutilized Business (HUB), a violation of 10 TAC §10.620 which outlines requirements for material participation and a violation of Appendix A of the Cottonwood HTC LURA, which requires a HUB to hold at least 51% ownership interest in the general partner, and to materially participate in the development and operation of the property throughout the Compliance Period. At the time that the HTC LURA was signed, the HUB was National Urban Construction Inc. The HUB has indicated that they do not intend to materially participate, and the finding remains unresolved to date.
  
7. An on-site monitoring review was conducted at Elmwood on February 28, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a July 3, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to provide evidence of regular, continuous, and substantial participation in the development, operation, and ownership of Cottonwood by a Historically Underutilized Business (HUB), a violation of 10 TAC §10.620 (Monitoring for Non-Profit Participation, or HUB, or CHDO Participation) which outlines requirements for material participation and a violation of Appendix A of the Cottonwood HTC LURA, which requires a HUB to hold at least 51% ownership interest in the general partner, and to materially participate in the development and operation of the property throughout the Compliance Period. At the time that the HTC LURA was signed, the HUB was National Urban Construction Inc. The HUB has indicated that they do not intend to materially participate, and the finding remains unresolved to date.
  - b. Respondent failed to maintain complete written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all

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

developments to establish written tenant selection criteria that meet minimum TDHCA requirements. Acceptable corrective documentation was submitted on November 27, 2018, 147 days past the deadline, after intervention by the Enforcement Committee.

- c. Respondent failed to provide a compliant affirmative marketing plan and evidence of outreach marketing, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. Acceptable corrective documentation was submitted on November 27, 2018, 147 days past the deadline, after intervention by the Enforcement Committee.
  - d. Respondent failed to provide evidence that required supportive services were being provided, a violation of Appendix A of the Elmwood HTC LURA and 10 TAC §10.619 (Monitoring for Social Services). Acceptable corrective documentation was submitted on November 27, 2018, 147 days past the deadline, after intervention by the Enforcement Committee.
8. The following violations remain outstanding at the time of this order:
- a. HUB violation described in FOF #6a; and
  - b. HUB violation described in FOF #7a.

#### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.620 in 2018, by failing to provide evidence of regular, continuous, and substantial participation in the development, operation, and ownership of Cottonwood and Elmwood.
5. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements for Elmwood.
6. Respondent violated 10 TAC §10.617 in 2018, by failing to provide a complete affirmative marketing plan for Elmwood.

7. Respondent violated 10 TAC §10.619 in 2018, by failing to provide evidence of required supportive services at Elmwood.
8. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
9. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
10. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
11. An administrative penalty of \$2,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$2,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

**IT IS FURTHER ORDERED** that Respondent shall address the file monitoring violations as indicated in the exhibits and submit full documentation to TDHCA on or before April 17, 2019.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty and the remaining \$1,500 of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$1,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community

Affairs” upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied. An exception to this requirement is if a HUB is identified and incorporated into the general partnerships of Cottonwood Owner and Elmwood Owner, in which case the partial transfer will not trigger payment of the deferred administrative penalty amount of \$1,500.

**IT IS FURTHER ORDERED** that any administrative penalty payment(s) must be submitted to the following address:

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

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 2, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on January 17, 2019.

By: \_\_\_\_\_

Name: J.B. Goodwin

Title: Chair of the Board of TDHCA

By: \_\_\_\_\_

Name: James "Beau" Eccles

Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS §**

**§**

**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**

**§**

**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS   §  
    §  
 COUNTY OF \_\_\_\_\_ §

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

1. “My name is Ronald Potterpin, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Director and Member for M&A Cottonwood GP, LLC, the general partner of PK Cottonwood Apartments, LP. I am the authorized representative of that organization, the owner of Cottonwood, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized to execute this document.
3. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs.”

**RESPONDENT:**

**PK COTTONWOOD APARTMENTS, LP**, a Texas limited partnership

**M&A COTTONWOOD GP, LLC**, a Texas limited liability company, its general partner

By: \_\_\_\_\_  
 Name: Ronald Potterpin  
 Title: Director and Member

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
 Signature of Notary Public

\_\_\_\_\_  
 Printed Name of Notary Public

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

STATE OF TEXAS    §  
   §  
COUNTY OF \_\_\_\_\_ §

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

1. "My name is Ronald Potterpin, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Director and Member for M&A Elmwood GP, LLC, the general partner of PK Elmwood Apartments, LP. I am the authorized representative of that organization, the owner of Elmwood, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized to execute this document.
3. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**PK ELMWOOD APARTMENTS, LP**, a Texas limited partnership

**M&A ELMWOOD GP, LLC**, a Texas limited liability company, its general partner

By: \_\_\_\_\_  
Name: Ronald Potterpin  
Title: Director and Member

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

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

## Exhibit 1

### File Monitoring Violation Resources and Instructions

#### **Resources:**

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced in this Agreed Final Order  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. **All corrections must be submitted via CMTS or as otherwise directed by the TDHCA Asset Management Division:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

#### **Instructions:**

3. **HUB Violation** – Cottonwood Owner and Elmwood Owner must each perform one of the following on or before April 17, 2019:
  - A. If you choose to admit a new HUB, with at least 51% ownership interest in the general partners for Cottonwood Owner and Elmwood Owner:
    - i. Submit complete ownership transfer requests via email to Rene Ruiz (rene.ruiz@tdhca.state.tx.us) and Lee Ann Chance (leeann.chance@tdhca.state.tx.us), with Ysella Kaseman (ysella.kaseman@tdhca.state.tx.us) as a cc.
      - a. The Ownership Transfer Form is available in the “Ownership Transfers” section at this link: <https://www.tdhca.state.tx.us/asset-management/pca-manual.htm>. There are 10 electronic tabs that represent separate forms or documents that all transfer requests must contain. A complete ownership transfer request will consist of one bookmarked PDF file. Full instructions are in the Post-Award Activities Manual.
      - b. The Post-Award Activities Manual at the following link provides complete instructions for submitting a complete ownership transfer request in the “Ownership Transfers (All Multifamily Developments)” section beginning at page 44: <https://www.tdhca.state.tx.us/asset-management/docs/18-PostAwardActivitiesManual.pdf>.
      - c. You must submit a separate ownership transfer request for Cottonwood and Elmwood.
    - ii. Submit an ownership transfer fee of \$1,000 for each property, for a total of \$2,000, per the current fee schedule at <https://www.tdhca.state.tx.us/asset-management/activity-fees.htm>.
    - iii. Final ownership transfer approval by TDHCA is not required on or before April 17, 2019, but you must submit complete ownership transfer requests and the required fees by that date. We urge you to submit the requests early in case additional information is requested by TDHCA.



- B. If you choose to submit a material LURA amendment request for Cottonwood and Elmwood:
- i. Submit complete material LURA amendment requests via email to Rene Ruiz (rene.ruiz@tdhca.state.tx.us) and Lee Ann Chance (leeann.chance@tdhca.state.tx.us), with Ysella Kaseman (ysella.kaseman@tdhca.state.tx.us) as a cc.
    - a. The amendment request coversheet is available in the “Amendments” section at this link: <https://www.tdhca.state.tx.us/asset-management/pca-manual.htm>. A complete amendment request will consist of one bookmarked PDF file. Full instructions are in the Post-Award Activities Manual.
    - b. The Post-Award Activities Manual at the following link provides complete instructions for submitting a complete material LURA amendment request in the “Amendments to the LURA (All Multifamily Developments)” section beginning at page 23: <https://www.tdhca.state.tx.us/asset-management/docs/18-PostAwardActivitiesManual.pdf>.
    - c. You must submit a separate material LURA amendment request for Cottonwood and Elmwood.
  - ii. Submit a LURA amendment fee of \$2,500 for each property, for a total of \$5,000, per the current fee schedule at <https://www.tdhca.state.tx.us/asset-management/activity-fees.htm>.
  - iii. Final amendment approval by TDHCA is not required on or before April 17, 2019, but you must submit complete amendment requests and the required fees by that date. We urge you to submit the requests early in case additional information is requested by TDHCA.

**Exhibit 2:**

**Texas Administrative Code**

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

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

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

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

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

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

Government Code §2306.6706.

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

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

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

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

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

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

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

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

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

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

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

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

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

1c

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Oak Timbers Ennis (HTF 85004 / CMTS 2679)

***RECOMMENDED ACTION***

**WHEREAS**, Oak Timbers Ennis, owned by 1 Timber Oaks - Ennis, LLC (Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, all findings that had been referred for an administrative penalty were resolved informally before consideration by the Enforcement Committee;

**WHEREAS**, Owner's representatives have agreed, subject to Board approval, to enter into an Agreed Final Order stipulating that violations occurred and assessing no administrative penalty; and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order, assessing no administrative penalty, but stipulating that violations occurred at Oak Timbers Ennis (HTF 85004 / CMTS 2679), as presented at this meeting, but authorizing staff to make any necessary non-substantive technical corrections, is hereby adopted as the order of this Board.

## **BACKGROUND**

1 Timber Oaks - Ennis, LLC (Owner) is the owner of Oak Timbers Ennis (Property), a low income apartment complex composed of sixty-five units, located in Ellis County. Records of the Texas Secretary of State list Cengis Lusho as the Director and Manager for the organization. The property is self-managed via Lusho LLC, with Cengis Lusho listed in CMTS as the primary contact.

The Property is subject to a Land Use Restriction Agreement (LURA) signed by a prior owner in 2012 in consideration for a Housing Trust Fund (HTF) in the amount of \$\$325,000 to build and operate the Property. The Owner acquired the property in 2014, with TDHCA permission, and paid off the HTF note. The LURA remains in effect per Section 7.8 of the LURA which stipulates that its restrictions run with the land, and as further required by an Agreement to Comply and Second Amendment signed by Owner in 2014.

Owner was previously referred for an administrative penalty three times in 2015, for reporting, file monitoring, and physical condition standards violations. When contacted by the Enforcement Committee about those referrals, Owner indicated that the onsite manager had died in May of that year. Acceptable corrections were then submitted and a warning letter was issued, closing the 2015 administrative penalty referrals. The property was referred for an administrative penalty again in 2018 for failure to provide complete written policies and procedures. Overall, because this was the only referred finding and it was fairly minor, the Enforcement Committee Secretary would typically allow it to be resolved informally per the Enforcement Committee's instructions on such violations, however, this violation was also referred during 2015. Because the violation has occurred multiple times, multiple corrective reviews were required after referral, and the issues with the criteria weren't ultimately resolved until late 2018, the Enforcement Committee determined that it is not appropriate to close this referral with no action. However, corrective documentation was received before the informal conference to address all violations, and Owner has agreed to sign an Agreed Final Order assessing no administrative penalty for noncompliance at Oak Timbers Ennis, but stipulating that violations had occurred and were not timely corrected.

Consistent with direction from the Department's Enforcement Committee, an Agreed Final Order stipulating that violations occurred is recommended, with no administrative penalty. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
1 TIMBER OAKS - ENNIS, LLC WITH	§	TEXAS DEPARTMENT OF
RESPECT TO OAK TIMBERS ENNIS	§	HOUSING AND COMMUNITY
(HTF FILE # 850004 / CMTS # 2679)	§	AFFAIRS
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 17<sup>th</sup> day of January, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **1 TIMBER OAKS - ENNIS, LLC**, a Texas limited liability company (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 2002, Oak Timbers, a Texas nonprofit corporation (Prior Owner) received a Housing Trust Fund loan in the total amount of \$325,000, to build and operate Oak Timbers Ennis (Property) (HTF file No. 850004 / CMTS No. 2679 / LDLD No. 563).

2. Prior Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective September 28, 2000, and filed of record at Volume 01731, Page 2047 of the Official Public Records of Real Property of Ellis County, Texas (Records), as amended by a First Amendment dated March 22, 2005, and filed in the Records at Document Number 0509984, as further amended by an Agreement to Comply with and Second Amendment dated May 7, 2014, and file din the Records at Document Number 1410504, as further amended by a Third Amendment dated November 26, 2018, and filed in the Records at Document Number 1833990. In accordance with Section 7.8 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Comply and Second Amendment), effective May 7, 2014, and filed in the Records at Document Number 1410504, thereby further binding Respondent to the terms of the LURA.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

5. An on-site monitoring review was conducted on January 24, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a May 3, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. Further corrective documentation was received by the Enforcement Committee on August 7, 2018, September 27, 2018, and October 22, 2018. The final submission resolved problems that were originally identified by the Compliance Division, but it also identified an additional problem relating to tenant selection preferences that required an administrative correction to the LURA before the finding could be fully closed. That LURA amendment was recorded on November 26, 2018, fully resolving the finding.
6. All violations listed above are considered resolved at the time of this Order.

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



## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements;
4. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
5. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
6. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
7. It is appropriate to assess no administrative penalty in accordance with the policies situated at 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent not be assessed an administrative penalty.

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 1, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on January 17, 2019.

By: \_\_\_\_\_

Name: J.B. Goodwin

Title: Chair of the Board of TDHCA

By: \_\_\_\_\_

Name: James "Beau" Eccles

Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS §**

**§**

**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**

**§**

**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS                    §  
   §  
COUNTY OF \_\_\_\_\_ §

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

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

**RESPONDENT:**

**1 TIMBER OAKS - ENNIS, LLC**, a Texas limited liability company

By: \_\_\_\_\_  
Name: Cengis Lusho  
Title: Director and Manager

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

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

## Exhibit 1

### Texas Administrative Code

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

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

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

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a

hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

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

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit

Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

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

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

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

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

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

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

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

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

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

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

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

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

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

1d

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Coppertree Village (HTC 70131 / CMTS 931)

**RECOMMENDED ACTION**

**WHEREAS**, Coppertree Village, owned by Coppertree Village Holdings, LLC (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, on December 18, 2018, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$10,000, with \$5,000 to be paid within 30 days of signature and the remaining \$5,000 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before April 17, 2019;

**WHEREAS**, unresolved compliance findings include Uniform Physical Condition Standards (UPCS) violations identified during inspections performed on March 28, 2017, and August 16, 2018; and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$10,000, subject to partial forgiveness as outlined above, for noncompliance at Coppertree Village, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.



## **BACKGROUND**

Coppertree Village Holdings, LLC d/b/a Coppertree Investments I LLC (67% ownership interest) and Coppertree Apartments LLC (33% ownership interest) (collectively referenced as “Owner”) are tenants in common for Coppertree Village (Property), a low income apartment complex composed of 322 units, located in Harris County. Records of the Texas Secretary of State indicate that Viking Management LLC d/b/a Coppertree Management LLC, is the governing person for both tenants in common, with Charles David Taylor as its sole owner. The property is managed by Triumph Housing Management LLC (Triumph), with Paul Ponte listed as the primary contact in CMTS. CMTS lists Alice Morris, also of Triumph, as the primary contact for Owner. The primary contact for the Enforcement Committee has been David Gates, Chief Operating Officer for Triumph.

The Property is subject to a Land Use Restriction Agreement (LURA) signed by a prior owner in 1992 in consideration for a housing tax credit allocation in the annual amount of \$230,891 to rehabilitate and operate the Property. The Owner acquired the property in 2015, and the LURA remains in effect per Section 2 of the LURA which stipulates that its restrictions run with the land.

The Property was referred for an administrative penalty in 2018 for Uniform Physical Condition Standards (UPCS) findings identified during a 2017 inspection. The majority of the referred findings were resolved in response to an informal conference notice, with the only unresolved finding relating to extreme deterioration of the exterior of the community center. A plan and contract for a full rehabilitation of that building was received by the Enforcement Committee. The Committee considered the submitted plan and voted to table a decision since the Owner had not previously been referred for an administrative penalty, and work was already under contract to address the one remaining finding. Multiple delays were reported, including weather delays, unexpected discovery of a termite infestation, a gas leak, plumbing leaks, and a partial roof collapse. The repairs remained incomplete as of September 25, 2018, and the Committee requested that staff set an informal conference. Meanwhile, the Compliance Division had performed a new UPCS inspection on August 16, 2018, in response to multiple complaints and outside reports about the poor condition of the property. The corrective action deadline for that new inspection was December 4, 2018, so the informal conference was scheduled for December 18, 2018, in order to incorporate both inspections. During the informal conference, authorized owner representative, David Gates of Triumph, stated that the owner has personally funded significant repair contracts during the past year, including new roofs, exterior paint, new flooring, new appliances, corrections for a HUD REAC<sup>1</sup> inspection, corrections for TDHCA UPCS findings, and repairs to water and fire damaged units. They have addressed issues relating to faulty electrical transformers that are directly owned by the Property, and intend to complete all TDHCA repairs by early 2019. They have also implemented security measures to improve safety and decrease vandalism, and the property management company’s regional manager is now based out of the Property.

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<sup>1</sup> The Real Estate Assessment Center (REAC) is the inspection performed by HUD as part of the Section 8 program.

Owner representative participated in an informal conference with the Enforcement Committee on December 18, 2018, and agreed to an Agreed Final Order with the following terms:

1. A \$10,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$5,000 portion of the administrative penalty on or before February 18, 2019;
3. Owner must correct the UPCS violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before April 17, 2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$5,000 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$10,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
COPPERTREE VILLAGE HOLDINGS, LLC	§	TEXAS DEPARTMENT OF
WITH RESPECT TO COPPERTREE VILLAGE	§	HOUSING AND COMMUNITY
(HTC FILE # 70131 / CMTS # 931)	§	AFFAIRS
	§	
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 17<sup>th</sup> day of January, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **COPPERTREE VILLAGE HOLDINGS, LLC, D/B/A COPPERTREE INVESTMENTS I LLC**, a Delaware limited liability company and **COPPERTREE APARTMENTS LLC**, a Texas limited liability company (collectively, Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1990, Texas-Coppertree Village Limited Partnership (Prior Owner) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of

\$230,891 to rehabilitate and operate Coppertree Village (Property) (HTC file No. 70131 / CMTS No. 931 / LDLD No. 238).

2. Prior Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective December 8, 1992, and filed of record at Document Number N992894 of the Official Public Records of Real Property of Harris County, Texas ("Records"). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property on August 7, 2015 and is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>2</sup>:

5. A Uniform Physical Condition Standards (UPCS) inspection was conducted on March 28, 2017. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a July 3, 2017, corrective action deadline was set. Partial corrections and a request for an adjustment were submitted to the Compliance Division on July 3, 2017, indicating that some items were not completed as a result of ongoing modernization in progress. Violations listed at Exhibit 1 were referred for an administrative penalty in 2018, and further corrections were received by the Enforcement Committee in response to an informal conference notice, addressing all referred findings with the exception of a finding relating to extreme deterioration of the exterior of the community center. A contract for full rehabilitation of the building was received by the Enforcement Committee, but evidence of resolution has not been received to date.
6. In response to complaints received about the property, another UPCS inspection was conducted on August 16, 2018. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a December 4, 2018, corrective action deadline was set. No corrective documentation has been submitted, but multiple contracts for rehabilitation were received by the Enforcement Committee.
7. The following violations remain outstanding at the time of this order:
  - a. 2017 UPCS violation described in FOF #5; and
  - b. 2018 UPCS violations described in FOF #6.

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<sup>2</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.621 in 2017 and 2018, and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.<sup>3</sup>
5. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
6. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
7. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
8. An administrative penalty of \$10,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

*[remainder of page intentionally blank]*

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<sup>3</sup> HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a)

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$10,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$5,000 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated in the exhibits and submit corrective documentation as indicated in the Exhibits, in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before April 17, 2019.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty and the remaining administrative penalty in the amount of \$5,000 will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$5,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

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

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

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

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on January 17, 2019.

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

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

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas



STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

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

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

**RESPONDENT:**

**COPPERTREE VILLAGE HOLDINGS, LLC, d/b/a COPPERTREE INVESTMENTS I LLC**, a Delaware limited liability company,  
**VIKING MANAGEMENT LLC, d/b/a COPPERTREE MANAGEMENT LLC**, a Washington limited liability company, its governing person

By: \_\_\_\_\_  
Name: Charles David Taylor  
Title: Owner

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

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

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

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

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

**RESPONDENT:**

**COPPERTREE APARTMENTS LLC**, a Texas limited liability company

**VIKING MANAGEMENT LLC**, d/b/a **COPPERTREE MANAGEMENT LLC**, a Washington limited liability company, its governing person

By: \_\_\_\_\_

Name: Charles David Taylor

Title: Owner

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

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

My Commission Expires: \_\_\_\_\_

## **Exhibit 1**

### **2017 UPCS Instructions**

1. A complete list of referred findings for the 2017 UPCS inspection is attached, however, corrective documentation has been received and accepted for all findings listed in the attached spreadsheet with the exception of the following:
  - Extreme deterioration throughout the exterior of the community center, including missing pieces, holes and spalling
2. Prepare corrective documentation for the above unresolved finding following these guidelines: <http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>
3. Submit corrective documentation via CMTS following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf> on or before April 17, 2019, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review.

**2017 UPCS violations that were referred for an administrative penalty:**

Deficiency Area	L1	L2	L3	Deficiency	Comments	Corrected	Correction Date
<b>Site:</b>							
Fencing and Gates			x	Holes/Missing Sections/Damaged/Falling/Leaning (Security/Safety)	missing sections multiple locations	yes	May-18
Grounds			x	Erosion/Rutting Areas	ruts multiple locations	yes	May-18
Grounds		x		Overgrown/Penetrating Vegetation	trees rubbing building 6	yes	May-18
Health & Safety			x	Hazards—Sharp Edges	broken glass ; throughout property	yes	May-18
Health & Safety			x	Hazards—Tripping	sidewalk uneven; driveway uneven multiple locations	yes	May-18
Market Appeal	x			Graffiti	graffiti on fences	yes	May-18
Play Areas and Equipment			x	Deteriorated Play Location Surface	deteriorated surface and retaining wall x3 playgrounds	yes	May-18
Refuse Disposal		x		Broken/Damaged Enclosure—Inadequate Outside Storage Space.	damaged enclosures	yes	May-18
Storm Drainage			x	Damaged/Obstructed	drain obstruction / missing cover	yes	May-18
<b>Bldg 6:</b>							
<b>Building Exterior</b>							
Roofs			x	Damaged Soffits/Fascia/Soffit Vents	deteriorated soffit	yes	May-18
<b>Bldg 7:</b>							
Kitchen	x			Refrigerator-Missing/Damaged/Inoperable	Fresh food seal needs replaced;	yes	May-18
<b>Building Systems</b>							
<b>Bldg 8:</b>							
<b>812</b>							
<b>Building Exterior</b>							
<b>Building Systems</b>							
Sanitary System			x	Missing Drain/Cleanout/Manhole Covers	exterior cleanout cover missing ;	yes	May-18
<b>Bldg 10:</b>							
<b>1004</b>							
Kitchen	x			Refrigerator-Missing/Damaged/Inoperable	Fresh food seal needs replaced;	yes	May-18
<b>Bldg 12:</b>							
<b>1201 for 1206</b>							
Kitchen	x			Refrigerator-Missing/Damaged/Inoperable	Fresh food seal needs replaced;	yes	May-18
<b>Bldg 14:</b>							
<b>1406</b>							

<b>Building Exterior</b>							
Roofs			x	Damaged Soffits/Fascia/Soffit Vents	deteriorated soffit	yes	May-18

<b>boiler Building 1:</b>							
<b>Building Exterior</b>							
Walls			x	Missing Pieces/Holes/Spalling	deteriorated siding / missing paint	yes	May-18
<b>Building Systems</b>							
<b>boiler Building 2:</b>							
<b>Building Exterior</b>							
Walls			x	Missing Pieces/Holes/Spalling	deteriorated siding	yes	May-18
<b>boiler Building 3:</b>							
<b>Building Exterior</b>							
Walls			x	Missing Pieces/Holes/Spalling	deteriorated siding	yes	May-18
<b>community center:</b>							
<b>Building Exterior</b>							
Walls			x	Missing Pieces/Holes/Spalling	extreme deteriorating throughout building	no no	

## **Exhibit 2**

### **2018 UPCS Instructions**

1. A list of referred 2018 UPCS violations that must be corrected is attached. All findings in the attached spreadsheet are considered uncorrected.
2. Prepare corrective documentation for each finding following these guidelines:  
<http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>
3. Submit corrective documentation via CMTS following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf> on or before April 17, 2019, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review.

**2018 UPCS violations that were referred for an administrative penalty:**

**Texas Department of Housing And Community Affairs  
List of Deficiencies Found**

Printed On: August 27, 2018

Inspectable Area	Inspectable Item	Deficiency				Comments
Coppertree Village 1415 W Gulf Band Rd Houston, TX 77088						
Building:						
Unit:						
	Fencing and Gates	Holes/Missing Section/Damaged/Falling/Leaning (Security, Safety)		L3		Security fence missing section by building 5
	Grounds	Ponding/Site Drainage		L2		Pounding by building 1
	Health & Safety	Hazards - Sharp Edges		L3		Rebar protruding out of curb by building 1 and between building 2 and 13
	Health & Safety	Hazards - Tripping		L3		Missing storm grate by building 6
	Storm Drainage	Damaged/Obstructed		L3		Area drain is clogged by building 6/ Missing grate/drain clogged between building 13 and 14
Building: Bldg 1						
Unit:						
Building Exterior						
	Health & Safety	Hazards - Other		L3		Hand railing loose at unit 134, 128, and 126
	Health & Safety	Hazards - Sharp Edges		L3		Broken window by 104 and 120
	Roofs	Damaged Soffits/Fascia/Soffit Vents		L3		Damaged soffit/ Fascia
	Roofs	Missing/Damaged Components from Downspout/Gutter		L2		Missing gutter elbow; Missing gutter by unit 123; Missing splashblock
	Walls	Missing Pieces/Holes/Spalling		L2		Trim deteriorated by unit 126
	Windows	Cracked/Broken/Missing/Cracked Panes		L3		Broken window by 104 and 120; Missing window pane by 141
Unit: Unit 109						
	Bathroom	Cabinets - Damaged/Missing		L1		Countertop sagging
	Ceiling	Holes/Missing Tiles/Panels		L1		Hole above shower
	Doors	Deteriorated/Missing Seals (Entry Only)		L3		Front entry seal deteriorated
	Kitchen	Countertops - Missing/Damaged		L2		Countertops sagging
Building: Bldg 10						
Unit: Unit 1002						
	Ceiling	Bulging/Buckling		L3		Ceiling buckling
	Doors	Damaged Hardware/Locks		L1		Closet door hardware missing
	Health & Safety	Hazards - Sharp Edges		L3		Broken glass in living room
	Kitchen	Countertops - Missing/Damaged		L2		Countertop damaged
	Porch/Balcony	Baluster/Side Railings Damaged		L3		Side railing is loose
	Smoke Detector	Missing/Inoperable		L3		All smoke detectors inoperable
Unit: Unit 1004						
	Bathroom	Shower/Tub - Damaged/Missing		L3		Missing tub hardware bath 1
	Doors	Damaged Hardware/Locks		L3		Entry door at balcony hardware is damaged
	Kitchen	Refrigerator-Missing/Damaged/Inoperable		L3		Missing refrigerator
	Kitchen	Sink - Damaged/Missing		L3		Missing sink hardware
	Kitchen	Range/Stove - Missing/Damaged/Inoperable		L3		Missing range/stove
	Outlets/Switches	Missing/Broken Cover Plates		L3		Missing covers bath 2, bedroom 1, and living room
	Smoke Detector	Missing/Inoperable		L3		All smoke detectors missing/inoperable
Unit: Unit 1015						
	Smoke Detector	Missing/Inoperable		L3		Smoke detector Inoperable in bedroom
Building: Bldg 11						
Unit:						
Building Exterior						
	Walls	Stained/Peeling/Needs Paint		L1		Needs paint
Unit: Unit 1106						
	Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing		L2		Toilet seat missing bath2
	Bathroom	Shower/Tub - Damaged/Missing		L3		tub drain deteriorated
	Doors	Damaged Hardware/Locks		L1		Missing door hardware pantry
	Doors	Missing Door		L3		Missing hall closet door, bedroom 1, Bath 1
	Doors	Damaged Surface (Holes/Paint/Rusting)		L3		Damage door bath 2, closet bedroom 2
	Kitchen	Range/Stove - Missing/Damaged/Inoperable		L1		Missing burner knob
	Smoke Detector	Missing/Inoperable		L3		Smoke detectors inoperable
Building: Bldg 13						
Unit: Unit 1303						



**Texas Department of Housing And Community Affairs**  
**List of Deficiencies Found**

Printed On: August 27, 2018

Inspectable Area Inspectable Item	Deficiency	C	S	3	Comments
Bathroom	Shower/Tub - Damaged/Missing			L3	Tub tile damaged
Doors	Damaged Hardware/Locks	L1			Bedroom door hardware damaged
Doors	Damaged Frames/Threshold/Lintels/Trim			L3	Back entry door trim damaged/bedroom door trim damaged
Building: Bldg 14					
Unit:					
Building Exterior					
Walls	Missing Pieces/Holes/Spalling			L3	Siding falling off/needs paint
Unit: Unit 1413					
Ceiling	Mold/Mildew/Water Stains/Water Damage	L1			Hole in ceiling above tub bath 2
Kitchen	Range/Stove - Missing/Damaged/Inoperable	L1			Back burner not working
Kitchen	Plumbing - Leaking Faucet/Pipes	L1			Faucet is leaking
Building: Bldg 19					
Unit:					
Restrooms/Pool Structures					
Bathroom	Lavatory Sink - Damaged Missing	L1			Hole in bathroom sink
Building Systems					
Fire Protection	Missing/Damaged/Expired Extinguishers			L3	Expired extinguisher kitchen/office (RDI)
Building: Bldg 2					
Unit:					
Building Systems					
Domestic Water	Water Supply Inoperable			L3	No cold water in kitchen unit 202
Building Exterior					
Roofs	Damaged Soffits/Fascia/Soffit Vents			L3	Damaged soffit/fascia
Roofs	Missing/Damaged Components from Downspout/Gutter		L2		Missing gutter elbow
Unit: Unit 201					
Bathroom	Lavatory Sink - Damaged/Missing	L1			Missing stoppers both baths
Ceiling	Bulging/Buckling			L3	Ceiling buckling in living room
Doors	Damaged Frames/Threshold/Lintels/Trim			L2	Damaged trim bedroom 1
Doors	Missing Door	L1			Missing closet door
Kitchen	Sink - Damaged/Missing			L3	Missing sink knobs
Walls	Peeling/Needs Paint			L2	Walls need paint/ peeling
Building: Bldg 3					
Unit:					
Building Exterior					
Doors	Damaged Frames/Threshold/Lintels/Trim			L3	Damaged entry door frame unit 303
Roofs	Damaged Soffits/Fascia/Soffit Vents			L3	Damaged soffit/ fascia
Walls	Missing Pieces/Holes/Spalling			L3	Siding damaged/trim/water penetrating/ needs paint
Windows	Cracked/Broken/Missing/Cracked Panes			L3	Window missing unit 302
Building: Bldg 4					
Unit:					
Building Exterior					
Doors	Damaged Frames/Threshold/Lintels/Trim			L3	Entry frame damaged unit 407/ Threshold damaged entry unit 411
Roofs	Missing/Damaged Components from Downspout/Gutter		L2		Missing downspout
Roofs	Damaged Soffits/Fascia/Soffit Vents			L3	Fascia
Walls	Missing Pieces/Holes/Spalling			L3	Deteriorated siding trim water penetrating/ Siding need paint
Windows	Cracked/Broken/Missing/Cracked Panes			L3	Broken window unit 403
Unit: Unit 411					
Floors	Soft Floor Covering Missing/Damaged	L1			Carpet damaged bedroom 2
Building: Bldg 5					
Unit:					
Building Systems					
Fire Protection	Missing/Damaged/Expired Extinguishers			L3	Extinguisher discharged unit 521(RDI)
Building Exterior					
Health & Safety	Hazards - Sharp Edges			L3	Broken window panes 501. 541, and 543
Roofs	Damaged Soffits/Fascia/Soffit Vents			L3	Damaged soffits/Fascia
Roofs	Missing/Damaged Components from Downspout/Gutter	L1			Missing splashblock

**Texas Department of Housing And Community Affairs**  
**List of Deficiencies Found**

Printed On: August 27, 2018

Inspectable Area Inspectable Item	Deficiency	1	2	3	Comments
Walls	Stained/Peeling/Needs Paint		L2		Needs paint
Walls	Missing Pieces/Holes/Spalling			L3	Siding falling off
Windows	Cracked/Broken/Missing/Cracked Panes			L3	Broken window panes 501, 541, and 543 Missing pane 540
Windows	Peeling/Needs Paint		L1		Trim needs paint
Windows	Damaged Sills/Frames/Lintels/Trim		L1		Damaged trim
Unit: Unit 501					
Bathroom	Ventilation/Exhaust System - Inoperable			L2	Exhaust fan inoperable bath 2
Bathroom	Lavatory Sink - Damaged/Missing			L3	Bath 2 sink handle broken/ Bath 1 no water
Bathroom	Shower/Tub - Damaged/Missing			L3	Broken/ Missing tiles in bath 1 and 2 tubs; bath 1 no water
Health & Safety	Electrical Hazards - Exposed Wires/Open Panels			L3	Missing cover plates in bath 1 and 2
Lighting	Missing/Inoperable Fixture	L1			Missing dinning room fixture
Outlets/Switches	Missing/Broken Cover Plates			L3	Missing cover plates bath 1 and 2
Unit: Unit 515					
Bathroom	Lavatory Sink - Damaged/Missing		L1		Missing stopper (RDI)
Walls	Damaged		L1		Puncture by living room light
Unit: Unit 519					
Bathroom	Lavatory Sink - Damaged/Missing		L1		Missing sink stopper bath 1
Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Blocked egress in living room
Unit: Unit 521					
Kitchen	Cabinets - Missing/Damaged			L2	Undersink shelf sagging (NIS)
Unit: Unit 532					
Bathroom	Lavatory Sink - Damaged/Missing		L1		Missing stopper bath 1
Ceiling	Holes/Missing Tiles/Panels			L3	Above bathroom door
Doors	Damaged Surface (Holes/Paint/Rusting)			L3	Front entry door peeling/Hole in pantry door
Floors	Soft Floor Covering Missing/Damaged			L3	All soft floor covering is damaged
Smoke Detector	Missing/Inoperable			L3	All smokes inoperable
Building: Bldg 6					
Unit:					
Building Systems					
Domestic Water	Water Supply Inoperable			L3	No hot water unit 602 bath 2
Building Exterior					
Doors	Damaged Frames/Threshold/Lintels/Trim			L3	Entry door 609 frame is damaged
Health & Safety	Garbage and Debris - Outdoors			L3	Garbage piled by entry door
Roofs	Damaged Soffits/Fascia/Soffit Vents			L3	Fascia rotted/deteriorated/sofet damaged
Walls	Missing Pieces/Holes/Spalling			L3	Exterior rotted/deteriorated/Hole by breaker panals
Unit: Unit 602					
Bathroom	Shower/Tub - Damaged/Missing		L1		Missing stopper bath 2
Ceiling	Holes/Missing Tiles/Panels			L3	Hole around A/C filter
Doors	Damaged Surface (Holes/Paint/Rusting)		L1		
Doors	Missing Door			L2	Missing hall closet door and bedroom closet door
Health & Safety	Infestation - Insects			L3	Roaches
Kitchen	Cabinets - Missing/Damaged			L2	Missing doors
Outlets/Switches	Missing/Broken Cover Plates			L3	Broken outlet in dinning room
Smoke Detector	Missing/Inoperable			L3	All smoke detectors inoperable
Walls	Damaged		L1		Holes in walls; dinning, living room, hallway, and bedroom 1
Unit: Unit 603					
Bathroom	Shower/Tub - Damaged/Missing		L1		Missing stopper bath 1
Doors	Missing Door		L1		Bedroom door missing
Floors	Soft Floor Covering Missing/Damaged			L3	All soft floor covering damaged
Kitchen	Range/Stove - Missing/Damaged/Inoperable			L3	Stove not in place
Smoke Detector	Missing/Inoperable			L3	All smoke detectors inoperable
Building: Bldg 7					
Unit:					
Building Exterior					
Roofs	Missing/Damaged Components from Downspout/Gutter			L2	Missing gutter by unit 729
Building Systems					

**Texas Department of Housing And Community Affairs**  
**List of Deficiencies Found**

Printed On: August 27, 2018

Inspectable Area Inspectable Item	Deficiency	1	2	3	Comments
Sanitary System	Broken/Leaking/Clogged Pipes or Drains			L3	Toilet in unit 717 clogged when raining
Building Exterior					
Walls	Missing Pieces/Holes/Spalling		L2		
Unit: Unit 701					
Bathroom	Lavatory Sink - Damaged/Missing			L3	Bath 2 countertop sagging
Doors	Damaged Frames/Threshold/Lintels/Trim			L3	Bath 1 door frame damaged
Floors	Soft Floor Covering Missing/Damaged			L3	Carpet damaged throughout
Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Blocked egress bedroom 1 and 2
Kitchen	Countertops - Missing/Damaged			L2	Countertop sagging
Unit: Unit 704					
Bathroom	Plumbing - Clogged Drains	L1			Bath tub drains slow/ sink drains slow
Kitchen	Range/Stove - Missing/Damaged/Inoperable			L3	Back 2 burners inoperable
Unit: Unit 708					
Bathroom	Plumbing - Leaking Faucet/Pipes	L1			Faucet leaking in bath tub
Unit: Unit 715					
Bathroom	Shower/Tub - Damaged/Missing			L3	Tub tile damaged
Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing			L2	toilet tank cover missing
Bathroom	Ventilation/Exhaust System - Inoperable			L2	Exhaust fan inoperable
Bathroom	Lavatory Sink - Damaged/Missing	L1			Missing stopper bath 1
Doors	Deteriorated/Missing Seals (Entry Only)			L3	Entry door seal deteriorated
Floors	Hard Floor Covering Missing/Damaged Flooring/Tiles			L3	Kitchen floor damaged
Health & Safety	Electrical Hazards - Exposed Wires/Open Panels			L3	Cover plate broken/ exposed wires
Outlets/Switches	Missing/Broken Cover Plates			L3	Outlet cover broken
Smoke Detector	Missing/Inoperable			L3	All smoke detectors inoperable
Walls	Damaged			L2	Hole in bedroom 2/ Hole by switch bath 1
Unit: Unit 717					
Doors	Deteriorated/Missing Seals (Entry Only)			L3	Entry door seal deteriorated
Unit: Unit 732					
Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing			L3	Toilet bath 1 inoperable
Kitchen	Range/Stove - Missing/Damaged/Inoperable			L3	All burners missing/ inoperable
Kitchen	Dishwasher/Garbage Disposal - Inoperable			L2	Missing dishwasher
Outlets/Switches	Missing/Broken Cover Plates			L3	Missing outlet cover living room, bedroom 1, kitchen x 2, and bath 2
Smoke Detector	Missing/Inoperable			L3	Missing smoke detector bedroom 1
Building: Bldg 8					
Unit: Unit 807					
Bathroom	Cabinets - Damaged/Missing	L1			Counter top sagging
Bathroom	Lavatory Sink - Damaged/Missing	L1			Missing stopper in bath 1 and 2
Bathroom	Shower/Tub - Damaged/Missing			L3	Missing knobs and showerhead bath 2; Missing knobs and hole in tub bath 1
Ceiling	Holes/Missing Tiles/Panels			L3	2' x 2' hole in bath 1
Floors	Hard Floor Covering Missing/Damaged Flooring/Tiles			L3	Flooring is damaged throughout
Kitchen	Countertops - Missing/Damaged			L2	Countertop is sagging
Outlets/Switches	Missing/Broken Cover Plates			L3	Loose outlet/ Missing cover plate in living room; Missing cover plates in bedroom 2; broken outlet cover in kitchen
Smoke Detector	Missing/Inoperable			L3	All smokes inoperable
Walls	Damaged			L2	Hole in wall Bedroom 2
Building: Bldg 9					
Unit:					
Building Exterior					
Health & Safety	Hazards - Other			L3	Stair landing leaning at unit 913
Unit: Unit 905					
Bathroom	Shower/Tub - Damaged/Missing			L2	Bath tub discolored
Ceiling	Mold/Mildew/Water Stains/Water Damage	L1			Hole with water damage above bath tub
Doors	Damaged Hardware/Locks	L1			Door hardware missing/damaged bedroom 2 closet
Kitchen	Dishwasher/Garbage Disposal - Inoperable			L2	Dishwasher inoperable
Kitchen	Countertops - Missing/Damaged			L2	Countertop sagging

**Texas Department of Housing And Community Affairs**  
**List of Deficiencies Found**

Printed On: August 27, 2018

Inspectable Area Inspectable Item	Deficiency	1	2	3	Comments
Unit: Unit 908 Kitchen	Range/Stove - Missing/Damaged/Inoperable	L1			Front left burner inoperable
Unit: Unit 908 Ceiling	Peeling/Needs Paint	L1			Hall ceiling needs paint
Unit: Unit 908 Kitchen	Dishwasher/Garbage Disposal - Inoperable		L2		Garbage disposal inoperable
Unit: Unit 908 Lighting	Missing/Inoperable Fixture	L1			Bathroom light inoperable
Unit: Unit 913 Smoke Detector	Missing/Inoperable			L3	Smoke detector hall inoperable
Unit: Unit 913 Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Blocked egress/security bars
Building: Bldg Mechanical 1 Unit:					
Building Exterior					
Health & Safety	Garbage and Debris - Outdoors			L3	Debris on top of roof
Health & Safety	Electrical Hazards - Exposed Wires/Open Panels			L3	Electric panel cover missing on broiler (RDI)
Roofs	Ponding			L3	Ponding on roof

**Exhibit 3:**

**Texas Administrative Code**

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

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

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

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

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

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

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

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

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

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

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

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

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

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

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

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

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

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

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

1e

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Harmon Elliott Senior Citizens Complex (HTF 355007 / CMTS 2642)

**RECOMMENDED ACTION**

**WHEREAS**, Harmon Elliott Senior Citizens Complex, owned by the Housing Authority of the City of Muleshoe (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, representatives of Owner have attended multiple informal conferences and signed a prior Agreed Final Order in 2015;

**WHEREAS**, an administrative penalty of \$1000 was included in that Agreed Final Order, with \$250 paid at signing and the remainder to be forgiven if all violations were resolved as specified in the Agreed Final Order;

**WHEREAS**, the 2015 Agreed Final Order was violated;

**WHEREAS**, the remaining \$750 administrative penalty was paid and final corrections were received after the deadline in the 2015 Agreed Final Order;

**WHEREAS**, TDHCA performed a new regularly scheduled onsite monitoring review in 2017, and identified violations that were not timely resolved and were referred for an administrative penalty;

**WHEREAS**, on December 18, 2018, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$2,000, with \$1,000 to be paid within 30 days of signature and the remaining \$1,000 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before February 18, 2019;

**WHEREAS**, unresolved compliance findings include: failure to provide a complete Affirmative Marketing Plan and evidence of outreach marketing, failure to provide compliant Tenant Selection Criteria, and a Household Income Above Limit Upon Initial Occupancy violation for unit 802; and

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



**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$2,000, subject to partial forgiveness as outlined above, for noncompliance at Harmon Elliott Senior Citizens Complex (HTF 355007 / CMTS 2642), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

## BACKGROUND

Housing Authority of the City of Muleshoe (Owner) is the owner of Harmon Elliott Senior Citizens Complex (Property), a low income apartment complex composed of 16 units, located in Bailey County. Raquel Posadas Kirven is its Executive Director, and CMTS lists her as the primary contact(s) for Owner. Board members for the housing authority include: Jose Sanchez Mora, Terome Clemmons, Steve Friskup, and Lupe Mendoza. The property is self-managed. There are two staff persons, including Ms. Kirven and a secretary.

The Property is subject to a Land Use Restriction Agreement (LURA) signed in 1996 in consideration for a Housing Trust Fund (HTF) loan in the amount of \$219,229 to build and operate the Property.

Owner was previously referred for an administrative penalty for reporting violations, file monitoring violations, and UPCS violations. An Agreed Final Order was signed in 2015, including a \$1,000 administrative penalty, with \$250 paid at signing and the remaining \$750 to be forgiven provided that complete corrections were submitted as required by the Agreed Final Order. That order was violated and the the remaining \$750 was paid. A new onsite file monitoring review was subsequently performed on October 17, 2017, setting a corrective action deadline of February 7, 2018. Corrective documentation was submitted to the Compliance Division on March 9, 2018, but it only resolved one finding. The remaining findings shown below were referred for an administrative penalty.

The following compliance violations relating to the 2017 onsite file review were referred for an administrative penalty and have been resolved:

1. Failure to establish a current utility allowance.

The following compliance violations relating to the 2017 onsite file review were referred for an administrative penalty and are unresolved:

1. Failure to maintain compliant Affirmative Marketing Plan and outreach marketing materials;
2. Failure to maintain compliant written policies and procedures, including tenant selection criteria; and
3. Household income violation for unit 802.

An informal conference scheduled for November 27, 2018, was postponed on the morning of the conference due to a personal matter for Owner representative. Owner representative later participated in an informal conference with the Enforcement Committee on December 18, 2018, and agreed to sign an Agreed Final Order with the following terms:

1. A \$2,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$1,000 portion of the administrative penalty on or before February 18, 2019;

3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before February 18, 2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$1,000 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$2,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
HOUSING AUTHORITY OF THE CITY OF	§	TEXAS DEPARTMENT OF
MULESHOE WITH RESPECT TO HARMON	§	HOUSING AND COMMUNITY
ELLIOTT SENIOR CITIZENS COMPLEX	§	AFFAIRS
(HTF FILE # 355077 / CMTS # 2642)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 17<sup>th</sup> day of January, 2019, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **HOUSING AUTHORITY OF THE CITY OF MULESHOE**, a public housing authority (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1996, Respondent received a Housing Trust Fund (HTF) loan in the amount of \$219,229 to build and operate Harmon Elliott Senior Citizens Complex (Property) (HTF No. 355077 / CMTS No. 2642 / LDLD No. 360).

2. Respondent signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective January 22, 1996, and filed of record at Volume 193, Page 198 of the Official Public Records of Real Property of Bailey County, Texas (“Records”).
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

4. Property has a history of violations and previously signed an Agreed Final Order in 2015, agreeing to a \$1,000 Administrative Penalty, of which \$250 was paid at signing and the remaining \$750 was to be forgivable provided that Respondent submitted complete corrections as required. That prior Agreed Final Order was violated.
5. An on-site monitoring review was conducted on October 17, 2017, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a February 7, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TAC §10.607 (Utility Allowances), which requires all developments to establish a utility allowance. At the time of the onsite review, Respondent was using an outdated 2015 USDA Rural Housing Service (“RHS”) utility allowance. A 2016 USDA RHS utility allowance was received by Compliance on March 9, 2018, but it was also outdated. A current utility allowance to correct the finding was received by the Enforcement Committee on October 9, 2018, 244 days after the corrective action deadline.
  - b. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received by the Enforcement Committee on October 9, 2018, but it was a copy of a previously rejected plan dated February 9, 2018, which had not correctly identified least likely to apply groups, and contained incomplete outreach marketing materials. A new plan was later submitted on October 17, 2018. This new plan correctly identified groups that are least likely to apply, but the plan was not signed or dated, and outreach marketing materials were incomplete. The finding remains unresolved.

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

- c. Respondent failed to maintain compliant written policies and procedures, including tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. The Compliance Division first provided a copy of this rule to Respondent on May 31, 2016, as part of a corrective action letter for a prior referral, warning representatives of potential future findings if the rule was not properly implemented. The policies in place at the time of the onsite review were incomplete; a revised policy was received by the Enforcement Committee on October 17, 2018, but the transfer policy section was missing information regarding how deposits will be handled for old and new units. The finding remains unresolved.
  - d. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit 802, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 2.2 of the LURA, which require screening of tenants to ensure qualification for the program. The household occupying unit 802 on May 4, 2017, was not properly screened for income and assets. The household subsequently moved out on May 30, 2018, before providing the required information to prove eligibility. The unit remained vacant until October 1, 2018. A partial tenant file for the new household was submitted to the Enforcement Committee on October 17, 2018, but it was also incomplete. It did not include an application, verifications of each source of income and assets, or a Tenant Rights and Resources Guide Acknowledgment form.
6. The following violations remain outstanding at the time of this order:
- a. Affirmative marketing violation described in FOF #5b;
  - b. Written policies and procedures violation described in FOF #5c; and
  - c. Household income violation described in FOF #5d.

#### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.607 in 2018 by failing to properly calculate a utility allowance.
4. Respondent violated 10 TAC §10.617 in 2018, by failing to provide a compliant affirmative marketing plan and acceptable evidence of outreach marketing.

5. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written policies and procedures, including tenant selection criteria, meeting TDHCA requirements.
6. Respondent violated 10 TAC §10.611 and Section 2.2 of the LURA in 2017 and 2018, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 802.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
9. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
10. An administrative penalty of \$2,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$2,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$1,000 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before February 18, 2019.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty and the remaining administrative penalty in the amount of \$1,000 will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$1,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

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

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

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

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

*[Remainder of page intentionally blank]*



Approved by the Governing Board of TDHCA on January 17, 2019.

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

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

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

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

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

**RESPONDENT:**

**HOUSING AUTHORITY OF THE CITY OF MULESHOE, a**  
public housing authority

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

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

My Commission Expires: \_\_\_\_\_

## Exhibit 1

### **File Monitoring Violation Resources and Instructions**

#### **Resources:**

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
Affirmative Marketing Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Affirmative Marketing Technical Assistance: <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>  
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. For a household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

#### **Instructions:**

##### **6. Written tenant selection criteria –**

What to submit: Respondent submitted written tenant selection criteria, however, the criteria were incomplete. Specifically, the most recent version submitted on October 17, 2018, was missing information in the transfer policy section regarding how deposits will be handled for old and new units. Add that information to the policy, update the effective date of the policy, then submit the full updated document via CMTS.

Additional technical support: A webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, and the full rule relating to written policy and procedures requirements is at 10 TAC §10.610. Staff recommends using that rule as a checklist. Additionally, the “10.610 (policy & procedures)” tab of this spreadsheet provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

**7. Household income above limit upon initial occupancy for unit 802 –**

Problem with prior submission: A new household occupied this unit on 10/1/2018. A partial tenant file was submitted, but it was missing required information, including:

- i. Application that screens for income and assets;
- ii. Verifications of all sources of income and assets; and
- iii. Tenant Rights and Resources Guide Acknowledgment form.

What to submit via CMTS on or before 2/18/2019:

- i. Application that screens for income and assets\*;
- ii. Verifications of all sources of income and assets\*;
- iii. Tenant Income Certification Form\*; and
- iv. Tenant Rights and Resources Guide Acknowledgment form.

*\*The application, verifications of all sources of income and assets, and the Tenant Income Certification must all be dated within 120 days of one another. If one of these documents is not within that time frame, you must get a new application, new verifications of all sources of income and assets, and a new Tenant Income Certification. Also remember that the application form that you use must screen for income and assets. Further information about how to complete a full tenant file is at Exhibit 2 for reference.*

**8. Affirmative marketing plan –**

Problem with prior submission: An updated plan was submitted on 10/17/2018. That plan correctly identifies groups that are least likely to apply, but the plan was not signed and dated, and the outreach marketing materials did not include required information.

How to prepare corrections:

- i. Sign and date the plan that you submitted on 10/17/2018;
- ii. Update outreach marketing materials to ensure that the following requirements are met:
  - a. The outreach letters must be dated so that TDHCA can verify that marketing was timely performed;
  - b. The outreach letters must be addressed to the organizations listed in Worksheet 3 of your plan so that TDHCA can verify marketing to the targeted organizations and populations (the letters that you submitted on 10/17/2018 were simply addressed “To Whom it May Concern”, which is insufficient). Submit one letter per targeted organization from Worksheet 3 of your plan;
  - c. All outreach letters *and* flyers must include:
    - i. The Fair Housing Logo; and
    - ii. Contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms “reasonable accommodation” and must be in both English and Spanish. Here is a sample of an acceptable sentence recently included in marketing materials from another property: “Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion

*razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX.”*

What to submit via CMTS on or before 2/18/2019: Submit the updated Affirmative Marketing Plan and outreach marketing materials via CMTS.

## Exhibit 2

### Tenant File Guidelines

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

1. **Intake Application**<sup>2</sup>: Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements.
2. **Release and Consent**: Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income**<sup>3</sup>: Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
  - a. **First hand verifications (required for HOME)**: Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan, unless the property is in the HOME program, in which case you must collect 6 payroll statements;
  - b. **Employment Verification Form**: Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;
  - c. **Verification of non-employment income**: You must obtain verifications for all other income sources, such as child support, social security, and/or

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<sup>2</sup> & <sup>3</sup> Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.

unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;

- d. **Telephone Verifications:** these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;
  - e. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
4. **Verify Assets<sup>4</sup>:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
- a. **First hand verifications (required for HOME)** such as bank statements to verify a checking account. For the HOME Program, first hand verifications are required: for savings accounts, use the current balance, for checking accounts, use the average balance for the last 6 months (include 6 months of statements and average the balance for the income certification). For other account types, ensure that you use a consistent number of consecutive statements, as identified in your management plan.
  - b. **3<sup>rd</sup> party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.

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<sup>4</sup> Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.

5. **Tenant Income Certification Form<sup>5</sup>:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member. You may use the USDA Income Certification form or the TDHCA Income Certification form. *Remember that it must be signed within 120 days of the application and the verifications of income and assets.*
6. **Lease:** Must conform with your LURA and TDHCA requirements, and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. The Rural Rental Housing Association's current lease form is acceptable for this property.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

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

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

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

A copy of the acknowledgment form is available at:

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

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<sup>5</sup> Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.



**Exhibit 3:**

**Texas Administrative Code**

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

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

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

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

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

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

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

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

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

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

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

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

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

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

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

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

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

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

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

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**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Sutton Oaks II (HTC 12004 / CMTS 4853)

**RECOMMENDED ACTION**

**WHEREAS**, Sutton Oaks II, owned by ARDC Sutton II, Ltd. (Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, all findings that had been referred for an administrative penalty were resolved informally before consideration by the Enforcement Committee;

**WHEREAS**, Owner's representatives have agreed, subject to Board approval, to enter into an Agreed Final Order stipulating that violations occurred and assessing no administrative penalty; and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order, assessing no administrative penalty, but stipulating that violations occurred at Sutton Oaks II (HTC 12004 / CMTS 4853), as presented at this meeting, but authorizing staff to make any necessary non-substantive technical corrections, is hereby adopted as the order of this Board.

## **BACKGROUND**

ARDC Sutton II, Ltd. (Owner) is the owner of Sutton Oaks II (Property), a low income apartment complex composed of 208 units, located in Bexar County. Records of the Texas Secretary of State list the following members and/or officers of San Antonio Housing Facility Corporation, the sole member of its general partner: Yolanda Hotman (Director), Stella Burciaga-Molina (Director), Ramiro Cavazos (Director and President), Karina Cantu (Director), Richard Gambitta (Director), Charles Munoz (Director), Morris Strinbling (Director), Lourdes Castro Ramirez (Secretary). CMTS lists David Nisivoccia as the primary contact for Owner. The property is managed by Franklin Apartment Management, with Kevin Ryan Baldwin listed in CMTS as their primary contact. The onsite manager is Luke Roberts.

The Property is subject to a Land Use Restriction Agreement (LURA) signed in 2013 in consideration for a housing tax credit allocation of \$1,990,796 to construct and operate the Property

While this Property has no prior administrative penalty referral history, the ownership group was previously referred for related properties, Hemisview Village (HTC 08413 / CMTS 4642) and East Meadows (HTC 14191 / CMTS 5030). The former was referred for an affirmative marketing violation, but that referral was closed informally when full corrections were received, and a warning letter was sent on January 27, 2018. The latter was referred for failure to provide compliant Tenant Selection Criteria, but an accommodation was made by the Committee Secretary per guidance by the Enforcement Committee. Full corrections were again received and a warning letter was sent September 18, 2018.

The following compliance violations identified during 2018 at Sutton Oaks II were referred for an administrative penalty shortly thereafter, and were resolved in response to an informal conference notice:

1. Failure to provide compliant Tenant Selection Criteria; and
2. Failure to provide a Tenant Income Certification and supporting documentation for unit 9204 at recertification.

It is not appropriate to close the current administrative penalty referral with a warning letter because of the referral history for this ownership group, however, corrective documentation was received before the informal conference to address all violations, and Owner has agreed to sign an Agreed Final Order assessing no administrative penalty for noncompliance at Sutton Oaks II, but stipulating that violations had occurred and were not timely corrected.

Consistent with direction from the Department's Enforcement Committee, an Agreed Final Order stipulating that violations occurred is recommended, with no administrative penalty. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
ARDC SUTTON II, LTD. WITH RESPECT TO	§	TEXAS DEPARTMENT OF
SUTTON OAKS II	§	HOUSING AND COMMUNITY
(HTC FILE # 12004 / CMTS # 4853)	§	AFFAIRS
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 17<sup>th</sup> day of January, 2019, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) considered the matter of whether enforcement action should be taken against **ARDC SUTTON II, LTD.**, a Texas limited partnership (“Respondent”).

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

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

**WAIVER**

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

**FINDINGS OF FACT (“FOF”)**

**Jurisdiction:**

1. During 2012, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board of \$1,990,796 to build and operate Sutton Oaks II (“Property”) (HTC file No. 12004 / CMTS No. 4853 / LDLD No. 811).

2. Respondent signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective December 1, 2013, and filed of record at Volume 16484, Page 1961 of the Official Public Records of Real Property of Bexar County, Texas.
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

4. An on-site monitoring review was conducted on March, 29, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a July 25, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to maintain compliant written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. Acceptable documentation to correct the finding was submitted on November 5, 2018, 103 days after the corrective action deadline, after intervention by the Enforcement Committee; and
  - b. Respondent failed to provide a Tenant Income Certification and supporting documentation at annual recertification for unit 9204, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually recertify the income of each low-income household in a mixed income housing tax credit property. The annual recertification should have been done on March 6, 2018. Acceptable documentation to correct the finding was submitted on October 26, 2018, 93 days after the corrective action deadline, after intervention by the Enforcement Committee.
5. All violations listed above are considered resolved at the time of this Order.

**CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

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

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.610 in 2018, by not maintaining compliant written tenant selection criteria meeting TDHCA requirements.
5. Respondent violated 10 TAC §10.612 in 2018, by failing to provide tenant income certification and documentation at recertification for unit 9204.
6. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
7. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
8. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
9. It is appropriate to assess no administrative penalty in accordance with the policies situated at 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent not be assessed an administrative penalty.

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 1, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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

*[Remainder of page intentionally blank]*



Approved by the Governing Board of TDHCA on January 17, 2019.

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

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

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 17th day of January, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

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

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

**RESPONDENT:**

**ARDC SUTTON II, LTD.**, a Texas limited partnership

**ARDC SUTTON II GP, LLP**, a Texas limited liability company, its general partner

**SAN ANTONIO HOUSING FACILITY CORPORATION**, a Texas nonprofit corporation, its member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

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

My Commission Expires: \_\_\_\_\_

## Exhibit 1

### Texas Administrative Code

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

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

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

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a

hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

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

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit

Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

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

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

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

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

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

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

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

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

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

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

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

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

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

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding authorization to release a Notice of Funding Availability for Program Year 2019 Community Services Block Grant Discretionary funds for education and employment initiatives for Native American and migrant seasonal farm worker populations

**RECOMMENDED ACTION**

**WHEREAS**, Community Services Block Grant (CSBG) funds are awarded annually to the Texas Department of Housing and Community Affairs (the Department) by the U.S. Department of Health and Human Services (USHHS);

**WHEREAS**, the Department reserves 90% of the allotment for CSBG-eligible entities to provide services/assistance to the low-income population in all 254 counties; up to 5% for state administration expenses; and the remaining amount for state discretionary use;

**WHEREAS**, at the Board meeting of June 29, 2017, the Department established a set aside of \$1,600,000 for 2019 Community Services Block Grant Discretionary (CSBG-D) projects, including \$300,000 for Native American and migrant seasonal farm worker population education and employment initiatives; and

**WHEREAS**, CSBG-D funds for Native American and migrant seasonal farm worker population initiatives will be made available to eligible applicants to carry out the purpose of the CSBG pursuant to 42 U.S. Code Chapter 106;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Acting Director be granted the authority to release a Notice of Funding Availability (NOFA) for 2019 CSBG-D funds for Native American and migrant seasonal farm worker population education and employment initiatives;

**FURTHER RESOLVED**, that to the extent that subsequent revisions to the NOFA are required in order to facilitate the use of the funds by the applicants, the Board also authorizes staff to make such revisions in accordance with, and to the extent limited by the CSBG federal and state regulations; and

**FURTHER RESOLVED**, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such other acts as may be necessary to effectuate the foregoing.

## **BACKGROUND**

Each year the Department sets aside 5% (approximately \$1,600,000) of its annual CSBG allocation for state discretionary use. Each year funds from CSBG-D are used for specific identified efforts that the Department supports and other ongoing initiatives such as employment and education programs for Native American and migrant seasonal farm workers. This year, \$300,000 has been targeted for Native American and migrant seasonal farm worker populations for employment and education programs for which the Department is issuing this NOFA. This amount is substantively unchanged from the amounts programmed for this activity last year. The Department will release funds competitively.

In the event that the Department does not have sufficient eligible applications to fund in this category, the Department may, at the discretion of the Acting Director, reprogram the funds from this category into another eligible category approved with this action to award additional funds, with subsequent ratification by the Board.

The Department's anticipated contract period for Program Year (PY) 2019 CSBG-D Native American and migrant seasonal farm worker initiatives is May 1, 2019, through April 30, 2020, which has the contracts starting earlier than in the past in an effort to maximize the amount of time to expend funds prior to their expiration.

The NOFA and Scoring Attachment B are attached for review and approval as part of this item. The other attachments referenced in the NOFA, Attachments A and Attachments C through H, are submission forms of required information or certifications, and are not included within this Board Action Item.





## **Notice of Funding Availability (NOFA) for Federal Fiscal Year (FFY) 2019 Community Services Block Grant (CSBG) Discretionary Funds for Services to Native American and Migrant Seasonal Farm Worker Populations**

The Texas Department of Housing and Community Affairs (the Department) is pleased to announce a NOFA for FFY 2019 CSBG Discretionary Funds for services to Native American and migrant seasonal farm worker populations. The Department is seeking organizations interested in administering projects focused on employment and education in Native American and migrant seasonal farm worker populations.

Interested applicants must meet the requirements set forth in the application and must submit a complete application through the established system described in the NOFA by **Friday, February 15, 2019, 5:00 p.m. Austin local time.**

The application forms contained in this packet and submission instructions are available on the Department's web site at <http://www.tdhca.state.tx.us/nofa.htm>. The Department looks forward to receiving your completed application. Should you have any related questions, please contact Rita Gonzales-Garza at (512) 475-3905 or [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us).

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## I. Application Instructions

### A. Application Deadline:

All applications must be submitted before **Friday, February 15, 2019, 5:00 p.m. Austin local time.**

### B. Electronic Submission:

All applications must be submitted electronically to be considered eligible applications. Applications are to be submitted through the Wufoo system using the following link:

<https://tdhca.wufoo.com/forms/native-americansmigrant-seasonal-farm-worker-nofa/>

### C. Application Questions

Application questions may be submitted via electronic mail to [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us). Answers will be provided in the order in which they are received. Please do not submit the same question twice as you await a response.

**The deadline to submit questions related to the content of the NOFA and Application is Thursday February 14, 2019, by 11:00 a.m. CST (Austin local time).** Questions related to the content of the NOFA submitted after this deadline may not be answered.

## II. Proposed Timeline for NOFA and Application

Date
January 17, 2019
February 14, 2019 11:00 a.m. (Austin local)
February 15, 2019 5:00 p.m. (Austin local)
April 25, 2019
May 1, 2019
April 30, 2020

## III. General Information

### A. Background

The Department has been designated as the state agency to administer the CSBG Program. On an annual basis, the Department receives CSBG funds from the U.S. Department of Health and Human Services (HHS) to ameliorate the causes of poverty within communities.

The Department is permitted to reserve up to 5% of CSBG funds for state discretionary use for which the Department's Board has determined specific uses. This NOFA for services to Native American and migrant seasonal farm worker (MSFW) populations releases the portion of these FFY 2019 CSBG State Discretionary (CSBG-D) funds aimed at services for Native Americans and MSFWs.

Capitalized words in this NOFA, unless otherwise defined herein, have the meaning outlined in Chapter 2306 of the Texas Government Code or in Title 10 Texas Administrative Code (TAC), Chapter 1 or Chapter 6.

**B. CSBG-D Subrecipient Performance Requirements:**

This NOFA is for services to Native American and MSFW populations. The NOFA will provide funding to organizations to provide new or existing projects that provide education and/or employment assistance and services focusing on the direct needs of individuals and families within the MSFW population or the Native American population. The successful applicant must ensure that participants receive case management along with employment and/or education assistance and services.

This activity must be completed throughout the 12-month contract period. The contract period is anticipated to be May 1, 2019, through April 30, 2020.

Subrecipient must complete activities that have the following results:

- For employment projects, an increase in employment skills or increase in persons assisted in obtaining jobs; and/or
- For education projects, an increase in education and or skills that are expected to lead to an increase in income.

Persons eligible for direct assistance must have an annual income at or below 125% of the federal poverty income guidelines issued annually by HHS.

**C. Funds Available and Award Amounts**

In this NOFA, the Department makes available \$300,000 of FFY 2019 non-formula CSBG funds to be utilized for the following discretionary projects:

Category 1: Migrant and Seasonal Farm Worker Employment Assistance and Services Projects	\$200,000
Category 2: Native American Education Employment Assistance and Services Projects	\$100,000

An applicant must apply for \$100,000 per application.

If sufficient eligible applications are received that meet threshold criteria it is anticipated that three awards of \$100,000 each will be made by the Department’s Board of Directors (Board). The Department intends to fund the two highest scoring applications for assistance to the MSFW population, and the one highest scoring application for assistance to the Native American population. However, if sufficient eligible applications are not received to accomplish that, then the next highest scoring application in either category will be recommended. An organization may submit an application for one or both categories, but may only submit one application for each category, and a separate application per category is required. In the event that the Department does not receive sufficient eligible applications in response to this NOFA to exhaust available funding, the Department will present a plan to the Board for reprogramming of the funds.

The availability of FFY 2019 CSBG discretionary funds to Subrecipient organizations is dependent on the Department’s receipt and availability of funds from HHS. Access to funds may be limited to the amount of 2019 CSBG discretionary funds available to the Department from HHS, and is subject to Board decisions regarding its use.

#### **D. Eligible Applicant Organizations**

Organizations eligible to apply for CSBG-D NOFA funds are: Private Nonprofit Organizations with 501(c) status, Public Housing Authorities, Local Mental Health Authorities, Units of General Local Government, and Regional Councils of Governments who are proposing an educational and/or employment project targeted to either MSFW populations or Native Americans.

#### **E. Ineligible Applicant Organizations**

Organizations ineligible to apply for the competitive FFY 2019 CSBG State Discretionary Funds are:

- Private Nonprofit Organizations that do not have a Certificate of Formation (or Articles of Incorporation);
- Private Nonprofit Organizations that the Texas Secretary of State's Office website states are not authorized to do business in Texas;
- Organizations for which no persons on the organization's governing body or employees are debarred or suspended by the Department or another governmental agency;
- Organizations for which no persons on the organization's governing body or employees are on the System for Award Management in accordance with 2 CFR Part 180;
- Organizations that includes proposed financial participation by a person who, during the five year period preceding the date of the application, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or assessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

#### **F. Private Nonprofit Organizations.**

The Department is not requiring that an organization submit a Certificate of Formation or proof of eligible status. However, it is the applicant's responsibility to ensure that its information including its Certificate of Formation (formally known as Articles of Incorporation) with the Texas Secretary of State's Office is correct and complete at the time of application. The Department will confirm proof of active status directly with the Texas Secretary of State. No administrative deficiencies will be issued for failure to have the appropriate status and governing documents reflected on the Secretary of State's Office when confirmed by the Department. Failure to have this information will cause the application to be terminated without further review as further described in Section VI, A of the NOFA.

#### **G. Registration Requirements**

Prior to contract execution, the successful applicant must provide the Department with the organization's Data Universal Numbering System (DUNS) and proof of registration with the Central Contractor Registration (CCR). If the organization is not registered, go to <https://www.sam.gov> to renew, update, or create a new registration.

### **IV. State and Federal Requirements**

Subrecipient shall comply with all provisions of the Federal and State laws and regulations including but not limited to:

Public Law 105-285, Title II - Community Services Block Grant Program, Subtitle B Community Services Block Grant Program of the Community Services Block Grant Act, Chapter 106 of the Community Services Block Grant Act (42 U.S.C. §9901 *et seq.*), as amended by the "Community Services Block Grant Amendments of 1994" (P.L. 103-252) and the Coats Human Services Reauthorization Act of 1998 (P.L. 105-285);

Chapter 2306 of the Texas Government Code:

- A. Title 10 Texas Administrative Code, Part 1, Chapters 1 and 2;
- B. Title 10 Texas Administrative Code, Part 1, Chapter 6, Subchapters A and B;
- C. 2 CFR Part 200, as applicable; and
- D. Texas Uniform Grant Management Standards.

Subrecipient shall also comply with the Drug-Free Workplace Act of 1988, the Pro-Children Act of 1994, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. 12101 *et seq.*) and Executive Order 13166 of August 11, 2000 related to Limited English Proficiency.

Subrecipient shall practice non-discrimination and provide equal opportunity in compliance with federal law in keeping with the President's Executive Order 11246 of September 24, 1965, and ensure that a person shall not be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this contract, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief.

Subrecipient shall comply with political activity prohibitions and shall not utilize CSBG funds to influence the outcome of any election, or the passage or defeat of any legislative measure or to directly or indirectly hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of subrecipients, the State of Texas, or the government of the United States. Subrecipient shall comply with 45 CFR. §87.2 and ensure that CSBG funds are not to be used for sectarian or inherently religious activities such as worship, religious instruction or proselytization, and must be for the benefit of persons regardless of religious affiliation.

Subrecipient shall comply with Chapter 2264 of the Texas Government Code and will not knowingly employ an undocumented worker, where "undocumented worker" means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States.

Subrecipient is not permitted to award any funds provided by this contract to any party that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. The Subrecipient will be required to agree that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>

## V. Application Content

Attachments A-H are Threshold Documents. Each page of the application, excluding the Single Audit, must be numbered. Each Application must contain the items listed below in the following order:

- Table of Contents – must include page numbers.
- Attachment A – Applicant Information Form – Form must be placed on the top of the application.

- Attachment B – Application Questions – Complete the NOFA Application Questions document. Applications that do not include a completed document with responses to NOFA questions will be deemed ineligible. Please use the following format to provide any information which is requested in response to questions:
  - ✓ Minimum 11 font
  - ✓ Standard 8½ “ x 11” paper with 1” margins
  - ✓ Provide brief descriptions of requested information.
- Attachment C – Financial Information – All applications must include the following documents relating to fiscal accountability, even if this information has been previously submitted to the Department.
  - A. An application must include a completed Audit Certification Form, found on the Department’s website at <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.
  - B. An organization that is subject to the Federal Single Audit Act requirements must certify that the Single Audit for the latest fiscal year is available at the Federal Audit Clearinghouse. An Organization that is subject only to the State Single Audit Act must submit one copy of the organization’s most recent Single Audit report.
  - C. An organization not subject to either the Federal or the State Single Audit requirements must submit one copy of a third-party audit of financial statements prepared by a Certified Public Accountant, including any notes to the audit.
- Attachment D – Uniform Previous Participation Form for Single Family and Community Affairs.
- Attachment E – Certifications Regarding Legal Actions, Debarment & Compliance with Laws.
  - A. Attachment F – Private Nonprofit Organization’s Tax-Exempt Status Documentation Existing Internal Revenue Service (IRS) ruling – All private nonprofit organizations must provide documentation of their status as a tax-exempt entity under Section 501(c) of the Internal Revenue Code. The ruling should be on IRS letterhead which is legible and signed by the IRS District Director. Expired advanced rulings from the IRS are not acceptable.
  - B. If an organization is a subsidiary of a parent organization, documentation of the parent organization’s IRS ruling and a copy of the page listing the affiliate organization in the documents filed with the IRS by the parent organization.
- Attachment G – Applicant Certifications
  - A. The certification must be signed by the organization’s Executive Director. If such cannot be attested, then attach a document explaining why.
- Attachment H – CSBG Budget Worksheets
  - A. The proposed budget for CSBG is to be submitted utilizing the Attachment H form. There are several tabs within the spreadsheet to complete. Complete the budget based on the estimated funds available noted in Section III. C.
  - B. The Department strongly encourages applicants to budget no more than **20%** of the CSBG funds for **administrative costs** (overhead and staff costs related to administrative staff not involved in the direct delivery of services).
  - C. This NOFA does not have limitations on the amount of funds utilized for the provision of direct services or for the costs of staff assigned to provide the direct services, as long as the costs meet federal and state requirements.

## VI. Application Review Process

### A. Eligibility Prescreening Review

The Department will review applications to determine if they meet the following eligibility prescreening criteria. If the Department determines that any of these criteria have not been satisfied, the application will not be reviewed and the applicant will be sent a notice of the elimination of their application from consideration, and notified of their opportunity to appeal. The prescreening criteria are:

- All application threshold documents A through H must be submitted by the application deadline.
- Application documents must be submitted electronically to be considered eligible applications. Applications are to be submitted through the Wufoo using the following link: <https://tdhca.wufoo.com/forms/native-americansmigrant-seasonal-farm-worker-nofa/>
- An Applicant must meet all requirements as set forth in III. General Information, E. Eligible Applicant Organizations; and
- An Applicant must not be an ineligible applicant organization as set forth in III. General Information, F. Ineligible Applicant Organizations.

Any applicant not meeting these threshold criteria will be terminated. A notice of termination will be sent, and an applicant will have an opportunity to appeal the decision in accordance with 10 TAC §1.7, Staff Appeals Process.

### B. Deficiency Notices

After the application receipt deadline, the Department will not consider any unsolicited information that an applicant may want to provide. If the Department identifies deficiencies within the Attachments it will issue a deficiency notice to request the deficiency be resolved. Applicants will have three (3) days from the date of issuance of the deficiency notice to provide the requested information. Deficiency notices will be e-mailed to the applicant's chief executive and the person specified as the "person to contact with CSBG application questions" in the applicant information form. If the applicant does not provide the requested information within the 3-day time period, the applicant will be sent a notice indicating termination of the application.

### C. Scoring of Applications

Applications received from eligible organizations with no threshold deficiencies will be reviewed and scored by the Department. The Department will utilize a standard scoring instrument to evaluate, score, and rank each application. The scoring instrument will award points based on the applicant's response to the requested information in Attachment B. **Applications with a score below 50% of the maximum eligible points available will not be considered for funding except as described in the next paragraph.**

If all applicants score below the minimum point threshold, the Department reserves the right to review the top overall scoring entity and if, in the Department's judgment, they can appropriately administer the CSBG-D funds, may recommend an award to its Governing Board. Upon completion of scoring each application, applicants will be provided a scoring notice with an opportunity to appeal.

The Department will consider and evaluate prior monitoring and/or audit issues during its application scoring. Additionally, other factors to be considered in the scoring of each application will include, but not be limited to:

- Capacity to effectively administer federal funds and to ensure compliance with regulations;
- Ability to demonstrate staff and organizational capacity to deliver the proposed services; and,



- Ability to demonstrate positive past performance with Department or other federally funded programs, including the results of Department monitoring reviews, timeliness of submission of reports, results of the last fiscal audit, and other information deemed relevant to performance.

#### **D. Awards**

Applicants whose applications score competitively will be reviewed by the Department’s Executive Award Review Advisory Committee in accordance with 10 TAC Chapter 1, Subchapter C and subsequently brought to the Department’s Governing Board for consideration of an award.

#### **E. Appeals Process**

An appeal of a staff determination must be submitted in writing and in accordance with the Texas Administrative Rule Title 10, Part 1, Chapter 1, Subchapter A, §1.7 which can be found at the Secretary of State’s website at:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=1&sch=A&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=1&sch=A&rl=Y).

### **VII. Appendices**

#### **Federal and State Resources:**

CSBG Act Coats Human Services Reauthorization Act of 1998, available at

<http://www.tdhca.state.tx.us/community-affairs/csbg/guidance.htm>

Texas Administrative Code - 10 TAC Chapter 1, Administration, available at

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=10&pt=1&ch=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=10&pt=1&ch=1)

Texas Administrative Code - 10 TAC Chapter 2, Enforcement, available at

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=10&pt=1&ch=2](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=10&pt=1&ch=2)

Texas Administrative Code - 10 TAC Chapter 6, Subchapter A, General Provisions, available at

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=6&sch=A&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=6&sch=A&rl=Y)

Texas Administrative Code - 10 TAC Chapter 6, Subchapter B, CSBG, available at

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=6&sch=B&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=6&sch=B&rl=Y)

### **VIII. List of Attachments**

Attachments are posted separately on the TDHCA website as fillable MS Excel documents at

<http://www.tdhca.state.tx.us/nofa.htm>

- Attachment A-G:
  - Attachment A: Applicant Information Form
  - Attachment B: Application Questions Parts 1-4
  - Attachment C: Audit Information
  - Attachment D: Uniform Previous Participation Information
  - Attachment E: Certifications Regarding Legal Actions, Debarment & Compliance with Laws
  - Attachment F: Private Nonprofit Organization’s Tax-Exempt Status Documentation
  - Attachment G: Applicant Certifications
- Attachment H: CSBG Budget Worksheets

**Applicant Name:**

**Instructions:**

When responding to the questions in Attachment B - Part 1 - 4:

- 1. Attachments:** Applicant must complete all areas highlighted in **yellow** and upload attachments according to the instructions found on the Wufoo submission page.
- 2. Responses:** If the response is provided in a separate document, please ensure that the response is uploaded as the appropriate entry in the Wufoo submission. If the Department is unable to clearly determine which question the response pertains to, the applicant may not receive points for their response.
- 3. Years of Experience:** When responding to years of experience, if the experience is 6 months or greater, round your response up to one year. If it is less than six months, do not. For example: 1 year 5 months would be 1 year and 1 year 6 months would be 2 years.
- 4.** All applicants must complete all parts of the application questions.

**Attachment B: Part 1 - Experience**

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)																																																		
1.1	The applicant's experience administering other state or federally funded programs subject to 2 CFR Part 200 or UGMS (currently administered directly by applicant), including funds from the Texas Department of Housing and Community Affairs (TDHCA).	State or federally funded grant programs administered: Note: A maximum of 50 points will be awarded. • Year 1 of Grant is 0 points, 2 points for each year thereafter	50																																																					
	<p><b>Table 1.1</b> In the table below, list all current state or federally funded grant programs greater than \$50,000 administered directly by the applicant and the number of years administering the grant (indicate each grant source only once), including TDHCA funds. Add additional pages as necessary.</p> <table border="1"> <thead> <tr> <th>Grant Name</th> <th>Funding Entity and Purpose of Award</th> <th># of Years Administered</th> <th>State Funds (Y/N)</th> <th>Federal Funds (Y/N)</th> </tr> </thead> <tbody> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> <tr><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td><td style="background-color: yellow;"></td></tr> </tbody> </table>						Grant Name	Funding Entity and Purpose of Award	# of Years Administered	State Funds (Y/N)	Federal Funds (Y/N)																																													
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Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)																																																		

1.2	Provide the following information on the experience in delivering <b>employment skills or employment related assistance</b> :	<p>In assigning points, reviewer will consider the depth to which the nature of the experience in delivering <b>employment skills or employment related assistance</b> is described:</p> <p>a. A maximum of 10 points will be provided, based on the depth of employment skills or employment related assistance experience.</p> <p>b. A maximum of 10 points may be awarded, with 4 points for 2 years of experience, 8 points for 3-4 years, 10 points for 5+ years of providing direct employment skills or employment related assistance.</p> <p>c. Population served includes Native American and/or migrant seasonal farm worker: Yes = 10 points. No = 0 points.</p> <p>d. Provide points for the number of unduplicated persons served with employment skills or employment related assistance in the previous 12 months that were Native American or migrant seasonal farm worker: 5-15 persons award 5 points; 16-29 persons award 10 points; 30-45 persons award 20 points 46-55 persons award 30 points 56+ persons award 40 points</p>	70			
<p>a. In the space below, provide a description of relevant experience providing direct assistance to assist persons to gain <u>employment skills or employment related assistance</u> to improve their employability or increase wages (types of services, etc.). Explain if the experience was aimed at providing services to either Native Americans or migrant seasonal farm workers.</p>						
<p>b. In the space below, provide information on the number of years of relevant experience providing <u>direct employment skills or employment related assistance</u> to either Native Americans or migrant seasonal farm workers.</p>						
<p>c. During the past 12 months, did the applicant target their <u>employment skills or employment related assistance</u> to Native Americans or migrant seasonal farm workers? Yes or No? If the response is no, who was targeted?</p>						

d. In the space below, provide information on the number of Native Americans or migrant seasonal farm workers that were served by the applicant in the past 12 months with employment skills or employment related assistance related assistance. Specify the time period.

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
1.3	Provide the following information on the experience in delivering <b>education related assistance</b> :	<p>In assigning points, reviewer will consider the depth to which the nature of the experience in delivering education related assistance is described:</p> <p>a. A maximum of 10 points will be provided, based on the depth of education related assistance experience.</p> <p>b. A maximum of 10 points may be awarded, with 4 points for 2 years of experience, 8 points for 3-4 years, 10 points for 5+ years of providing direct education related assistance.</p> <p>c. Population served includes Native American or migrant seasonal farm worker: Yes = 10 points. No = 0 points.</p> <p>d. Provide points for the number of unduplicated persons served with education related assistance in the previous 12 months that were Native American or migrant seasonal farm workers: 5-15 persons award 5 points; 16-29 persons award 10 points; 30-45 persons award 20 points 46-55 persons award 30 points 56+ persons award 40 points</p>	70			

a. In the space below, provide a description of relevant experience providing direct assistance to assist persons to increase their education aimed at improving their employability or increasing their wages (types of services, etc.). Describe if that experience was aimed at providing services to either Native Americans or migrant seasonal farm workers.

b. In the space below, provide information on the number of years of relevant experience providing direct education related assistance to either Native Americans or migrant seasonal farm workers.

c. During the past 12 months, did the applicant target their education assistance to Native Americans or migrant seasonal farm workers? Yes or No? If the response is no, who was targeted?

d. In the space below, provide information on the number of Native Americans or migrant seasonal farm workers that were served by the applicant in the past 12 months with education related assistance. Specify time period.

190	0	0	0
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Applicant Name:						
Attachment B: Part 2 - Prior Performance						
Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
2.1	<p>In the table below, list all TDHCA funded programs administered in the past 3 years.</p> <p>Only the most recent monitoring report will be considered for point deductions.</p> <p>Provide copies of the most recent monitoring reports for each of the TDHCA programs listed. If the grant has not been monitored, provide information explaining such. Only the most recent monitoring report will be considered for point deductions.</p> <p>Provide follow-up response from TDHCA of resolution of monitoring findings. Also explain if follow-up response from TDHCA of resolution of monitoring findings has not been released.</p> <p>For ease of review, please number the pages of the documents, even if the numbering is handwritten.</p> <p>Deficiencies are those which identify issues related to fraud, waste, abuse, or financial irregularity, or <u>significant</u> non-compliance with either federal rules, State regulations/rules including but not limited to OMB Circulars or Uniform Grant Management Standards.</p>	<p>Number of monitoring findings, deficiencies and disallowed costs identified in monitoring reviews of state funded programs.</p> <p>For each monitoring report, determine:</p> <p>(1) Monitoring report had findings: Deduct -10 points per finding.</p> <p>(2) Applicant shows history of not cooperating with or not submitting documentation upon request with TDHCA: Deduct -50 points per fund source of non-cooperation.</p> <p>(3) Monitoring report had deficiencies: Deduct -50 points per grant program.</p> <p>(4) Monitoring report had disallowed costs in excess of \$1,000 amount based on other than minor administrative errors): Deduct -50 points per grant program in addition to (1)-(3) point deductions above.</p> <p><b>Note:</b> If monitoring report is not attached and explanatory information is not provided: Deduct -20 points per grant.</p>	(points to be deducted based on review)			
<p><b>Table 2.1</b> (Instruction: Please provide copies of the most recent monitoring reports. If the grant has not been monitored in the past 36 months, provide a document from the funding source to that effect. Scan all monitoring reports into one document and include a cover page labeled as "Documents in response to Question #2.1" and number each page consecutively. The numbering can be hand written at the bottom of each page.)</p>						
				# of Findings	Copy of Report attached (Y/N)	

Funding Source		Name of Monitoring Report	Page #	# of Deficiencies	Date of Last Monitoring (MM/DD/YY)	Amount of Disallowed Costs
Section	Question and Response	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
2.2	<p>Does the applicant have a history in the preceding 12 months or in the last year of CSBG-D funding of not submitting their monthly performance or monthly expenditure reports or final performance or final expenditure reports to the Department by the due date?</p> <p><b>Response:</b> If Yes, list which documents/submissions below in highlighted area:</p>	<p>If Departmental records show late submissions of performance or expenditure reports in the preceding 12 months or the last year of CSBG-D funding: Deduct -10 points per late submission No late submissions = 0 points</p>	(points to be deducted based on review)			

2.3	<p>Has the applicant been placed on a modified cost reimbursement basis of payment for TDHCA Community Affairs (CA) funded programs during the past 3 years (a contract sanction whereby reimbursement of costs incurred by a Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs)?</p> <p><b>Response:</b> Select Yes or No in the drop down menu of the cell below:</p> <hr/> <p>Is the applicant currently on a modified cost reimbursement method of payment for TDHCA funded programs?</p> <p><b>Response:</b> Select Yes or No in the drop down menu of the cell below:</p> <hr/>	<p>Applicant's history of being on a modified cost reimbursement method of payment for TDHCA Community Affairs Division funded programs.</p> <ul style="list-style-type: none"> <li>• Yes, during the past 3 years: Deduct -50 points</li> <li>• Yes, currently on modified cost reimbursement: Deduct -100 points</li> <li>• No, not during the past 3 years: 0 point deduction</li> </ul>	(points to be deducted based on review)			
2.4	<p>Provide the following information related to your organization's expenditures of CSBG Discretionary funds for the most recently completed TDHCA CSBG Discretionary contract. If no funding was received, leave blank.</p>	<p>Prior Performance - Expenditures: For each percentage point not spent per year, one point will be deducted. (i.e., 81.4% = 19 points deducted, 81.5% = 18 points deducted)</p> <p>Note: The Department will verify expenditures from our records.</p>				
Year	Contract Period	CSBG Discretionary Award Amount	Final Expenditure Amount			% of Funds Expended
Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
2.5	Complete the table below. Provide the requested information for the most recently completed TDHCA CSBG Discretionary contract.	<p><b>Prior Performance Persons Served</b></p> <ul style="list-style-type: none"> <li>• Deduct -5 points for every performance statement target for which 90% of the target that was not met. Deductions will not be taken for exceeding the target.</li> </ul>	(points to be deducted based on review)			
Contract Period	Performance Statement #	Performance Statement description (per TDHCA contract)	Number to Be Served	Performance Reported in Final Performance Report to TDHCA	% of Target Achieved	




TBD 0 0 0

Applicant Name:						
Attachment B: Part 3 - Efficiency						
Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
3.1	<p>In the table below, provide information on the costs that are proposed to be charged to the CSBG-D grant.</p> <p>Administrative costs include those expenses related to management staff such as the executive director, accounting staff, human resource staff, administrative personnel, and overhead costs related to same staff.</p> <p>Programmatic costs relate to staff costs of who provide direct client services and carry out duties such as intake, client interview, casework, case management, referrals, and follow-up. It also includes the overhead costs related to these direct client program staff.</p> <p>Direct service costs relate to costs for direct services to clients such as tuition assistance.</p> <p>In the table below, break out the part of the Overhead Costs that are administrative and programmatic.</p>	<p>Percentage of CSBG costs budgeted for programmatic costs plus direct client assistance costs (which can include caseworkers salary and fringe):</p> <p>80-100%: 100 points  60-79%: 80 points  40-59%: 60 points  20-39%: 40 points  Less than 20%: 0 points</p> <p><b>NOTE:</b> If calculation is found to be incorrect, no (0) points will be awarded.</p>	100			

**Section 3.1 – Table**

<b>Proposed CSBG Budget</b>		<b>Format</b>	<b>Answer</b>
a. Administrative costs, including salaries and fringe and overhead related to administrative staff (for example Ex Dir, CFO, admin staff)		Dollar figure	
b. Programmatic costs, including salaries and fringe of program staff and their related overhead costs (for example program directors, case workers, homeless service liaison)		Dollar figure	
c. Direct client services/assistance costs (e.g. rent, food, education assistance, tuition) NOTE: From Budget Support Sheet B6.		Dollar figure	
d. Costs that are budgeted related to Travel, Supplies, Equipment, Contractual, and Other categories that aren't included in a. or b. above or in the Indirect Cost category.		Dollar figure	
e. Indirect costs (for applicants with a federally approved Indirect Cost Rate Plan or for entities claiming the de minimus rate)		Dollar figure	
f. Total CSBG budget requested		Dollar figure a+b+c+d+e	\$ -
g. Percentage of CSBG costs budgeted for programmatic costs and direct client assistance costs (based on subtotal for b. and c. above)		Percentage (b+c)/f	#DIV/0!

<b>Section</b>	<b>Question</b>	<b>Scoring Mechanism</b>	<b>Maximum Points</b>	<b>Self-Score</b>	<b>Reviewer 1 (TDHCA use only)</b>	<b>Reviewer 2 (TDHCA use only)</b>
<b>3.2</b>	Provide the following budget information on direct client services/assistance related to <b>employment and/or education assistance</b> : The budget figures should coincide with the budget (Budget Support Sheet B.6 Direct Client Services).	<p><b>Award points as follows:</b></p> <p>a. Applicant provided clear information on the amount of the budget dedicated to direct client assistance related to employment and/or education assistance. Compare to amounts in budget.</p> <p>If information did not match the budget, deduct -10 points.</p> <p>b. Percentage of budget dedicated to direct client assistance related to employment and/or education assistance: Each percentage point of direct client assistance equals to 1 point.</p>	<b>50</b>			

<b>Direct Client Services/Assistance Related to Employment</b>						<b>Response:</b>
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a. Indicate the total funds budgeted for direct client services/assistance related to <b>employment and/or education</b> (do not include any staff or overhead costs for program staff providing employment and/or education related services).	
b. Of the amount indicated in a., indicate the percentage budgeted for direct client services/assistance related to <b>employment and/or education</b> in relation to the whole budget.	



***Applicant Name:***

***Attachment B: Part 4 - Proposed Employment and Education Services/Activities***

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.1	<p>In the table below, indicate how your organization will implement the initiative and evaluate progress on accomplishing what is proposed in the CSBG Discretionary NOFA Application by breaking down your administration of this grant into distinct tasks.</p>	<p><b>Evaluation of Programs:</b> Review plan to evaluate project and award points as follows:</p> <p>Evaluation plan should include, but not be limited to, identification of the tasks, steps to accomplish tasks, evaluation, frequency of evaluation, and a completion time.</p> <ul style="list-style-type: none"> <li>• Award up to 30 points if the tasks clearly set forth activities that will lead to accomplish what is proposed in the application.</li> <li>• Award up to 20 points if the steps to be taken to achieve the tasks are clearly delineated.</li> <li>• Award up to 20 points if the process used to evaluate the initiative is comprehensive.</li> <li>• Award up to 5 points if frequency for when evaluation will occur is reasonable for the tasks.</li> <li>• Award up to 5 points for the completion time. If completion time allotted to achieve results is insufficient, award 0 points.</li> </ul>	80			

**Section 4.1 – Table**

**Evaluation Process** - Itemize each task (chronologically if possible), enter name of task, describe the task, identify the steps to accomplish the task, briefly describe process to evaluate the task, describe frequency of evaluation, and a completion date for task. Enter one row per task. *Note:* Applicants may attach a separate document with additional details related to the processes to be utilized to evaluate the task; however, identify the question # and task #.

Task #	Task Description	Steps to Accomplish Task	Brief Description of Evaluation Processes for Task	Frequency for evaluation to occur	Task Completed (month/year)
1 (example) Establish training curricula (example)	Create and evaluate main training curricula. Curricula will be a 6 week sessions on: 1) Basic computer skills (including basic skills of Microsoft platforms 2) Resume preparation 3) Job search skills and 5) Practice of job interview skills.	Purchase and gather up to date data on the training skills proposed to insure that the most up to date information is provided. Create curricula based on the most up to date information gather for skill forming.	The program coordinator (PC) will be in charge to purchase materials and create the curriculum. The PC will create a advisory board composed of field experts to insure the accuracy of the content, cultural appropriateness and relevance to skill formation.	During the first three months of the program and every 3 months for the duration of the program.	<b>8/19</b>

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.2	<p><b>Employment Initiative:</b> Provide targets for the number of unduplicated persons that you anticipate will achieve the stated goal or receive the stated service as a result of assistance provided through the proposed initiative. An individual can be counted as an unduplicated person receiving a service only once in each activity during the contract term (only count the primary recipient of the assistance and not the entire household).</p> <p>NOTE: The Department will utilize these proposed targets in the contract and applicant will be evaluated in a future application cycle on their performance (i.e., points deducted for not meeting proposed targets).</p>	<p><b>Award points as follows:</b></p> <p>1 point awarded for each person to achieve stated goal or will receive stated service in a through d</p> <p>NOTE: <b>Do not overestimate</b> your target numbers because you will be severely penalized for not meeting targets proposed in your application in Attachment B Part 2 Question 2.5.</p>	120			
<b>Table 4.2 - Employment Initiative</b>						<b>Target</b>
	a. Number of persons that will gain employment.					
	b. Number of persons that will obtain an increase in wages and or benefits.					
	c. Number of persons that will obtain work skills (not related to job search, but actual work skills) to obtain employment or to obtain an increase in employment (a better job, better wages, etc.) through job/vocational training.					
	d. Number of persons to be provided job readiness assistance (such as coaching, resume writing, interview skills training, pre-employment physicals, background checks, etc.).					



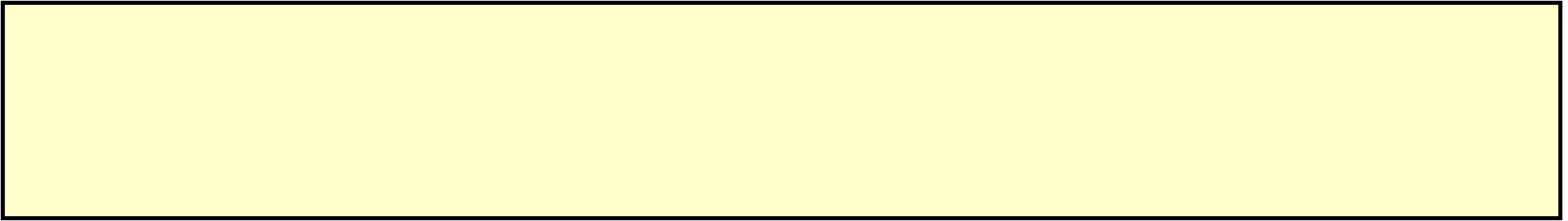
Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.3	<p><b>Education Initiative:</b></p> <p>Provide targets for the number of unduplicated persons that you anticipate will achieve the stated goal or receive the stated service as a result of assistance provided through the proposed initiative. An individual can be counted as an unduplicated person receiving a service only once in each activity during the contract term (only count the primary recipient of the assistance and not the entire household).</p> <p>NOTE: The Department will utilize these proposed targets in the contract and applicant will be evaluated in a future application cycle on their performance (i.e., points deducted for not meeting proposed targets).</p>	<p><b>Award points as follows:</b></p> <p>1 point awarded for each person to achieve stated goal or will receive stated service in b through g</p> <p>NOTE: Do not overestimate your target numbers because you will be severely penalized for not meeting targets proposed in your application in Attachment B Part 2 Question 2.5.</p>	100			
<b>Table 4.3 - Education Initiative</b>						<b>Target</b>
	a. Number of persons receiving case management (a process where a case worker meets with client on an on-going basis to identify, develop, and implement a plan to meet short and long-term goals). <u>No points awarded.</u>					
	b. Number of persons that will enroll and work towards obtaining a recognized credential, certificate, or degree related to the achievement of educational or vocational skills (a trade school or community college).					
	c. Number of persons that will demonstrate improved basic education.					
	d. Number of persons that will enroll in programs to gain competencies required for employment by obtaining a high school diploma or GED.					
	e. Number of persons that will enroll and work towards obtaining an Associate's degree.					
	f. Number of persons that will enroll and work towards obtaining a Bachelor's degree.					
	g. Number of persons that will obtain a degree (associate's or bachelor's degree) within contract year.					
Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.4	<b>Unduplicated Persons:</b>	<b>Award points as follows:</b>	120			

	<p>Provide targets for the number of unduplicated persons that you anticipate will receive the following types of assistance through the proposed <u>education and employment</u> initiative. An individual can be counted as an unduplicated person receiving a service only once in each activity during the contract term (only count the primary recipient of the assistance and not the entire household).</p>	<p>1 point awarded for each person to achieve stated goal or will receive stated service in b through d</p> <p>NOTE: Do not overestimate your target numbers because you will be severely penalized for not meeting targets proposed in your application in Attachment B Part 2 Question 2.5.</p>				
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Table 4.4 - Unduplicated Persons						Target
	a. Number of persons receiving case management (a process where a case worker meets with client on an on-going basis to identify, develop, and implement a plan to meet short and long-term goals). <u>No points awarded.</u>					
	b. Number of persons receiving assistance, either funded with the grant or other funding source, for rent, food, utilities, child care, or transportation.					
	c. Number of persons receiving assistance with tools, uniforms, clothes, equipment, books and supplies which enable them to obtain or retain a job or complete their education goals.					
	d. Number of persons that receive Financial Literacy Education or Counseling.					

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.5	<p>Provide the following information in the yellow-highlighted area below: Describe the current <b>coordination and outreach efforts</b> and describe how your organization will coordinate the proposed project with other service providers in the service area to meet the varied needs that will enable clients to further their education or obtain employment or increase wages.</p>	<p>In assigning points, reviewer will consider the depth to which items are described:            Applicant provided information that demonstrates:            a. Clear coordination and outreach efforts: 10 point maximum            b. Variety of client needs addressed through coordination efforts: 10 point maximum            c. Coordination efforts were not sufficiently demonstrated: 0 points</p>	20			

**4.5 Response**



440	0	0	0
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<b>Applicant Name:</b>				
<b>Attachment B - SCORING SUMMARY</b>				
<b>Checklist of Application Questions Requesting Attachments</b>				
<b>Question</b>		<b>Attachment Item Requested</b>		
	<b>2.1</b>	Most recent monitoring report for each TDHCA award made in the last 3 years		
<b>Application Question Sections</b>				
<b>Scoring Section</b>	<b>Maximum Points</b>	<b>Points Received</b>	<b>Reviewer 1</b>	<b>Reviewer 2</b>
Part 1: Experience	190	0	0	0
Part 2: Prior Performance	Deductions To Be Determined	0	0	0
Part 3: Efficiency	150	0	0	0
Part 4: Proposed Employment and Education Services/Activities	440	0	0	0
<b>Maximum Points=780</b>				
<b>Final Score (Minimum Score = 390**)</b>		<b>0</b>	<b>0</b>	<b>0</b>

*\* The Self-Score column on Attachment B Parts 1-4 are to be completed by the Applicant; however, the Department does not base its scoring of the application on the Applicant's self-score. \**

*\*\*TDHCA reserves the right to reject funding for applications that do not exceed 390 points. \*\**

*\*\*\*TDHCA reserves the right to request further information related to the application for clarification purposes during the scoring review period. \*\*\**

1h

**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**JANUARY 17, 2019**

Presentation, discussion, and possible action on Resolution No. 19-023 authorizing the filing of one or more applications for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds and containing other provisions relating to the subject

**RECOMMENDED ACTION**

Adopt attached resolution.

**BACKGROUND**

An allocation of private activity bond authority, also known as volume cap, is required for the issuance of tax-exempt, single family mortgage revenue bonds and for the issuance of mortgage credit certificates (MCCs). Staff is requesting authorization to submit one or more applications for a maximum reservation of \$450 million of volume cap to be used for MCC Program 92. Staff expects that MCC Program 92 will use bond authority that has been carried forward for this purpose.

Final approval of MCC Program 92 is being considered by the Board under item 3c.

## RESOLUTION NO. 19-023

### RESOLUTION AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR RESERVATION WITH THE TEXAS BOND REVIEW BOARD WITH RESPECT TO QUALIFIED MORTGAGE BONDS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended from time to time (the “Act”), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low and very low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the “Board”) from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to make, acquire and finance, and to enter into advance commitments to make, acquire and finance, mortgage loans and participating interests therein, secured by mortgages on residential housing in the State of Texas (the “State”); (b) to issue its bonds, for the purpose, among others, of obtaining funds to acquire or finance such mortgage loans, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such single family mortgage loans or participating interests, and to mortgage, pledge or grant security interests in such mortgages or participating interests, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and (d) to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department; and

WHEREAS, Section 103 and Section 143 of the Internal Revenue Code of 1986, as amended (the “Code”), provide that the interest on obligations issued by or on behalf of a state or a political subdivision thereof the proceeds of which are to be used to finance owner-occupied residences will be excludable from gross income of the owners thereof for federal income tax purposes if such issue meets certain requirements set forth in Section 143 of the Code; and

WHEREAS, Section 146(a) of the Code requires that certain “private activity bonds” (as defined in Section 141(a) of the Code) must come within the issuing authority’s private activity bond limit for the applicable calendar year in order to be treated as obligations the interest on which is excludable from the gross income of the holders thereof for federal income tax purposes; and

WHEREAS, the private activity bond “State ceiling” (as defined in Section 146(d) of the Code) applicable to the State is subject to allocation, in the manner authorized by Section 146(e) of the Code, pursuant to Chapter 1372, Texas Government Code, as amended (the “Allocation Act”); and

WHEREAS, the Allocation Act requires the Department, in order to reserve a portion of the State ceiling for qualified mortgage bonds (the “Reservation”) and satisfy the requirements of Section 146(a) of the Code, to file an application for reservation (the “Application for Reservation”) with the Texas Bond Review Board (the “Bond Review Board”), stating the maximum amount of the bonds requiring an allocation, the purpose of the bonds and the section of the Code applicable to the bonds; and

WHEREAS, the Allocation Act and the rules promulgated thereunder by the Bond Review Board (the “Allocation Rules”) require that the Application for Reservation be accompanied by a certified copy of the resolution of the issuer authorizing the filing of the Application for Reservation; and

WHEREAS, the Board has determined to authorize the filing of one or more Applications for Reservation in the maximum aggregate amount of \$450,000,000 with respect to qualified mortgage bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

## ARTICLE 1

### APPROVAL OF CERTAIN ACTIONS

Section 1.1 Applications for Reservation. The Board hereby authorizes Bracewell LLP, as Bond Counsel to the Department, to file on its behalf with the Bond Review Board one or more Applications for Reservation in the maximum aggregate amount of \$450,000,000 with respect to qualified mortgage bonds, together with any other documents and opinions required by the Bond Review Board as a condition to the granting of one or more Reservations.

Section 1.2 Authorization of Certain Actions. The Authorized Representatives of the Department named in this Resolution are hereby authorized to take such actions on behalf of the Department as may be necessary to carry out the purposes of this Resolution, including the submission of any carryforward designation requests for such Reservations.

Section 1.3 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.



PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Chair, Governing Board

ATTEST:

\_\_\_\_\_  
Secretary to the Governing Board

(SEAL)

1i

**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding site eligibility under 10 TAC §11.101(a)(2)(E) relating to Undesirable Site Features and an Inducement Resolution No. 19-026, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Application for 2019 Private Activity Bond Authority for Lago de Plata (#19600) in Corsicana

**RECOMMENDED ACTION**

**WHEREAS**, a bond pre-application, as further detailed below, was submitted to the Department for consideration of an inducement resolution;

**WHEREAS**, pursuant to 10 TAC §11.101(a)(2)(E) of the 2019 Uniform Multifamily Rules related to Undesirable Site Features, Development Sites within the applicable distance of any of the undesirable features identified therein may be considered ineligible as determined by the Board, unless the Applicant provides information regarding mitigation of the applicable undesirable site feature(s);

**WHEREAS**, the applicant disclosed in the pre-application that the development is located within 500 feet of a railway;

**WHEREAS**, pursuant to 10 TAC §11.101(a)(2), rehabilitation developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs may be granted an exemption by the Board;

**WHEREAS**, all units in the development are covered by a Housing Assistance Payments (HAP) contract from HUD;

**WHEREAS**, Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department; and

**WHEREAS**, approval of the inducement will allow staff to submit an application to the Bond Review Board (BRB) for the issuance of a Certificate of Reservation associated with the Development;

**NOW, therefore, it is hereby**

**RESOLVED**, that the exemption is granted based on the ongoing and existing federal assistance and the site for the Lago de Plata development is deemed eligible under the requirements of 10 TAC §11.101(a)(2)(E) of the Qualified Allocation Plan; and

**FURTHER RESOLVED**, that based on the foregoing, the Inducement Resolution No. 19-026 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority under the Private Activity Bond Program for Lago de Plata, is hereby approved in the form presented to this meeting.

### **BACKGROUND**

The BRB administers the state's annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules, including but not limited to site eligibility and threshold as well as previous participation as it relates to previously funded developments through the Department. During the review of the full application, staff will also underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will then be presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. This inducement resolution would reserve approximately \$14 million in private activity bond volume cap.

*General Information:* This development is located at 1600 E. 13<sup>th</sup> Avenue in Corsicana, Navarro County, and includes the acquisition and rehabilitation of 150 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the Area Median Family Income and all are covered by a HAP contract.

*Site Analysis:* The Lago de Plata development is located approximately 230 feet from an active railway. Developments proposed to be located within 500 feet of an active railway are considered ineligible pursuant to 10 TAC §11.101(a)(2)(E) of the Qualified Allocation Plan unless certain mitigation is submitted or the development qualifies for an exemption as provided under the rule. Developments with ongoing and existing federal assistance from HUD, USDA or Veterans Affairs may be granted an exemption by the Board. Included in the pre-application was the applicant's request for such exemption, along with documentation in the form of a HAP contract confirming that all of the units are receiving federal assistance that is expected to be renewed under the new ownership.

Staff recommends that the site be considered eligible pursuant to the rule as explained herein. Staff notes that because a full application that includes all required third party reports has not yet been submitted, should there be other site features and/or neighborhood risk factors specific to the site that could render it ineligible under the rules, such site features and/or neighborhood risk factors will be evaluated at the time of full application, and considered before the Board at that time.

## RESOLUTION NO. 19-026

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENT; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental development (the “Development”) more fully described in Exhibit A attached hereto. The ownership of the Development as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the “Owners”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Development and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Development from the proceeds of tax-exempt and taxable, as applicable, obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Development will

satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Development listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable, as applicable, obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable, as applicable, obligations for purposes of paying the costs of the Development described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Development one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Development on the terms and conditions hereinafter set forth; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

## ARTICLE 1

### OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Development in an aggregate principal amount not to exceed those amounts, corresponding to the Development, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the

“Attorney General”); (v) satisfaction of the Board that the respective Development meets the Department’s public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction or rehabilitation of its Development and listed on Exhibit A attached hereto (“Costs of the Development”) from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Development; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Development will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Development, which Development will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Development. Substantially all of the proceeds of the Bonds shall be used to finance the Development, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families

of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Development. The Costs of the Development may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Development. Without limiting the generality of the foregoing, the Costs of the Development shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Development, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Development, the placing of the Development in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department ("Bond Counsel"), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.



Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Development's necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Development may be undertaken by any company or partnership that is a "related person" to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department's official intent for expenditures on Costs of the Development which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Development may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Development and Owners. The Board finds that:

(a) the Development is necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;

(b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;

(c) the Owners are financially responsible;

(d) the financing of the Development is a public purpose and will provide a public benefit; and

(e) the Development will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Development will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

## ARTICLE 3

### GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution page follows]*

PASSED AND APPROVED this 17<sup>th</sup> day of January, 2019.

[SEAL]

By: \_\_\_\_\_  
Chair, Governing Board

ATTEST:

\_\_\_\_\_  
Secretary to the Governing Board

*Signature Page to Inducement Resolution*

**EXHIBIT "A"**

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Lago de Plata Apartments	LIH Lago de Plata, LP, a Texas limited partnership	General Partner: LIH Lago de Plata GP, LLC, a Texas limited liability company	14,000,000
Costs: Acquisition/rehabilitation of a 150-unit affordable, multifamily housing development to be known as Lago de Plata Apartments, to be located at 1600 East 13 <sup>th</sup> Avenue, Navarro County, Corsicana, TX 75110			

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding site eligibility under 10 TAC §11.101(a)(2) relating to Undesirable Site Features and 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for Residences of Stillwater in Georgetown

**RECOMMENDED ACTION**

**WHEREAS**, the Residences of Stillwater is anticipated to be a proposed development by Pedcor Investments which was previously brought before the Board at the Board meetings of January 18, 2018, for a decision regarding eligibility for proximity to a railroad track pursuant to 10 TAC §10.101(a)(2) and February 22, 2018, for a decision regarding site eligibility under 10 TAC §10.101(a)(3) of the 2018 Uniform Multifamily Rules regarding the elementary school within the attendance zone that did not achieve the Met Standard rating by the Texas Education Agency (TEA) for 2017;

**WHEREAS**, the Board determined the site was eligible despite the proximity to a railroad track, and the mitigation concerning the school was deemed sufficient under the rule;

**WHEREAS**, the applicant did not pursue the site in 2018 but has since submitted a request to have the Undesirable Site Features and Neighborhood Risk Factors re-evaluated based on the 2019 Qualified Allocation Plan;

**WHEREAS**, the 2019 Qualified Allocation Plan requires that for sites located within 500 feet of an active railroad track, the site shall be ineligible unless a Railroad Quiet Zone has been adopted, a third party performs a noise assessment and sound mitigation in accordance with HUD standards will be implemented by the applicant, or the railroad is a commuter or light rail;

**WHEREAS**, the applicant has indicated that a third party noise assessment will be submitted at the time of application submission;

**WHEREAS**, the elementary school for the attendance zone of the proposed development achieved the 2018 Met Standard rating by TEA, however, the middle school (Forbes Middle School) for the attendance zone did not; and

**WHEREAS**, Forbes Middle School achieved Met Standard in 2016 and 2017 but did not for 2018 and a letter from the Director of Assessment for Georgetown Independent School District (ISD) was submitted that indicated recent changes in

the TEA Accountability Rating system resulted in Forbes Middle School falling just shy of achieving the Met Standard rating;

**NOW, therefore, it is hereby,**

**RESOLVED**, that the information provided by Georgetown ISD combined with the past performance of Forbes Middle School is not of a nature and severity that should render the site ineligible, and staff recommends the site for the proposed Residences of Stillwater development be eligible under 10 TAC §11.101(a)(3) of the 2019 Qualified Allocation Plan; and

**FURTHER RESOLVED**, that the determination of site eligibility as it relates to the proximity of the railroad track under 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan is conditioned upon submission of a third party noise assessment, and that the applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development.

## **BACKGROUND**

*Prior Board Action:* Pedcor Investments submitted requests in 2018 that sought a preliminary determination on site eligibility for a proposed development, Residences of Stillwater, in Georgetown. The site, intended to include new construction, and funded through the 4% Housing Tax Credit program, is within the attendance zone of an elementary school (Cooper Elementary), that did not achieve the Met Standard rating based on the 2017 TEA Accountability Ratings. Staff recommended and the Board concurred, finding the site eligible based on sufficient mitigation provided.

The Board also considered and approved a request from Pedcor to deem the site eligible despite its proximity to a railroad track. This finding of eligibility was based on the 2018 Uniform Multifamily Rules. The application was never submitted in 2018, and Pedcor has requested the Department re-consider site eligibility based on the 2019 Qualified Allocation Plan in anticipation of an application being submitted in 2019.

*Current Site Eligibility Request:* The proposed development site is located in northeast Georgetown just off the NE Inner Loop and west of State Highway 130. The site is surrounded primarily by vacant land, with the railroad track just north of the site. According to the map provided by the applicant and attached hereto the railroad track is approximately 450 feet from the proposed development site and there is a tract of land (3.3 acres), represented to be future commercial development and zoned as such, that would separate the Residences of Stillwater from the railroad track. The applicant also indicated that adjacent to the proposed development site will be a single family subdivision of approximately 230 homes that will be adjacent to the railroad track.

The presence of an undesirable site feature does not automatically render a site ineligible but rather requires an applicant disclose the specific undesirable site feature and submit appropriate mitigation, as further detailed in the rule. Pursuant to §11.101(a)(2):

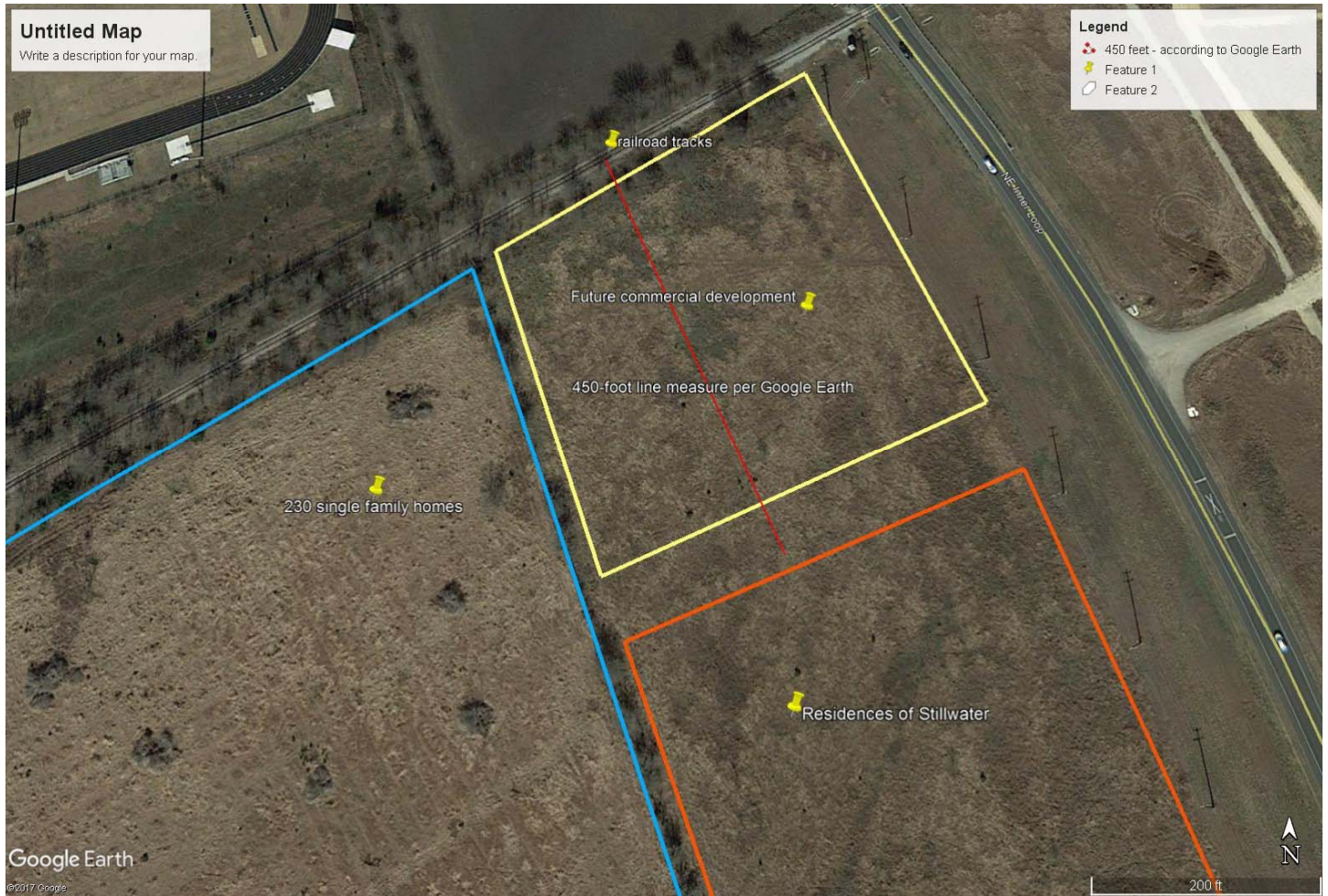


*“(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:  
(i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone; or  
(ii) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or  
(iii) the railroad in question is commuter or light rail;”*

The applicant has confirmed that options (i) and (iii) are not applicable to the railroad track in question. Because a housing tax credit application has not yet been submitted, the Department has not received the third party noise assessment. Staff recommends the site be considered eligible despite the proximity to the railroad track, and that such determination of eligibility be conditioned upon submission of the third party noise assessment, and that the applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development.

As it relates to the school performance, Cooper Elementary achieved the 2018 Met Standard rating; however, the middle school (Forbes Middle School) in the attendance zone for the proposed development was designated as Improvement Required. Historical performance of Forbes Middle School indicates that the school achieved the Met Standard rating in 2016 and 2017. A letter from the Director of Assessment for Georgetown ISD was submitted that indicated recent changes in the TEA Accountability Rating system resulted in Forbes Middle School falling just shy of achieving the Met Standard rating. Based on the aforementioned information, staff does not believe the one-year Improvement Required status of Forbes Middle School is of a nature and severity that should render the proposed development ineligible.

Staff notes that while an application for the proposed development has not yet been submitted, the affirmative recommendation regarding eligibility is based on the facts and information provided herein under the rules of the current statute and the Qualified Allocation Plan, and that should an application be filed under an amended statute or different program rules it could affect this determination, and might necessitate a Board re-consideration.



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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**JANUARY 17, 2019**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#18456 Jackie Robinson Memorial Apartments, El Paso)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Jackie Robinson Memorial Apartments, sponsored by the Housing Authority of the City of El Paso (HACEP), was submitted to the Department on September 21, 2018;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on November 15, 2018, and will expire on April 14, 2019;

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

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 4 and subject to the conditions as noted herein after review and discussion by the Executive Award and Review Advisory Committee (EARAC);

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,182,177 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Jackie Robinson Memorial Apartments, and conditioned upon the following, is hereby approved as presented to this meeting:

1. The Housing Authority of the City of El Paso (HACEP) or the management company contracted by HACEP is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department by **July 1, 2019**.
2. HACEP is required to submit the written policies and procedures for all developments subject to a TDHCA LURA for Department review no later than **July 1, 2019**.
3. Any requested extension to the above deadlines must be approved by the Board.

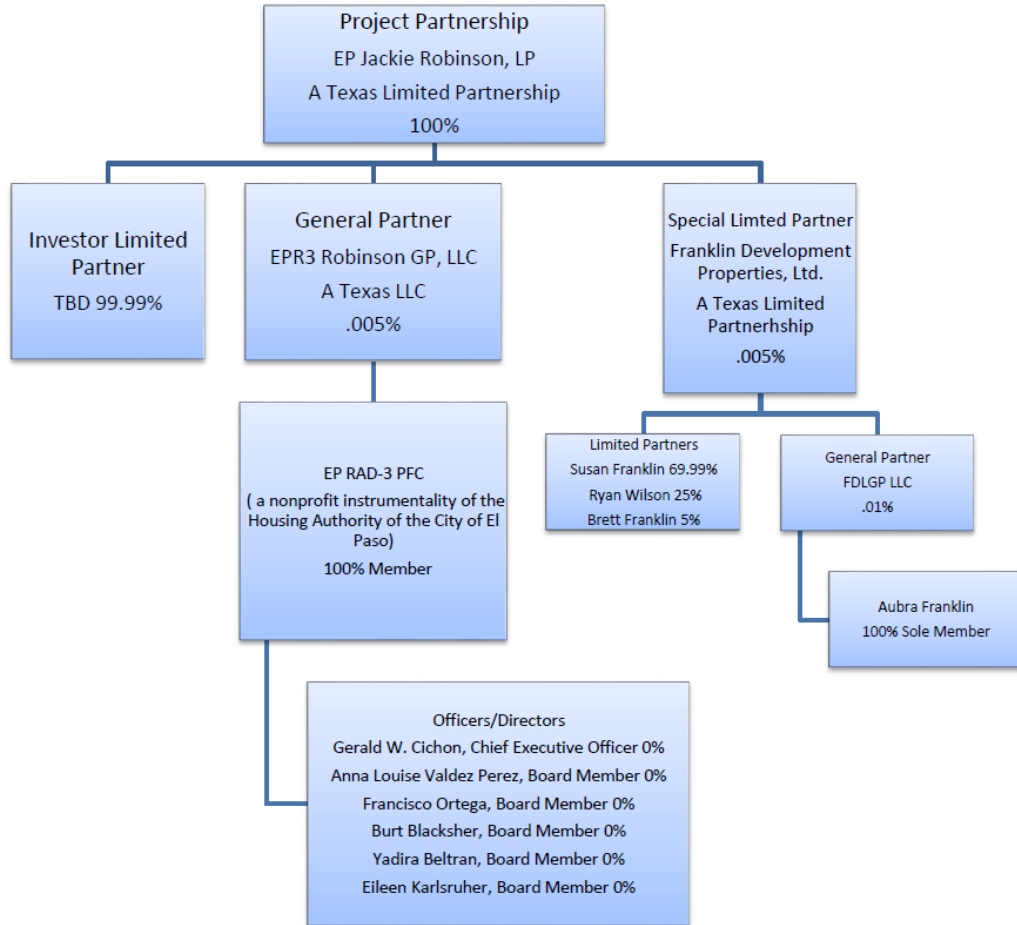
## **BACKGROUND**

*General Information:* Jackie Robinson Memorial Apartments is the proposed acquisition and rehabilitation of 184 units located at 421 Mangrum Circle, El Paso, El Paso County. The development was originally constructed in 1975 with 184 units; however, in order to comply with the requirements of the Americans with Disabilities Act of 1990, the applicant will convert two of the existing townhome units into two additional single-story units to yield a total of 186 units after rehabilitation. The property is currently owned by HACEP and is operating as public housing. All of the units will be rent and income restricted at 60% of the Area Medium Family Income and Project Based Vouchers are anticipated to continue for all of the units, including the two units that will be converted. The subject property will serve the general population and was considered by the city to be legal non-conforming with respect to zoning for the footprint and parking. The majority of the development site is located in census tract 0011.14, with a few buildings located within census tract 0011.15.

*Organizational Structure:* The Borrower is EP Jackie Robinson, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered a Category 4 and the previous participation was deemed acceptable by EARAC, with the aforementioned conditions, after review and discussion.

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

# EXHIBIT A





# 18456 Jackie Robinson Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION

January 10, 2019

PROPERTY IDENTIFICATION	
Application #	18456
Development	Jackie Robinson Apartments
City / County	El Paso / El Paso
Region/Area	13 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1975)

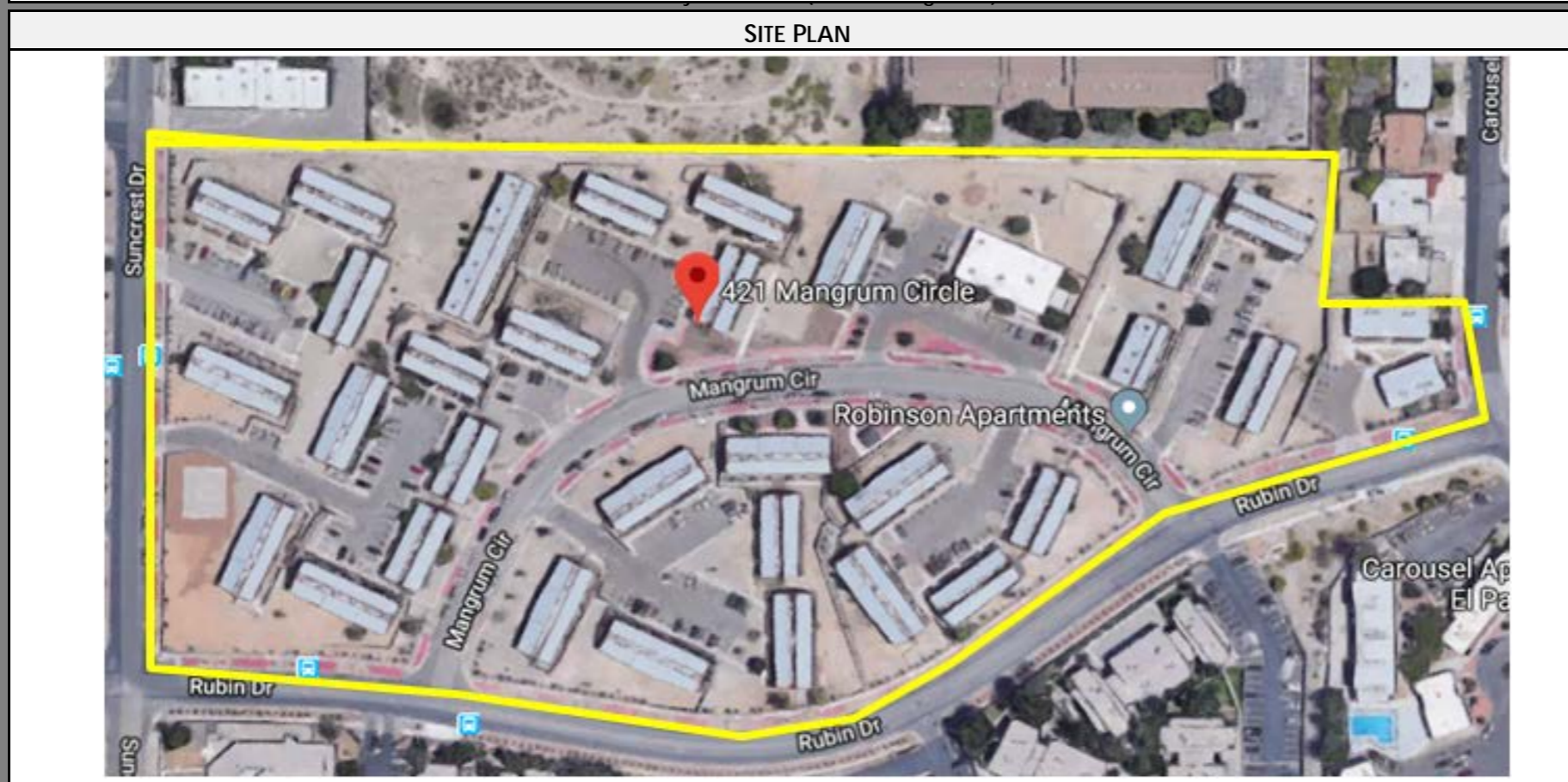
RECOMMENDATION			
TDHCA Program	Request	Recommended	
LIHTC (4% Credit)	\$1,182,177	\$1,182,177	\$6,356/Unit \$0.93

KEY PRINCIPAL / SPONSOR		
Housing Authority of the City of El Paso (HACEP) Franklin Development Properties - Ryan Wilson (Developer) Alamito PFC (Related-Party Issuer) Affordable Housing Enterprises (Contractor) Gerald ("Jerry") W. Cichon		
Related Parties	Contractor - Yes	Seller - Yes



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	7	4%	40%	-	0%
2	76	41%	50%	-	0%
3	72	39%	60%	186	100%
4	31	17%	MR	-	✓
<b>TOTAL</b>	<b>186</b>	<b>100%</b>	<b>TOTAL</b>	<b>186</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	Expense Ratio	39.7%
Breakeven Occ.	87.5%	Breakeven Rent	\$844
Average Rent	\$917	B/E Rent Margin	\$73
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,174/unit	Controllable	\$2,772/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	2.3%		
Highest Unit Capture Rate	8%	4 BR/50%	31
Dominant Unit Cap. Rate	5%	2 BR/50%	76
Premiums (↑60% Rents)	N/A		
Rent Assisted Units	186	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	996 SF	Density	15.5/acre
Acquisition	\$53K/unit	\$9,900K	
Building Cost	\$76.39/SF	\$76K/unit	\$14,153K
Hard Cost	\$92K/unit		\$17,180K
Total Cost	\$205K/unit		\$38,076K
Developer Fee	\$3,294K	(33% Deferred)	Paid Year: 6
Contractor Fee	\$2,405K	30% Boost	Partial

REHABILITATION COSTS / UNIT			
Site Work	\$6K	7%	Finishes/Fixtures \$14K 15%
Building Shell	\$50K	54%	Amenities \$2K 2%
HVAC	\$10K	11%	Total Exterior \$58K 69%
Appliances	\$2K	2%	Total Interior \$26K 31%



DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
PNC - Construction/Freddie TEL	15/35	5.40%	\$16,500,000	1.12	HACEP - Seller Note	50/0	3.00%	\$9,900,000	1.15	PNC - Tax Credit Capital	\$10,993,145
										Paisano HRC	\$1,083,036
<b>TOTAL DEBT (Must Pay)</b>			<b>\$16,100,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$9,900,000</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$12,076,181</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$26,000,000</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$38,076,181</b>

**CONDITIONS**

- Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
  - a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - b: Certification of comprehensive testing for asbestos, lead-based paint and lead in drinking water; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials, lead-based paint or lead in drinking water are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
  - c: Certification of the actual QCT amplifier calculation.

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

**BOND RESERVATION / ISSUER**

Issuer	Alamito Public Facilities Corporation
Expiration Date	4/14/2019
Bond Amount	\$30,000,000
BRB Priority	Priority 3
Close Date	4/14/2019
Bond Structure	Freddie Mac
% Financed with Tax-Exempt Bonds	74.5%

**RISK PROFILE**

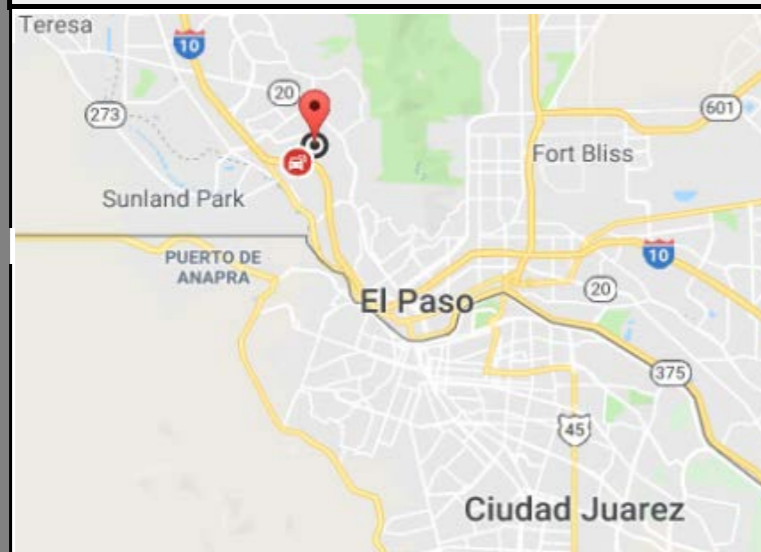
STRENGTHS/MITIGATING FACTORS

- 10% construction contingency & available
- Minimal lease up risk
- Pro forma based on historical expenses
- 100% rental assistance

WEAKNESSES/RISKS

- Potential cost overruns associated with rehab projects

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**





**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**JANUARY 17, 2019**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19408 Mission Trails at El Camino Real, San Marcos)

**RECOMMENDED ACTION**

**WHEREAS**, an application for 4% Housing Tax Credits for Mission Trails at El Camino Real, sponsored by The Michaels Development Company, was submitted on November 1, 2018;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on September 20, 2018, and will expire on February 17, 2019, and a subsequent supplemental Certificate of Reservation was issued on January 10, 2019 and will expire on June 9, 2019;

**WHEREAS**, the proposed issuer of the bonds is the Capital Area Housing Finance Corporation; and

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 4 and subject to the conditions as noted herein after review and discussion by the Executive Award and Review Advisory Committee (EARAC);

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,683,222 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Mission Trails at El Camino Real, and conditioned upon the following, is hereby approved as presented to this meeting.

1. Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Developments subject to TDHCA LURAs over which the owner has the power to exercise Control. These persons shall include IRM's Head of Compliance, IRM's Senior Vice President, as well as the Texas Regional Manager.
2. Owner agrees to establish an email distribution group in CMTS and include IRM's Head of Compliance, Compliance Clerk, Regional Vice President, and Texas Regional

Manager for the proposed Development and to maintain up to date to ensure that all responsible parties receive notification of any uploads and will facilitate a timely response to any identified issues.

3. Upon request, from the Department, Owner or IRM will provide documentation reflecting the implementation of these measures.

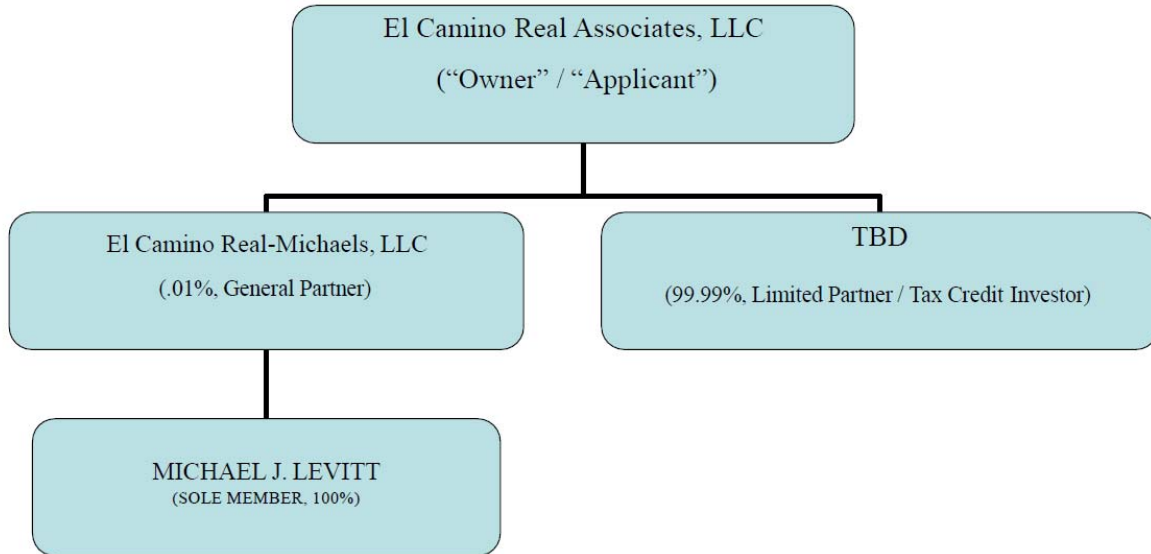
### **BACKGROUND**

*General Information:* Mission Trails at El Camino Real is the proposed new construction of 352 units to be located at the northeast corner of TX Highway 123 and Clovis Barker Road in San Marcos, Hays County. The development will serve the general population and the site conforms to current zoning requirements. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served; however, 282 of the units will be rent and income restricted at 60% of AMFI, one unit will be employee-occupied, and the remaining 69 units will be rented at market rate.

*Organizational Structure and Previous Participation:* The Borrower is El Camino Real Associates, LLC and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 4, and subject to the conditions as noted herein after review and discussion by the Executive Award and Review Advisory Committee ("EARAC").

*Public Comment:* There have been no letters of support or opposition submitted to the Department.

**EXHIBIT A**



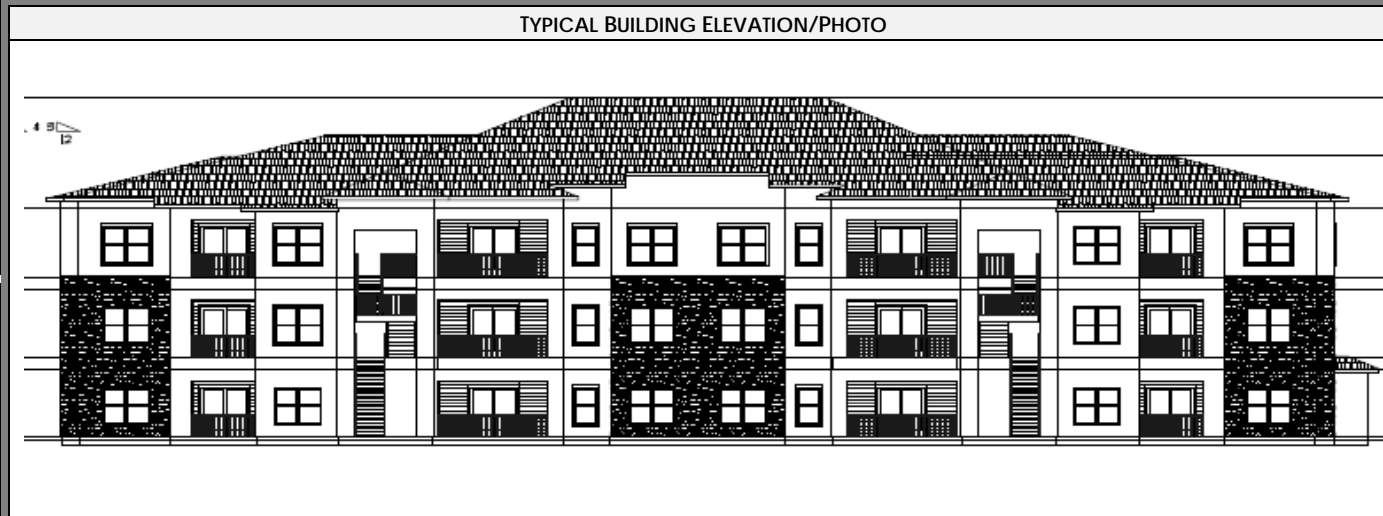
# 19408 Mission Trails at Camino Real - Application Summary

REAL ESTATE ANALYSIS DIVISION

January 10, 2019

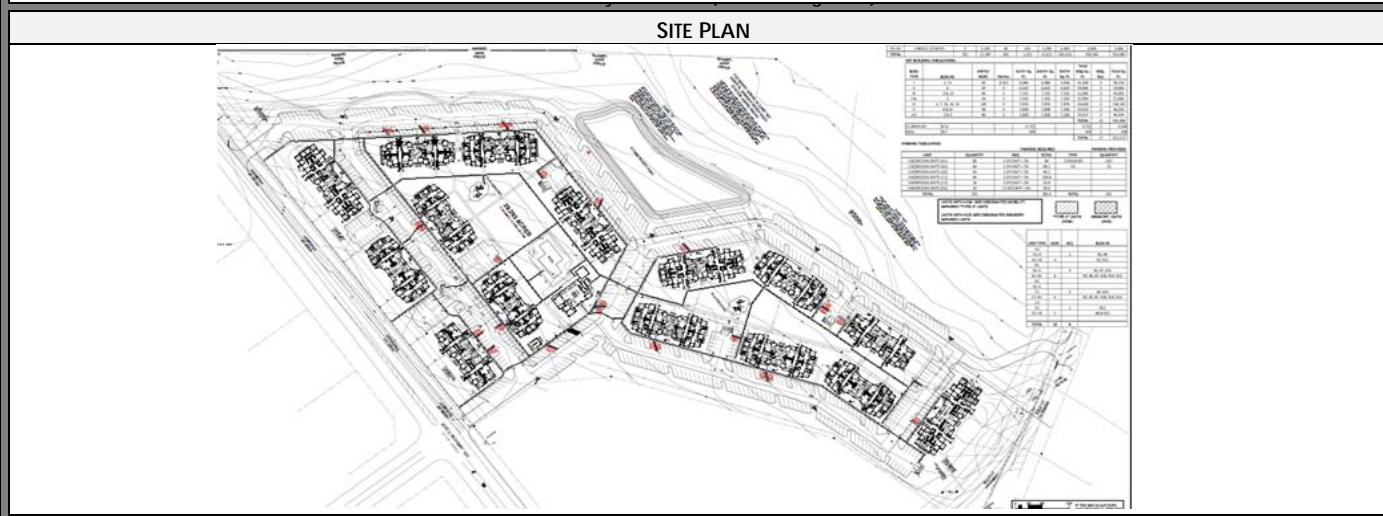
PROPERTY IDENTIFICATION		RECOMMENDATION				
Application #	19408	TDHCA Program	Request	Recommended		
Development	Mission Trails at Camino Real	LIHTC (4% Credit)	\$1,685,207	\$1,683,222	\$4,782/Unit	\$0.95
City / County	San Marcos / Hays					
Region/Area	7 / Urban					
Population	General					
Set-Aside	General					
Activity	New Construction					

KEY PRINCIPAL / SPONSOR		
The Michaels Development Company - Ryan Zent Prestige Building Company - Mike Raider (Contractor)		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	80	23%	40%	-	0%
2	128	36%	50%	-	0%
3	112	32%	60%	282	80%
4	32	9%	MR	69	20%
<b>TOTAL</b>	<b>352</b>	<b>100%</b>	<b>TOTAL</b>	<b>351</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	✓ 1.21	Expense Ratio	✓ 42.8%
Breakeven Occ.	✓ 83.3%	Breakeven Rent	\$1,015
Average Rent	\$1,128	B/E Rent Margin	✓ \$114
Property Taxes	\$1,007/unit	Exemption/PILOT	0%
Total Expense	\$5,428/unit	Controllable	\$3,076/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	✓ 4.1%		
Highest Unit Capture Rate	⚠ 26%	4 BR/60%	29
Dominant Unit Cap. Rate	⚠ 19%	3 BR/60%	102
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	928 SF	Density	12.0/acre
Acquisition		\$10K/unit	\$3,399K
Building Cost	\$72.40/SF	\$67K/unit	\$23,648K
Hard Cost		\$86K/unit	\$30,263K
Total Cost		\$166K/unit	\$58,516K
Developer Fee	\$6,100K	(29% Deferred)	Paid Year: 4
Contractor Fee	\$4,014K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
FNMA via Berkadia	18/40	4.75%	\$36,800,000	1.21	Interim Operating Income	0/0	0.00%	\$1,870,539	1.21	Riverside Capital	\$15,989,009
					Interest Income	0/0	0.00%	\$2,073,066	1.21	The Michaels Organization	\$1,783,042
<b>TOTAL DEBT (Must Pay)</b>			<b>\$36,800,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$3,943,605</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$17,772,051</b>
<b>TOTAL DEBT SOURCES</b>											<b>\$40,743,605</b>
<b>TOTAL CAPITALIZATION</b>											<b>\$58,515,656</b>

**CONDITIONS**

1 Receipt and acceptance before Determination Notice:

- a: Certification that if the site is in the 100-year floodplain when it places in service, the finished ground floor elevation of the buildings will be at least one foot above the floodplain and that all drives, parking and amenities will be no more than 6 inches below the floodplain; and that the Owner will provide flood insurance coverage for the buildings and for the residents' personal property until such time that the site is officially designated to be no longer in the floodplain.
- b: Documentation that a noise study has been completed, and certification from the Architect that all recommendations from the noise study are incorporated into the development plans.
- c: Architect certification that the development plans incorporate mitigation measures sufficient to satisfy HUD Acceptable Separation Distance ("ASD") guidelines related to residential propane tanks on adjacent properties.

2 Receipt and acceptance by Cost Certification:

- a: For any buildings remaining in the floodplain, documentation that flood insurance is in place both for the buildings and for the residents' personal property at the property owner's expense; and certification from the owner that flood insurance for the buildings and for the residents' personal property will remain in force until such time that the buildings are officially designated as no longer in a floodplain.
- b: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
- c: Architect certification that mitigation measures for HUD ASD guidelines were successfully implemented in the completion of the Development.

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

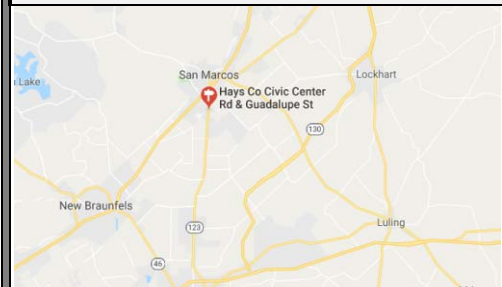
**BOND RESERVATION / ISSUER**

Issuer	Capital Area HFC
Expiration Date	2/17/2019
Bond Amount	\$40,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	Freddie Mac
% Financed with Tax-Exempt Bonds	83.3%

**RISK PROFILE**

STRENGTHS/MITIGATING FACTORS	
▫	Developer experience
▫	low expense ratio
▫	Attractive design should compete well in market
WEAKNESSES/RISKS	
▫	Market risk exposure on 20% of units

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**



11

**BOARD ACTION REQUEST**

**OCI, HTF, and NSP DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action to authorize the issuance of a 2019 Amy Young Barrier Removal Program Notice of Funding Availability and publication of the Notice of Funding Availability in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) is required by Rider 9(c) of the General Appropriations Act (GAA) to produce a plan outlining its use of the General Revenue appropriated for the Housing Trust Fund (HTF) for the 2018-2019 biennium;

**WHEREAS**, the plan approved by the Board on June 29, 2017, authorized the use of any HTF funds from loan repayments, interest earnings, deobligations, and any other additional HTF funds as allowed by statute in excess of those funds required under Rider 8, to be programmed into activities approved in the HTF plan;

**WHEREAS**, in the plan, the Board authorizes staff to proceed with issuing Notices of Funding Availability (NOFAs) to expedite the commitment and expenditure of funds;

**WHEREAS**, in 2018, the HTF received \$1,288,332.42 in loan repayments other than repayments from Bootstrap Program activities, and deobligated \$330,000 from closed and/or canceled Amy Young Barrier Removal (AYBR) Program reservation activities from Program Year 2018, totaling \$1,618,332.42 that needs to be programmed into activities approved in the HTF plan; and

**WHEREAS**, staff recommends releasing this \$1,618,332.42 of available funds through a 2019 AYBR Program Statewide Allocation NOFA whose purpose will be to make funds available on statewide basis and that notice of the NOFA is to be published in the *Texas Register* on February 1, 2019;

**NOW, therefore, it is hereby**

**RESOLVED**, that \$1,618,332.42 will be made available to the AYBR Program through the 2019 AYBR Program Statewide Allocation NOFA; and

**FURTHER RESOLVED**, the Acting Director and staff as designated by the Acting Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

## **BACKGROUND**

Staff has identified that \$1,288,332.42 in HTF, non-Bootstrap Loan Program repayments have been received. While Bootstrap Loan Program repayments are only reprogrammed back into the Bootstrap Loan Program, loan repayments that are repaid from other non-Bootstrap sources may be reprogrammed into any HTF Plan activity. In addition to the loan repayments, staff also identified \$330,000 that has been deobligated from closed and/or canceled reservation activities over the course of implementing the 2018 AYBR Program year.

This total of \$1,618,332.42 in uncommitted funds is recommended to be programmed into the AYBR Program, which provides one-time grants of up to \$20,000 to Persons with Disabilities in a Household qualified as Low-Income (earning up to 80% Area Median Family Income). Grants are for home modifications that increase accessibility, eliminate life-threatening hazard and correct unsafe conditions allowing persons with disabilities to remain in their homes. Administrators receive up to an additional \$2,000 in administration funds per household activity. This release of additional funding is estimated to assist 61 households with barrier removal modifications.

All Applications awarded under this NOFA will be subject to the requirements of 10 TAC Chapter 20 (the Single Family Programs Umbrella Rule), 10 TAC Chapter 21 (Minimum Energy Efficiency Requirements for Single Family Construction Activities), and 10 TAC Chapter 26 (the Housing Trust Fund Rule). All Applications will also be required to meet the applicable requirements in 10 TAC Chapters 1 and 2 (Administration and Enforcement, respectively). It should be noted that whereas the annual allocation of HTF funds programmed for AYBR are released regionally to allow time for all areas of the state to access funds, this additional release of funds will not first be allocated regionally. It will be immediately made available statewide so that regions in the state that have depleted their funds and have clients awaiting assistance, can access these funds.

The Department anticipates releasing the 2019 Amy Young Barrier Removal Program Statewide Allocation NOFA and publishing notice of the NOFA in the Texas Register on February 1, 2019.





**Texas Department of Housing and Community Affairs  
Housing Trust Fund  
Fiscal Year 2019 Amy Young Barrier Removal Program  
Statewide Allocation  
Notice of Funding Availability  
February 1, 2019**



**Sections**

1. Program Overview
2. Eligible Administrators
3. Definitions
4. Program Requirements
5. Property and Construction Guidelines
6. Reservation System Guidelines
7. Reservation Process, Stage 1: Household Eligibility Review
8. Reservation Process, Stage 2: Initial Inspection, Work Write-Up and Cost Estimate Review
9. Reservation Process, Stage 3: Construction Contract and Bid Review
10. Reservation Process, Stage 4: Project Costs Draw and Administration Fee Draw Review
11. For More Information

## **1. Program Overview**

The Amy Young Barrier Removal Program (the Program or AYBR) provides one-time grants of up to \$20,000 to Persons with Disabilities in a Household qualified as Low-Income. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards, and correct unsafe conditions. Construction standards and guidelines are further described in the Program Manual.

The Administrator must comply with Chapter 2306 of the Texas Government Code, and Title 10 of the Texas Administrative Code, including but not limited to: Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, Single Family Program Umbrella Rule; Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities; and Chapter 26, Texas Housing Trust Fund Rule.

With this NOFA the Texas Department of Housing and Community Affairs (the Department) announces \$1,618,332 in funding from the Housing Trust Fund (HTF): \$1,471,210.91 in Project funds and \$147,121.09 in Administrative funds. The funds will be available for Program Reservation Setups beginning Tuesday, February 19, 2019, at 10:00 a.m. Austin local time (the Reservation start date).

Only Administrators with an executed and valid 2019 AYBR Program Statewide Allocation Reservation System Agreement will have access to the online Reservation System for the purpose of reserving the funds described in this NOFA. On the Reservation start date, funds will be available on the Department's online Reservation System on a first-come, first-served basis. Reservations submitted prior to the Reservation start date per the Reservation System time stamp will not be considered.

After the Reservation start date, additional Program funding may become available from cancellations of reservations. The Department will release any available funds from cancellations on Tuesdays, at or after 10:00 a.m. Austin local time. If the Department is closed on a Tuesday, the funds will be released the next business day on which the Austin office is open.

## **2. Eligible Administrators**

- a) The Department is accepting applications from eligible Administrators seeking access to funding pertaining to this NOFA.
- b) The following entities are eligible to access the funding pertaining this NOFA:
  - i. Units of Local Government;
  - ii. Councils of Government;
  - iii. Colonia Self-Help Centers;
  - iv. Nonprofit Organizations;
  - v. Local Mental Health Authorities; and
  - vi. Public Housing Authorities.

- c) Participating Jurisdictions (*i.e.*, cities and counties) that receive a direct award of HOME funding from the U.S. Department of Housing and Urban Development are *ineligible* to be an Administrator of the Program.
- d) Eligible entities must have at least 2 years of previous participation as an Administrator for the AYBR Program or provide the Department documentation in the form of descriptions of staff experience and current or previous contracts with the Department or other funders to show the following:
  - i. Experience of at least 2 years in providing housing rehabilitation services to Low-Income Households in Texas;
  - ii. Experience with accessibility standards, applicable building codes, and construction serving the needs of Persons with Disabilities; and
  - iii. Qualifications of Administrator's housing inspector(s), according to the Qualified Inspection Certification form on the Program website.
- e) Partnership with another entity that meets the above requirements is acceptable, but must be documented with a contract or memorandum of understanding, subject to Department approval. Letters of support or intent will not be accepted.
- f) Administrators seeking access to funding pertaining to this NOFA must complete the Reservation System Access Application available on the Program website, including a Previous Participation Review (see 10 TAC Chapter 1 Subchapter C). The Department will accept Previous Participation Reviews prior to the release of this NOFA. The Department will accept Reservation System Access Applications on an ongoing basis.

### **3. Definitions**

- a) Any capitalized terms that appear in this NOFA but are not defined in this section are defined in Chapter 2306 of the Texas Government Code or in the Department Rules.
- b) This NOFA also uses the following definition:  
Reservation Setup – The submission of all required documents to the online Reservation System in order to reserve Program funds for an eligible Household.

### **4. Program Requirements**

- a) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Texas Government Code), Department Rules, reservation agreements, Program Manual, forms, and this NOFA.
- b) The maximum amount of Program assistance per Household is a one-time grant of up to \$20,000 in Project Costs (combined Hard and Soft Costs).
- c) The Department will pay the Administrator an Administration Fee equal to 10% of the Project Costs upon successful completion of the project. The Administration Fee is paid in addition to the \$20,000 maximum assistance permitted per Household. Generally, submission of the Administration Fee draw request will be sufficient to receive the Administration Fee. The Department may request additional information if necessary.

### **5. Property and Construction Guidelines**

- a) Owner-occupied homes and rental units are eligible for Program assistance in accordance with 10 TAC §26.26.
- b) In rental units, all Household occupants, including the Person with Disability, must be named on the Intake Application and Household Income Certification. The unit must be free of hazardous and unsafe conditions prior to participation in the Program.
- c) Administrators must follow the construction requirements in Department Rules.
- d) Administrators must follow all applicable sections of their local building codes and ordinances. In the absence of local building code, Administrators must adhere to the construction standards and guidelines detailed in the Program Manual.

## **6. Reservation System Guidelines**

- a) An Administrator may have up to 15 reservations in “active” status from the current NOFA at any one time. Completed activities that are undergoing processing of the draw request (in “pending accounting approval” status) do *not* count towards the limits of active reservations. Reservations from any other Department or HTF Program NOFAs will not limit the number of Reservations under this NOFA.
- b) The Department reserves the right to suspend or limit access to the Reservation System for Administrators out of compliance with Program requirements such as past due Single Audits or Audit certification forms; late responses to Compliance monitoring or Audit Management letters, Administrator ineligibility, inadequate staffing or inadequate capacity, complaints, etc. Administrator access may be restored upon the Department’s acceptance of required documentation.
- c) The Department may de-authorize access to the Reservation System by an Administrator and terminate their AYBR Program Reservation System Agreement if the Administrator does not meet requirements in this NOFA, violates the Department Rules, or violates the AYBR Program Reservation System Agreement.

## **7. Reservation Process, Stage 1: Household Eligibility Review**

- a) Administrators shall market the Program in accordance to 10 TAC §20.9, complete application intake, and qualify Households for participation. Details on determining income eligibility and preparing and submitting Reservation Setups are provided in the Program Manual and the Reservation System User Guide.
- b) After collecting and verifying the required Household income and property eligibility documentation, the Administrator shall enter the Reservation Setup information into the online Reservation System, upload and submit all required forms as described in the Program Manual and Reservation System User Guide, and reserve up to the maximum of \$20,000 in Project Costs per Household.
- c) Reservation Setups will be processed in the order submitted on the Reservation System. Submission of a Reservation Setup on behalf of a Household does not guarantee funding.
- d) The Department will attempt to review the Reservation Setup documentation within 10 calendar days of submission by the Administrator.

- e) If the Reservation Setup is incomplete, as defined in the Program Manual, it will be set back to "pending" status and funds will be released and available for other reservation requests. If the documentation needs correction or additional information, the Department will notify the Administrator of the deficiencies in writing. **If any deficiencies remain uncured 10 calendar days after notification, the Department may cancel the reservation.** No extensions to Reservation Setups will be granted but the Administrator may resubmit the Reservation Setup, if funds are available.
- f) Once the Department reviews and approves the Reservation Setup, the Department will reserve up to the maximum of \$20,000 in Project Costs and an Administration Fee equal to 10% of the Project Costs in the Reservation System on behalf of the Household. The Department will notify the Administrator of the successful completion of Stage 1 ("Stage 1 Notification") and instruct the Administrator to proceed to Stage 2 of the reservation process.

## **8. Reservation Process, Stage 2: Initial Inspection, Work Write-Up and Cost Estimate Review**

- a) When the Department approves the Reservation Setup and sets it to "active" status in the Reservation System, Project Costs and Administration Fee will be reserved for the Household for a period of **60 calendar days**. During this time, the Administrator must complete the initial inspection, "before" photos, work write-up and cost estimation forms and upload and submit all required documentation as described in the Program Manual.
- b) The Department will attempt to review the Stage 2 documentation within 10 calendar days of submission by the Administrator.
- c) If documentation needs correction or additional information, the Department will notify the Administrator of the deficiencies. **If any deficiencies remain uncured 10 calendar days after notification, the Department may cancel the reservation.** No extensions will be granted but the Administrator may resubmit the Reservation Setup, if funds are available.
- d) Once the Department completes its review and approves the Stage 2 submission, the Department will notify the Administrator of the successful completion of Stage 2 (Stage 2 Notification) and instruct the Administrator to proceed to Stage 3 of the reservation review process.

## **9. Reservation Process, Stage 3: Construction Contract Bid Review**

- a) Within **60 calendar days** of the Stage 2 Notification, (described in section 8d), the Administrator must upload and submit the line item bid selected for contract award and other required documentation as described in the Program Manual.
- b) The Department will attempt to review the Stage 3 documentation within 10 calendar days of submission by the Administrator.
- c) If documentation needs correction or additional information, the Department will notify the Administrator of the deficiencies. **If any deficiencies remain uncured 10 calendar days after notification, the Department may cancel the reservation.** No extensions will be granted but the Administrator may resubmit the Reservation Setup, if funds are available.
- d) Once the Department completes its review and approves the Stage 3 submission, the

Department will notify the Administrator of the successful completion of Stage 3 (Stage 3 Notification) and instruct the Administrator to proceed with construction.

#### **10. Reservation Process, Stage 4: Project Costs Draw and Administration Fee Draw Review**

- a) The Administrator has **90 calendar days** from the Stage 3 Notification (described in section 9d) to complete all construction activities and upload and submit both the Project Costs and Administration Fee draw requests. Details on preparing documents required and uploading draw requests are provided in the Program Manual and the Reservation System User Guide. If the Administrator fails to meet this deadline, the Reservation may be canceled.
- b) The Department may grant a one-time extension of 30 calendar days to the project completion deadline due to extenuating circumstances. Administrators must submit a written request explaining the extenuating circumstances to justify the extension prior to the project completion deadline.

#### **11. For More Information**

Please contact Diana Velez at (512) 475-4828 or [htf@tdhca.state.tx.us](mailto:htf@tdhca.state.tx.us).

1m

**BOARD ACTION REQUEST**  
**HOUSING RESOURCE CENTER**  
**JANUARY 17, 2019**

Presentation, discussion, and possible action on a minor amendment of the 2018 State of Texas Consolidated Plan: One-Year Action Plan

**RECOMMENDED ACTION**

**WHEREAS**, the U.S. Department of Housing and Urban Development (HUD) requires the submission of a One-Year Action Plan in accordance with 24 CFR §91.320;

**WHEREAS**, the final 2018 State of Texas Consolidated Plan: One-Year Action Plan (Plan), which reports on the intended use of funds received by the State of Texas from HUD for Program Year (PY) 2018, beginning on February 1, 2018, and ending on January 31, 2019, was approved for submission to HUD at the Board meeting of June 28, 2018, and the Plan was submitted to HUD on July 19, 2018;

**WHEREAS**, staff has developed a minor amendment to the Plan, in accordance with the State's citizen participation plan, and the requirements of 24 CFR §§91.505 and 91.320(k)(2)(iv), in order to have the ability (with a Development specific waiver in accordance with the rules, Plan, and NOFA, and approved by the Board) to award PY 2018 HOME funds to multifamily developments that are proposing refinancing with per-unit rehabilitation costs that are less than the minimum per-unit rehabilitation costs that exist in Title 10, Part 1, Chapter 11 (previously Chapter 10) of the Texas Administrative Code as a result of the 2019-1 Multifamily Direct Loan Annual NOFA, which highlights the Department's commitment to its statutory requirement to the preservation of affordable housing; and

**WHEREAS**, the minor amendment will be submitted to HUD upon Board approval;

**NOW, therefore, it is hereby**

**RESOLVED**, that the minor amendment to the Plan, in the form presented to this meeting, is hereby approved for submission to HUD.

**BACKGROUND**

TDHCA has prepared a minor amendment of the 2018 State of Texas Consolidated Plan: One-Year Action Plan (Plan) in accordance with the State's citizen participation plan and the requirements of 24 CFR §§91.505 and 91.320(k)(2)(iv). Since TDHCA will not develop new activities or change the method of distribution detailed in the Plan, the State of Texas is not required to substantially amend the Plan. Instead, TDHCA will submit a minor amendment of the Plan to HUD in writing through HUD's Integrated



Disbursement and Information System (IDIS). The minor amendment of the Plan will also be posted to the TDHCA webpage at <http://www.tdhca.state.tx.us/housing-center/pubs-plans.htm>.

The purpose of the minor amendment is to add detail to the Plan that will allow TDHCA (with an approved Development specific waiver in accordance with the rules, Plan, and NOFA, and approved by the Board) to award PY 2018 HOME funds to multifamily developments that are proposing refinancing with lower rehabilitation costs than would otherwise be allowed in 10 TAC Chapter 11 (10 TAC §11.101(b)(3)) as a result of the Preservation set-aside, which specifically allows for refinancing of existing non-federal debt with minimal rehabilitation, being included in the 2019-1 Multifamily Direct Loan Annual NOFA.

This action seeks approval to submit a minor amendment of the 2018 One-Year Action Plan to HUD. Staff recommends approval of this action.

**Minor Amendment to the  
2018 State of Texas Consolidated Plan: One-Year Action Plan**

TDHCA has prepared a minor amendment of the 2018 State of Texas Consolidated Plan: One-Year Action Plan (Plan) in accordance with the State's citizen participation plan and the requirements of 24 CFR §§91.505 and 91.320(k)(2)(iv). Since TDHCA will not develop new activities or change the method of distribution detailed in the Plan, the State of Texas is not required to substantially amend the Plan. Instead, TDHCA will submit the following minor amendment of the Plan to HUD in writing and through HUD's Integrated Disbursement and Information System (IDIS). The minor amendment of the Plan will also be posted to the TDHCA webpage at <http://www.tdhca.state.tx.us/housing-center/pubs-plans.htm>.

Section AP-90 (Program Specific Requirements for HOME) from the final 2018 OYAP has been amended as **blacklined** in this document. The purpose of this minor amendment is to add detail to the Plan that will allow TDHCA (with a Development specific waiver in accordance with the rules, Plan, and NOFA, and approved by the TDHCA Board) to award PY 2018 HOME funds to multifamily developments that are proposing refinancing with lower rehabilitation costs than would otherwise be allowed in 10 TAC Chapter 11 (10 TAC §11.101(b)(3)) as a result of the Preservation set-aside, which specifically allows for refinancing of existing non-federal debt with minimal rehabilitation, being included in the 2019-1 Multifamily Direct Loan Annual NOFA.

**AP-90 Program Specific Requirements – 91.320(k)(1,2,3)  
HOME Investment Partnership Program (HOME)  
Reference 24 CFR 91.320(k)(2)**

1. A description of other forms of investment being used beyond those identified in Section 92.205 is as follows:

The State is not proposing to use any form of investment in its HOME Program that is not already listed as eligible for investment in 24 CFR §92.205(b).

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in §92.254, is as follows:

A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in §92.254, is as follows:

If the participating jurisdiction intends to use HOME funds for homebuyers, the guidelines for resale or recapture must be described as required in 24 CFR §92.254(a)(5). Recapture provisions are not applicable for HOME-assisted multifamily rental projects; in the case of default, sale, short sale, and/or foreclosure, the entire HOME investment must be repaid.

TDHCA has elected to utilize the recapture provision under 24 CFR §92.254(a)(5)(ii) as its primary method of recapturing HOME funds under any program the State administers that is subject to this provision. The following methods of recapture would be acceptable to TDHCA and will be identified in the note prior to closing.

A. Recapture the amount of the HOME investment reduced on a pro rata share based on the time the homeowner has owned and occupied the unit measured against the required affordability period. Number of years remaining in the Period of affordability X Total direct HOME subsidy = Recaptured Amount

Period of affordability

B. The recapture amount is subject to available net proceeds in the event of sale or foreclosure of the housing unit. In the event of sale or foreclosure of the housing unit, if the net proceeds (i.e., the sales price minus closing costs; any other necessary transaction costs; and loan repayment, other than HOME funds) are less than the HOME investment that is subject to recapture, then the Department will recapture the available amount of net proceeds. If there are no Net Proceeds from the sale, no repayment will be required of the homebuyer and the balance of the loan shall be forgiven. TDHCA will not recapture more than the amount available through net proceeds.

C. The household can sell the unit to any willing buyer at any price.

D. In the event that the assisted property is rented or leased, or otherwise ceases to be the principal residence of the initial household, the entire HOME investment is subject to recapture.

E. In the event of sale to a subsequent low-income purchaser of a HOME-assisted homeownership unit, the low-income purchaser may assume the existing HOME loan and recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the subsequent homebuyer. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR §92.254(a)(4) are as follows:

In certain limited instances, TDHCA may choose to utilize the resale provision at 24 CFR §92.254(a)(5)(i) under any activity the State administers that is otherwise subject to this provision. The following method of resale would be acceptable to TDHCA and will be identified in the note prior to closing:

A. Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, or if the initial Household is no longer occupying the property as their Principal Residence.

B. Resale requirements must ensure that, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, the housing is made available for subsequent purchase at an affordable price to a reasonable range of low- or very low-income homebuyers that will use the property as their principal residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent of the area median family income and meet all program requirements.

C. The resale requirement must ensure that the price at resale provides the original HOME-assisted owner a fair return on investment. Fair return on investment is defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of \$500. Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement

are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then fair return shall remain in force.

D. The initial homebuyer's investment of down payment and closing costs divided by TDHCA's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer. The balance of appreciated value shall be paid to TDHCA. If appreciated value is zero, or less than zero, then no appreciated value exists. The HOME loan balance will be transferred to the subsequent buyer and the affordability period will remain in effect. The period of affordability is based on the total amount of HOME funds invested in the housing.

E. In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid. In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR §92.206(b), are as follows:

TDHCA may use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds as described in 24 CFR §92.206(b)(2). TDHCA shall use its underwriting and evaluation standards, site and development requirements, and application and submission requirements found in 10 TAC, Chapter ~~10~~11, for refinanced properties in accordance with its administrative rules. TDHCA may allow for lower per-unit rehabilitation costs than those required in 10 TAC §11.101(b)(3), potentially allowing rehabilitation costs as low as \$1,000 per unit provided (1) those minimal rehabilitation costs can be supported in a Property Condition Assessment and/or Capital Needs Assessment, (2) the request is in accordance with this plan, TDHCA's rules, and the applicable NOFA, and (23) TDHCA's Board agrees to waive the minimum rehabilitation costs in 10 TAC §11.101(b)(3). At a minimum, ~~these rules~~ this requires the following:

- that rehabilitation is the primary eligible activity for developments involving refinancing of existing debt by requiring that the HOME eligible rehabilitation costs – whether funded entirely or partially by TDHCA's HOME funds – are greater than the refinancing costs (i.e. payoff amount plus closing and title costs);
- that a minimum funding level – minimal rehabilitation costs as described above, or the applicable per unit costs in 10 TAC §11.101(b)(3) – is set for rehabilitation on a per unit basis;
- that a review of management practices is required to demonstrate that disinvestments in the property has not occurred;
- that long-term needs of the project can be met;
- that the financial feasibility of the development will be maintained over an extended affordability period;
- that whether new investment is being made to maintain current affordable units and/or creates additional affordable units is stated;

- that the required period of affordability is specified;
- that the HOME funds may be used throughout the entire jurisdiction (except as TDHCA may be limited by the Texas Government Code) is specified; and
- that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG, ~~is stated~~.

**Discussion:**

For HOME, the State is not proposing to use any form of investment in its HOME Program that is not already listed as an eligible for investment in 24 CFR §92.205(b). As described above, TDHCA may use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated as described in 24 CFR §92.206(b). TDHCA shall use its underwriting and evaluation standards, site and development requirements, and application and submission requirements found in 10 Texas Administrative Code, Chapters 10, 11, and 13, for refinanced properties in accordance with its administrative rules.

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**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**JANURARY 17, 2019**

Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit, Housing Trust Fund, and HOME Land Use Restriction Agreements for Clifton Manor Apartments I and II (HTC #05236, HTF #1000422, and HOME #1000434)

**RECOMMENDED ACTION**

**WHEREAS**, in 2005, Clifton Manor Apartments I and II (the Development) received a 9% Housing Tax Credit (HTC) award under the at-risk set aside, a Housing Trust Fund (HTF) loan, and a HOME loan for the acquisition and rehabilitation of 40 units of multifamily housing in Clifton, Bosque County;

**WHEREAS**, the Land Use Restriction Agreements (LURAs) require all 40 units to be set-aside for Individuals and Families with incomes that do not exceed 50% of the area median income (AMI);

**WHEREAS**, the Development Owner, Clifton-Charger Properties, LP, is now requesting a modification to the income restrictions in the LURAs to allow eight units to be occupied by individuals and families with incomes that do not exceed 60% AMI;

**WHEREAS**, an amendment to income restrictions in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(B), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing; and

**WHEREAS**, the requested change does not negatively affect the Development, impact the viability of the transaction, impact the Application award, or affect the amount of the tax credits and funding awarded by the Department;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Clifton Manor I and II is approved, as presented to this meeting, and the Acting Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

In 2005, Clifton Manor I and II was awarded 9% HTC award under the at-risk set aside, an HTF loan, and a HOME loan for the acquisition and rehabilitation of 40 units of multifamily housing in Clifton, Bosque County. The HTF and HOME LURAs have a term that ends March 27, 2036, 30 years after their effective date of March 27, 2006. The HTC LURA has a 15-year compliance period that ends December 31, 2020 and an extended use period that ends December 31, 2045. Each LURA specifies that all 40 units must be set-aside for households with incomes that are 50% or less of the Area Median Income (AMI). Additionally, USDA is funding the project and has contracted to provide USDA Rural Development Rental Assistance for 25 of the 40 units. On October 19, 2018, Bonita Williams, the Development Owner's representative, submitted a request to amend the LURAs to increase the income restrictions from 50% to 60% AMI for the 15 units that do not receive rental assistance, and on November 7, 2018, Ms. Williams revised the request to go from 15 to eight units. Though the income restrictions for the eight units would change, the rent limits of these eight units would remain at the 50% AMI limits. This change was not reasonably anticipated at Application.

At Application, the Development was anticipated to be financially feasible with all of the units restricted at rents and incomes of 50% AMI. However, Ms. Williams states that the Development has been struggling with occupancy, as evidenced by the summary of the vacancies between October 2017 and October 2018. Ms. Williams also provided a Rent Roll Analysis indicating that the Development experienced a 74% turnover rate with the units not receiving rental assistance, resulting in a vacancy occurring with 11 of the 15 units during the past 13 months. After reviewing the rent rolls for the past 13 months, staff determined that the property supported an average vacancy rate of 17.69%, indicating an average of 7.08 vacant units per month. Therefore, after further discussions with Ms. Williams, she revised the original request, and currently requests to allow the income limit for eight of the 15 units that do not receive rental assistance to increase to 60% AMI.

Ms. Williams explains that the issue is that they are experiencing difficulty in finding tenants that qualify at the 50% AMI and that the tenants that do qualify tend to only occupy the units on a short-term basis when there is a lack of rental assistance. The high turnover rate has not only affected the property's revenue, but has also caused higher operating expenses due to the repairs and maintenance costs incurred each time a tenant vacates a unit. Ms. Williams believes that allowing an increase in the income limits for eight units will improve the occupancy status because they routinely have to turn away potential tenants that have incomes that exceed the 50% AMI, but that would qualify at the 60% AMI limit. She explains that an individual earning \$10 per hour (\$20,800 annually) does not qualify at the 50% AMI limit but would qualify at the 60% AMI limit:



### 2018 Income Limits – HOME

AMFI %	Number of Household Members							
	1	2	3	4	5	6	7	8
20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
30	\$ 12,150	\$ 13,900	\$ 15,650	\$ 17,350	\$ 18,750	\$ 20,150	\$ 21,550	\$ 22,950
40	\$ 16,240	\$ 18,560	\$ 20,880	\$ 23,160	\$ 25,040	\$ 26,880	\$ 28,720	\$ 30,600
50	\$ 20,300	\$ 23,200	\$ 26,100	\$ 28,950	\$ 31,300	\$ 33,600	\$ 35,900	\$ 38,250
60	\$ 24,360	\$ 27,840	\$ 31,320	\$ 34,740	\$ 37,560	\$ 40,320	\$ 43,080	\$ 45,900
70	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
80	\$ 32,450	\$ 37,050	\$ 41,700	\$ 46,300	\$ 50,050	\$ 53,750	\$ 57,450	\$ 61,150
120	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

### 2018 Income Limits - HTC and HTF

AMFI %	Number of Household Members							
	1	2	3	4	5	6	7	8
20	\$ 8,180	\$ 9,340	\$ 10,520	\$ 11,680	\$ 12,620	\$ 13,540	\$ 14,480	\$ 15,420
30	\$ 12,270	\$ 14,010	\$ 15,780	\$ 17,520	\$ 18,930	\$ 20,310	\$ 21,720	\$ 23,130
40	\$ 16,360	\$ 18,680	\$ 21,040	\$ 23,360	\$ 25,240	\$ 27,080	\$ 28,960	\$ 30,840
50	\$ 20,450	\$ 23,350	\$ 26,300	\$ 29,200	\$ 31,550	\$ 33,850	\$ 36,200	\$ 38,550
60	\$ 24,540	\$ 28,020	\$ 31,560	\$ 35,040	\$ 37,860	\$ 40,620	\$ 43,440	\$ 46,260
70	\$ 28,630	\$ 32,690	\$ 36,820	\$ 40,880	\$ 44,170	\$ 47,390	\$ 50,680	\$ 53,970
80	\$ 32,720	\$ 37,360	\$ 42,080	\$ 46,720	\$ 50,480	\$ 54,160	\$ 57,920	\$ 61,680
120	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Therefore, by allowing eight households to qualify at the 60% AMI, the Development will be able provide housing for more low income households and potentially be able to acquire more long-term tenants that can afford the units without rental assistance. Ms. Williams provided a traffic report that supports that they have had several applicants that were ineligible only because they had household incomes that exceeded the 50% AMI. According to the traffic report, in several instances, the annual household income was just \$360 over the 50% AMI limit. Ms. Williams explained that this traffic report only captures information from the completed applications that were received. The report does not reflect the applicants that do not initiate the application process because they are informed of the income limits and realize that they would not qualify.

The Owner has provided correspondence from USDA and their syndicator that indicates they are both in support of the request to amend the income restrictions to allow 60% AMI units. USDA and the syndicator have both acknowledged that the property is incurring operating losses and that it needs to improve its occupancy rate in order to maintain financial stability. Ms. Williams has provided operating statements and financial audits that support that the property's cash flow has continued to decline since 2011, and that it has sustained significant losses in the past two years. The current operating statements indicate that for the first three

quarters of 2018, the property has already incurred operating losses totaling \$14,062. The pro forma shows that if the property had reduced their vacancy loss to 7.5% of potential gross income, a reduction from eight units to three units, the property would have generated positive cash flow in the amount of \$302 through September 30, 2018, and would be projected to generate \$2,942 in annual cash flow through the end of 2018.

It should be noted that the requested increase to income limits specified in the LURAs will not affect the rent limits for the Development, which are controlled by USDA and currently lower than the HTC, HTF, and HOME rent limits. Without the USDA contract, the Development would still be restricted to the lower of either the Low HOME rent limits specified by the HOME LURA or the 50% AMI rent limits specified in the HTC and HTF LURAs. Additionally, the positive cash flow generated by the property is controlled in accordance with the Rural Development Loan Agreement. The audited financials indicate the maximum annual return to the owner is \$3,124 per the Agreement.

Staff has reviewed the original Application and scoring documentation against this amendment request and has concluded that the requested change to the income limits will not affect the points awarded. The HTC Application indicates 80% of the units were required to be set-aside for tenants with incomes at or below 50% AMI. Therefore, by continuing to restrict 32 units (80% of 40) at 50% AMI, the Development remains eligible for the points that were awarded in the Application. Additionally, staff has reviewed the HOME and HTF Notices of Funding Availability (NOFAs) in effect at the time that the Application was submitted and has determined that the amendment to increase the income limits to 60% AMI for eight of the units will not violate the income set-aside requirements specified in the NOFAs.

Based on discussions with the Department's Legal Division, staff recommends approval of the amendment to the LURAs to allow eight units to be occupied by tenants with incomes at or below 60% AMI, but also recommends to specify in the LURA that the eight units must give a preference to eligible applicants with incomes at or below 50% AMI. Staff discussed this modification with Ms. Williams, and she was agreeable to the proposed revision.

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on November 8, 2018, at the Development's onsite leasing office. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material amendment to the LURAs for Clifton Manor I and II as presented herein.

## Charger Affiliates LLC

1302 Sayles Blvd  
Abilene TX 79605

[Bonita@chargerdevelopment.com](mailto:Bonita@chargerdevelopment.com)

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October 19, 2018

TO: Lee Ann Chance, Asset Manager  
Texas Department of Housing and Community Affairs

RE: LURA Amendment Request for Clifton Manor Apartments  
Housing Tax Credit # 05236                      HTF # 1000422  
HOME # 1000434                                      CMTS 4300

Dear Ms. Chance,

Charger Affiliates LLC, General Partner of Clifton-Charger Properties LP, the owner of Clifton Manor Apartments is making a request for an Amendment to the Low-Income Housing Credits LURA, the HOME Investment Partnership Program LURA, and the Housing Trust Fund LURA.

We are requesting a LURA change to allow 15 units at Clifton Manor Apartments to be occupied by Tenants at or below 60% AMGI. Doing so would significantly increase the number of qualified applicants. Currently all 40 units are to be occupied by tenants at or below 50% AMGI.

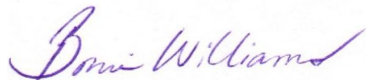
Clifton Manor Apartments is a 40 unit USDA Rural Development Property located in Clifton, Bosque County, Texas. In 2005 it was awarded housing tax credits for Acquisition/Rehab in the USDA-Rural Development Regional Set-Aside. This project would have been awarded tax credits even with the changes we are requesting because that year the USDA Rural Development set aside was regional; not statewide.

For several years Clifton Manor has suffered a high vacancy rate and has operated at a loss. This has put the development in a dire financial position. The property has 25 units of USDA Rural Development Rental Assistance. These 25 units stay occupied with very low income tenants. The remaining 15 units prove difficult to lease at 50% AMGI. We find that tenants at that income level need some form of rental assistance to be able to afford the rent and utilities. Every year more units of RA are requested, but none is available. No Section 8 Housing Choice Vouchers are available in Bosque County. It is one of the counties that is served by the TDHCA Section 8 HCV Program. This program has not taken new applications in years.

At the vacancy rate experienced over the last six years the property will be insolvent in 12-15 months. Before asking for a LURA Amendment we have tried to increase occupancy by community outreach, marketing and advertising, and move-in specials. We have changed management and trimmed expenses where possible. These measures have not changed the bleak outlook for Clifton Manor.

Clifton Manor routinely receives applications over the 50% AMGI. Many of these applicants would qualify at the 60% AMGI. Allowing 15 units to be occupied by tenants at 60% AMGI would improve occupancy significantly. It would allow the property to serve more citizens in Clifton in need of affordable housing. It would return the property to financial viability.

Kind regards,



Bonita Williams, Member, Charger Affiliates LLC

## Charger Affiliates LLC

1302 Sayles Blvd

Abilene TX 79605

[Bonita@chargerdevelopment.com](mailto:Bonita@chargerdevelopment.com)

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November 7, 2017<sup>8</sup>

TO: Lee Ann Chance, Asset Manager  
Texas Department of Housing and Community Affairs

RE: LURA Amendment Request for Clifton Manor Apartments  
Housing Tax Credit # 05236                      HTF # 1000422  
HOME # 1000434                                      CMTS 4300

Dear Ms. Chance,

This page and its attachments are the items you requested per our phone conversation on Nov. 5, 2018 and in your email of Nov. 6, 2018.

- We are agreeable to reducing our request from 15 units at 60% AMI to 8 units at 60% AMI and amending the LITHC, HOME, and HTF LURAs to reflect the changes with no change to the total number of units set-aside. All rents will remain the USDA Basic Rents.
- As to the USDA Rents, we are required to use the USDA Basic Rent of \$435 for 1BR (\$440 as of January 2019) and \$506 for 2BR (\$511 as of January 2019).
- Copies of the 2018 USDA approved budget and the 2019 proposed budget (awaiting USDA approval) are attached.
- The high vacancy and turnover rates (Schedule E) have led to unsustainable turnover and make ready costs. During the past 13 months, we have experienced a 74% turnover rate of the Non-RA units. We find that tenants at the 50% AMI need rental assistance, but none is available. Those with no rental assistance end up being short term tenants. We routinely have applicants that are above the 50% AMI but would qualify at the 60% AMI. (Schedule F). A working person making \$10.00 per hour makes too much to qualify at the current 50% AMI. Allowing 8 units at the 60% AMI would likely lead to stable long-term tenants who can more easily afford the Basic rents.
- Schedule F (recent applicants traffic report) is attached identifying household size and incomes relating to the 50% AMI and 60% AMI.
- Schedules A-D reflect how the property is anticipated to operate with 8 units at 60% AMI. Eight more occupied units with stable tenants will increase revenue and reduce the unsustainable turnover costs. Fixed costs (exterior building maintenance, manager's salary, debt service, groundskeeping, etc.) will be easier met with the increased revenue from higher occupancy.
- Attachments: USDA Rent Limits, Current and Proposed USDA Budgets, Schedules A-F and October through December 2017 rent rolls.

Bonita Williams,  
Member, Charger Affiliates LLC



United States Department of Agriculture

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October 24, 2018

Clifton-Charger Properties, LP  
Charger Affiliates, LLC  
Bonita Williams, Managing Member  
1302 Sayles Blvd.  
Abilene, Texas 79605

Re: Clifton Manor Apartments  
Texas Department of Housing and Community Affairs (TDHCA)  
Land Use Restriction Agreement (LURA)

Dear Ms. Williams:

Clifton-Charger Properties, LP request to TDHCA to amend the LURA to allow 15 units at Clifton Manor Apartments to be occupied by tenants at or below 60% of Area Median Gross Income (AMGI), with rents for these units to be no higher than the allowable rents at such AMGI level has been reviewed.

The supporting documentation, particularly the "Comparative Analysis of Audited Cash Flow Statements 2012-2017, and Unaudited 2018" and the vacancy history indicates a negative cash position except for one year and a high vacancy rate average of 17.6% (October 2017 to date).

The declining cash position and resulting decline in the operating bank balance is a concern that could result in insufficient cash to operate the property and provide housing for low income tenants. It is apparent the loss of income from vacant units is a significant factor in the declining cash position. The ability to provide housing to potential tenants that exceed the current 50% AMGI but at or below the proposed 60% AMGI would provide the opportunity to increase revenue and support the viability of the property to provide low-income housing to the area served. For this reason, USDA Rural Development Hillsboro Area Office (Agency) supports this request to amend the LURA.

If you have any questions, please contact me at 254-582-7328 x 128 or by email at [j.tyler@tx.usda.gov](mailto:j.tyler@tx.usda.gov).

Sincerely,

J. L. TYLER, JR.  
Area Specialist

**Rural Development • Hillsboro Area Office**  
1502 Hwy. 77 North - Hillsboro, Texas 76645  
Voice (254) 582-7328 Ext. 4 • Fax (254) 582-7622

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**From:** Brian MacLeod  
**Sent:** Thursday, October 18, 2018 12:34 PM  
**To:** 'louis@chargerdevelopment.com'  
**Subject:** Clifton Manor

Mr. Williams,

Michel Associates, Ltd., (“Asset Manager”), on behalf of Countryside Corporate Tax Credits XV Limited Partnership (the “Investor Limited Partner”) agrees with your assessment Clifton Manor (the “Project”) cannot continue to operate without increasing its income. Doing so requires the Project to improve occupancy. The Texas Department of Housing and Community Affairs (TDHCA) currently requires the Project to rent 100% of its units to households with annual income equal to 50% or less than Area Median Income (AMI). This restriction significantly limits the number of qualified tenants. The Project struggles with occupancy and consistently operates at a loss.

The Project’s occupancy hit a low (65% occupied) in August 2017. Its 2018 average occupancy from January to June 2018 was only 80%. Management has confirmed occupancy will significantly improve if the units could be rented to 60% AMI households. Applicants are routinely turned away because they are over the income limit.

Rural Development has previously confirmed rental assistance is not available to the Project. Its only option to continue operations for an extended period is TDHCA allowing units to be rented to households earning 60% or less than AMI.

Please note if your request to TDHCA is unsuccessful and the Project fails to meet financial obligations the Investor Limited Partner will take all legal actions available to enforce the Unconditional Guaranty of Louis and Bonita Williams.

Regards,  
Brian MacLeod  
Vice President of Asset Management

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**BRIAN MACLEOD/ VICE PRESIDENT OF ASSET MANAGEMENT/ 400 CROWN COLONY, SUITE 602  
QUINCY, MA 02169/ P: (617).845-5552/ E:BRIANM@MICHELLTD.COM**



## APPENDIX A - ADDITIONAL USE RESTRICTIONS

(Check all restrictions which were elected at the time of Application.)

### Additional Rent and Occupancy Restrictions

At least 0 Units in the Project must be occupied by Tenants at or below 30% of Area Median Gross Income, with rents for these Units no higher than the allowable tax credit rents at such AMGI level. At least 0 Units in the Project must be occupied by Tenants at or below 40% of Area Median Gross Income, with rents for these Units no higher than the allowable tax credit rents at such AMGI level. **At least 40 Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income,** with rents for these Units no higher than the allowable tax credit rents at such AMGI level. If at recertification the Tenant's household income exceeds the applicable limit, then the Unit remains as a Unit restricted at the specified level of AMGI until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the Unit exceeding the specified AMGI level is replaced, then the rent for the previously qualified Unit may be increased, subject to applicable Tax Credit requirements, lease provisions and local tenant-landlord laws.

### Additional Rent and Occupancy Restrictions for Developments with below market rate HOME funding included in the total eligible basis and utilizing the "9%" Applicable Percentage

At least 40% of the Units in each Federal Subsidized Building must be occupied by Tenants whose incomes are at or below 50% of Area Median Gross Income.

### Longer Compliance Period and Extended Use Period

The Compliance Period shall be a period of 15 consecutive taxable years and the Extended Use Period shall be a period of 40 consecutive taxable years, each commencing with the first year of the Credit Period.

### Material Participation by Qualified Nonprofit Organization

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall hold a controlling interest in the Project as required by the Department Rules, shall materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Project and shall otherwise meet the requirements of Section 42(h)(5) of the Code. At the time this Declaration is filed, the qualified nonprofit organization which shall own such interest and shall so materially participate in the development and operation of the Project is \_\_\_\_\_ and is the  [managing General Partner] or  [Managing Member] of the Project Owner. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified nonprofit organization.

### Joint Venture with Qualified Nonprofit Organization

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall materially participate as one of the General Partners or Managing Members in the development and operation of the Project. At the time this Declaration is filed, the qualified nonprofit organization which shall own such interest and shall so materially participate in the development and operation of the Project is \_\_\_\_\_ and is a  [General Partner] or  [Managing Member] of the Project Owner. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified nonprofit organization.

### Historically Underutilized Businesses (HUB)

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

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

(bb) "Very Low Income Families" means families and individuals whose Annual Incomes do not exceed fifty percent (50%) of the Area Median Income, or such other income limits as established by HUD in accordance with the Federal Act or as otherwise determined by the Department.

**Section 1.2. Generic Terms.** Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

## **ARTICLE II**

### **Use and Occupancy of the Property**

**Section 2.1. Use of the Property.** During the Term, Owner will maintain the Property as rental housing and will rent or hold available for rental each Unit on a continuous basis in order to meet the occupancy requirements of this Agreement.

**Section 2.2. Common Areas.** During the Term, Owner agrees that any common areas, including, without limitation, any laundry or community facilities on the Property shall be for the exclusive use of the tenants and their guests and shall not be available for use by the general public.

#### **Section 2.3. Occupancy Requirements.**

(a) **Initial Occupancy Requirements.** Notwithstanding anything herein to the contrary, at the time of occupancy of the Property or the time funds are invested pursuant to the HOME Program in connection with the Property, whichever is later, Owner must set aside forty units ("Qualifying Units") of the forty Units that comply with the following occupancy requirements:

(1) all forty (40) of the forty (40) Qualifying Units rehabilitated with funds provided under the HOME Program must be occupied by Very Low Income Families whose Annual Incomes do not exceed fifty percent (50%) of the Area Median Income, or such other income limits as established by HUD in accordance with the Federal Act or as otherwise determined by the Department.

(b) **Long Term Occupancy Requirements.** Subject to subsection (a) of this Section 2.3, during the Term, Owner will make available for occupancy to:

(1) **Very Low Income Families whose Annual Incomes do not exceed fifty percent (50%) of the Area Median Income not less than forty (40) of the Qualifying Units.**

Owner shall use its best efforts to distribute Units reserved for Low Income Families, Very Low Income Families and Extremely Low Income Families among unit sizes in proportion to the distribution of unit sizes in the Property and to avoid concentration of Low Income Families, Very Low Income Families and Extremely Low Income Families in any area or areas of the Property.

In accordance with Section 504 of the Rehabilitation Act of 1973, at least two (2) Units or five percent (5%) of all Units, whichever is greater, shall be designed to be made accessible for an individual with disabilities with mobility impairments and at least one (1) Unit or two percent (2%) of all Units,



**ARTICLE II**  
**Use and Occupancy of the Property**

**Section 2.1. Use of the Property.** During the Term, Owner will maintain the Property as multifamily rental housing and will rent or hold available for rental each Unit on a continuous basis.

**Section 2.2. Occupancy Requirements.**

(a) Subject to subsection (c), during the Term, Owner will set aside all forty (40) Units of the forty (40) Unit development to be made continuously available as follows:

All forty (40) Units of the forty (40) Qualifying Units must be set aside for Very Low Income Individuals and Families whose Annual Incomes do not exceed fifty percent (50%) of area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.

In accordance with Section 504 of the Rehabilitation Act of 1973, at least two (2) Units or five percent (5%) of all Units, whichever is greater, shall be designed to be made accessible for an individual with disabilities with mobility impairments and at least one (1) Unit or two percent (2%) of all Units, whichever is greater, shall be designed to be made accessible for an individual with disabilities with hearing or vision impairments.

(b) (i) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter such determinations shall be made at least annually on the basis of an examination or reexamination of the anticipated Annual Income of the family or individual.

(ii) If the Annual Income of a Qualified Tenant which is an Extremely Low Income Family shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed the applicable income limit for Low Income Families, the Unit shall be counted as occupied by a Qualified Tenant which is a Low Income Family other than a Very Low Income Family during such family's or individual's continuing occupancy of such Unit in accordance with Subsection (b) (iii) below and Owner shall be required to make the next available Qualifying Unit available for occupancy in accordance with Subsection (b) (iv) below.

(iii) If the Annual Income of a Qualified Tenant shall be determined upon reexamination to exceed the applicable income limit for Low Income Families, the Unit occupied by such family or individual shall be counted as occupied by a Qualified Tenant [and such family or individual shall be considered, for purposes of Subsection (a) and Article III, a Qualified Tenant which is a Low Income Family (other than a Very Low Income Family)] so long as (A) the Annual Income of such family or individual shall not be determined to exceed 140 percent (140%) of the applicable income limit for Low Income Families, or (B) if the Annual Income of such family or individual shall be determined to exceed 140 percent (140%) of the applicable income limit for Low Income Families, so long as each Unit of comparable or smaller size in the Property which is or becomes available is

## **bonita@chargerdevelopment.com**

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**From:** bonita@chargerdevelopment.com  
**Sent:** Friday, October 19, 2018 10:52 AM  
**To:** Terri Chenoweth (terri.chenoweth@tx.usda.gov); Michael Gunner (Michael.gunner@tx.usda.gov); Melony Hennig (jill.hennig@tx.usda.gov); J. Tyler (j.tyler@tx.usda.gov); Kathy Ballesteros (kathy.ballesteros@tx.usda.gov); 'brianm@michelltd.com'  
**Subject:** Clifton Manor Apartments  
**Attachments:** CMA Notice.pdf

Good Morning,

The owners of Clifton Manor Apartments in Clifton, Texas is making a request to The Texas Department of Housing and Community Affairs to allow 15 of the 40 units at Clifton Manor Apartments to be occupied by tenants at or below 60% Area Median Gross Income (AMGI). Currently all 40 units must be occupied by tenants at or below 50% AMGI.

The changes will not affect any current qualified tenants residing at Clifton Manor Apartments.

Attached is the required NOTICE OF PUBLIC MEETING.

[Bonita Williams](#)

Charger Development  
1302 Sayles Blvd  
Abilene TX 79605  
936-560-5702  
bonita@chargerdevelopment.com

## Charger Affiliates LLC

1302 Sayles Blvd  
Abilene TX 79605  
936-560-5702

[Bonita@chargerdevelopment.com](mailto:Bonita@chargerdevelopment.com)

---

October 19, 2018

### NOTICE OF PUBLIC MEETING REGARDING CLIFTON MANOR APARTMENTS

Charger Affiliates LLC as General Partner of Clifton-Charger Properties LP, the owner of Clifton Manor Apartments, is making a request to The Texas Department of Housing and Community Affairs to amend the Land Use Restriction Agreements (LURA's) for Low-Income Housing Credits, the HOME Investment Partnership Program, and the Housing Trust Fund, all recorded in the real property records of Bosque County, Texas.

The owner is requesting that at least 15 units at Clifton Manor Apartments be occupied by Tenants at or below 60% of Area Median Gross Income (AMGI), with rents for these Units no higher than the allowable rents at such AMGI level. Currently 40 Units must be occupied by Tenants at or below 50% AMGI.

The changes will not affect any current qualified tenants residing at Clifton Manor.

#### **MEETING INFORMATION:**

**LOCATION: Clifton Manor Apartments Leasing Office at  
115 S Avenue P, Clifton, TX 76634**

**TIME: Thursday, November 8, 2018 at 4:30 PM**

#### CONTACT INFORMATION:

Clifton Manor Apartments, Leasing Office  
115 S Ave P  
Clifton TX 76634  
Kristi Stinnett, Manager  
(254) 675-3616  
[cliftonmanorapartments@gmail.com](mailto:cliftonmanorapartments@gmail.com)

#### DEVELOPMENT OWNERS CONTACT INFORMATION:

Clifton-Charger Properties LP  
Louis and Bonita Williams  
1302 Sayles Blvd.  
Abilene TX 79605  
936-560-5702  
[Bonita@chargerdevelopment.com](mailto:Bonita@chargerdevelopment.com)  
[Louis@chargerdevelopment.com](mailto:Louis@chargerdevelopment.com)



Bonita Williams  
Member, Charger Affiliates LLC

## Clifton Manor Apartments LURA Amendment

### Public Meeting Minutes

A Public Meeting was held Thursday, November 8, 2018 at 4:30 PM, in the leasing office of Clifton Manor Apartments at 115 S. Avenue P, Clifton Texas. Each tenant, the Texas Department of Housing and Community Affairs (lender), USDA Rural Development (lender), and Countryside Corporate Tax Credits XV (Investor, Michael Associates, Ltd.) were provided written notice on October 19, 2018.

Present were Bonita and Louis Williams, (Members of Charger Affiliates LLC, the General Partner), Kristi Stinnett, (Site Manager), Shawn Hart and Paul Stinnett, (Maintenance), and tenants Susan Stipic, and Joyce Griffin.

Mr. and Mrs. Williams presented information about the LURA Amendment Request explaining that we were asking to increase the income limits for some of the apartments from 50% AMI to 60% AMI. It was discussed that ,if granted, then Clifton Manor would be able to house more citizens in need of affordable housing. The meeting was adjourned.

Bonita Williams

#### Attachments:

Notice dated October 19, 2018 and Attendance Sheet from the meeting

\*There were not comments from those that attended the Public Meeting.



Clifton Charger Properties, LP  
 Clifton Manor Apartments  
 115 S. Avenue P  
 Clifton, Texas

TDHCA # 05236  
 CMTS# 4300  
 HOME # 1000434  
 HTF# 1000422  
 USDA 49-018-202227362 022

**Schedule A**

13 Month Vacancy Rate (See attached Rent Rolls)

Month	Vacancy	Total Units	Vacancy Rate
October, 2017	<del>7</del> 8	40	17.50%
November, 2017	8	40	20.00%
December, 2017	10	40	25.00%
January, 2018	9	40	22.50%
February, 2018	7	40	17.50%
March, 2018	5	40	12.50%
April, 2018	6	40	15.00%
May, 2018	5	40	12.50%
June, 2018	8	40	20.00%
July, 2018	8	40	20.00%
August, 2018	5	40	12.50%
September, 2018	6	40	15.00%
October, 2018	8	40	20.00%
Average			<b>17.69%</b>

## Clifton Manor Apartments Rent Roll Analysis

O - Occupied w/ Rental Assistance

O - Occupied w/o Rental Assistance

V - Vacant unit

Unit Number	Vacant since	Rental Assistanc	Oct 2017	Nov 2017	Dec 2017	Jan 2018	Feb 2018	Mar 2018	Apl 2018	May 2018	June 2018	July 2018	Aug 2018	Sept 2018	Oct 2018	Total Turnover
114I	7/31/17	N/A	V	V	V	V	V	O	O	O	O	O	O	O	O	
114J		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
114K	11/27/16	N/A	V	V	V	O	O	O	O	O	V	V	O	O	O	2
114L	7/24/17	N/A	V	V	V	V	O	O	V	O	O	O	O	O	O	2
114M		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
114N		R/A	O	O	O	O	O	O	O	O	O	O	O	V	V	1
114O		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
114P		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
115A		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
115B		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
115C		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
115D	12/12/16	R/A	V	V	V	V	V	V	V	V	O	O	O	O	O	
115E		R/A	O	O	V	O	O	O	O	O	O	O	O	O	O	1
115F		R/A	O	O	O	O	O	O	O	O	O	O	O	O	V	1
115G		N/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
115H	8/31/17	N/A	V	V	V	V	V	V	V	V	V	V	V	V	V	
503A		R/A	O	O	O	O	O	O	O	O	V	O	O	O	O	1
503B		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
503C		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
503d		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
507A		R/A	O	O	O	O	O	O	O	O	O	O	O	V	V	1
507B		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
507C	10/1/17	R/A	V	V	V	O	O	O	O	O	O	O	O	O	O	
507D		N/A	O	O	O	V	V	O	O	O	V	V	V	V	V	2
511A	1/31/16	N/A	V	V	V	V	V	V	V	V	V	V	V	V	V	
511B		N/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
511C		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
511D		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
602A		N/A	O	O	O	O	O	O	O	O	O	V	V	V	V	1
602B		R/A	O	O	O	O	O	O	O	O	O	V	O	O	O	1
602C	7/31/17	N/A	V	V	V	V	V	V	V	V	V	O	O	O	O	
602D		N/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
606A		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
606B		R/A	O	O	O	O	O	O	O	O	O	V	O	O	O	1
606C		N/A	O	O	O	O	O	O	O	O	V	O	O	O	V	2
606D		R/A	O	O	V	V	V	V	V	V	V	V	V	O	O	1
610A		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
610B	7/20/17	N/A	V	O	O	O	O	O	O	O	O	O	O	O	O	1
610C		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
610D		R/A	O	O	O	O	O	O	O	O	O	O	O	O	O	
<b>Total Vacancies</b>			9	8	10	8	7	5	6	5	8	8	5	6	8	

Total Turnovers this period 18

**Important Points:**

11 turnovers were from the 15 non rental assistance tenants, 74% turnover (11/15=74%)  
 7 turnovers were from the 25 rental assistance tenants, 28% turnover (7/25=28%)

If we could tap into the 60% income level applicants for the non rental assistance units then we could get tenants that can afford to pay the rent without assistance.



Clifton Manor Apartments  
Recent applicants that would have qualified at 60% AMGI

Application Date	Last Name	First Name	House hold Size	Household Income	50% Income Limit at Application	Current 60% 1 person Income Limit	Current 60% 2 person Income Limit	Under Current 60% Income Limit
8/14/2017	████	████	2	23,989	22,650		27,840	(3,851)
2/8/2018	████	████	1	22,880	19,850	24,360		(1,480)
8/23/2018	████	████	1	24,000	19,850	24,360		(360)
4/4/2017	████	████	1	19,880	19,400	24,360		(4,480)
3/28/2017	████	████	1	19,872	19,400	24,360		(4,488)
4/13/2017	████	████	1	21,112	19,400	24,360		(3,248)
8/28/2018	████	████	1	24,000	19,850	24,360		(360)
9/28/2018	████	████	1	24,000	19,400	24,360		(360)
8/10/2017	████	████	1	20,458	19,850	24,360		(3,902)
4/13/2017	████	████	1	24,000	22,150	24,360		(360)
8/9/2018	████	████	1	23,850	19,850	24,360		(510)
10/9/2018	████	████	1	22,400	20,300	24,360		(1,960)
10/16/2018	████	████	1	22,500	20,300	24,360		(1,860)

Note: These are applicants that filled out entire applications. Other potential applicants once told the income limits, do not complete applications.



Clifton Charger Properties, LP  
 Clifton Manor Apartments  
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TDHCA # 05236  
 CMTS# 4300  
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 USDA 49-018-202227362 022

**Schedule C**

Income Statement as of 9/30/18 (Actual verses Proforma using 7.5 vacancy rate) using the USDA 2019 BASIC rent

	Actual as of 9/30/2018 with existing 17.88% Vacancy Average	Proforma as of 9/30/2018 with 7.5% Vacancy Average	Proforma for entire 2018 with 7.5% Vacancy Average
Rental Income	149,888	164,252	219,003
Other Income	<u>0</u>	<u>0</u>	<u>0</u>
Total Income	149,888	164,252	219,003
Operational Expenses	119,693	119,693	159,591
Accrued Property Tax due in December	7,500	7,500	7,500
Total Operational Expenses	<u>127,193</u>	<u>127,193</u>	<u>167,091</u>
Income (Loss) from Operations	<b>22,695</b>	<b>37,059</b>	<b>51,912</b>
Long Term Debt Service:			
USDA, \$1,229 monthly	6,047	6,047	8,062
HOME, \$1,906 monthly	17,151	17,151	22,872
HTF, \$322 monthly	<u>2,894</u>	2,894	3,864
Total Long Term Debt	<u>26,092</u>	<u>26,092</u>	<u>34,798</u>
Cash Flow before Reserve deposits	<b>(3,397)</b>	10,967	17,114
Reserves, \$1181 monthly	10,665	10,665	14,172
<b>Net Cash Flow</b>	<b>(14,062)</b>	<b>302</b>	<b>2,942</b>

Staff's Review of Development Owner's Audited Financials

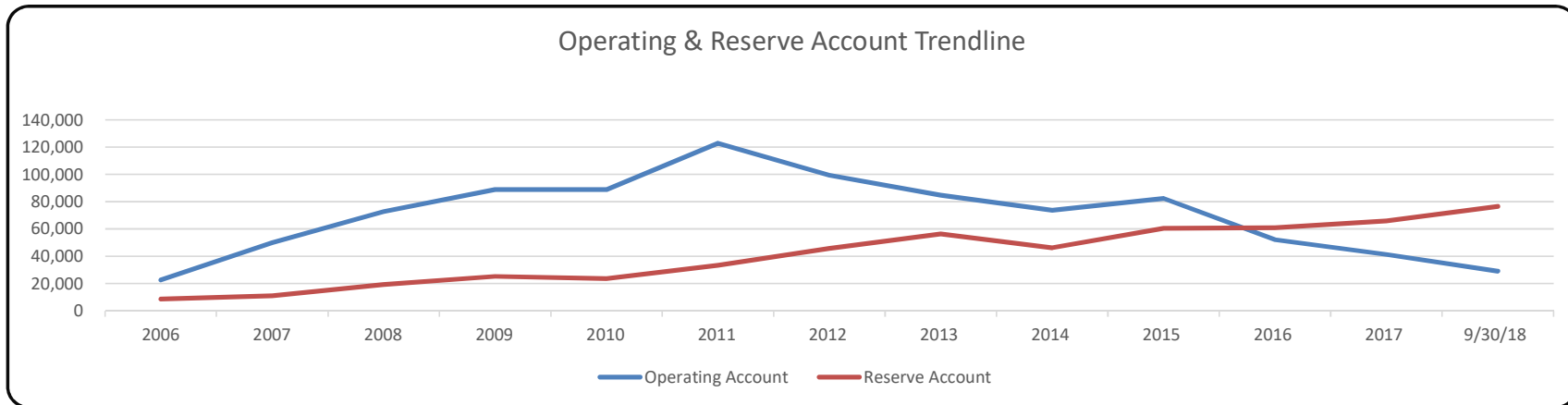
Audited Year	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Potential Rental Income	122,160	188,784	192,423	203,360	218,839	220,940	218,557	218,411	218,230	223,761	223,825	233,884
Vacancy Loss	(16,005)	(33,342)	(16,777)	(18,558)	(15,871)	(18,613)	(34,261)	(39,928)	(19,070)	(17,179)	(31,400)	(46,810)
Total Rental Income	106,155	155,442	175,646	184,802	202,968	202,327	184,296	178,483	199,160	206,582	192,425	187,074
Other Operating Income	390	3,420	4,675	3,964	3,148	3,514	1,158	2,108	1,235	1,187	1,460	794
Interest Subsidy Income	6,481	8,836	9,721	9,721	9,721	9,721	9,721	9,721	9,721	9,721	8,514	6,690
Interest Income	7	150	979	680	440	213	183	64	52	52	54	52
Effective Gross Income	113,033	167,848	191,021	199,167	216,277	215,775	195,358	190,376	210,168	217,542	202,453	194,610
Operating Expenses	69,483	109,353	129,166	137,004	156,583	135,999	118,403	128,106	137,613	145,422	168,841	152,984
Replacement Reserve	8,512	14,667	14,220	15,763	14,220	15,587	14,320	14,220	14,220	14,220	14,220	14,220
Total Expenses	77,995	124,020	143,386	152,767	170,803	151,586	132,723	142,326	151,833	159,642	183,061	167,204
Net Operating Income	35,038	43,828	47,635	46,400	45,474	64,189	62,635	48,050	58,335	57,900	19,392	27,406
Debt Service - Interest	11,572	20,344	27,015	28,122	25,782	24,557	23,242	21,829	20,310	18,676	17,047	15,980
Debt Service - Principal Reduction	4,930	11,343	22,003	25,572	25,463	26,688	28,003	29,415	30,935	32,568	28,502	25,497
Total Debt Service	16,502	31,687	49,018	53,694	51,245	51,245	51,245	51,244	51,245	51,244	45,549	41,477
Net Cash Flow (Loss)	18,536	12,141	(1,383)	(7,294)	(5,771)	12,944	11,390	(3,194)	7,090	6,656	(26,157)	(14,071)
Potential Rental Income	122,160	188,784	192,423	203,360	218,839	220,940	218,557	218,411	218,230	223,761	223,825	233,884
Vacancy Loss	(16,005)	(33,342)	(16,777)	(18,558)	(15,871)	(18,613)	(34,261)	(39,928)	(19,070)	(17,179)	(31,400)	(46,810)
Financial Vacancy Loss	13.10%	17.66%	8.72%	9.13%	7.25%	8.42%	15.68%	18.28%	8.74%	7.68%	14.03%	20.01%
40	5.24	7.06	3.49	3.65	2.90	3.37	6.27	7.31	3.50	3.07	5.61	8.01

# Clifton Manor Apartments

## Schedule D

Comparative Analysis of Audited Cash Flow Statements 2006-2017 and unaudited 2018 (See attached Audits)

	Audited 2006	Audited 2007	Audited 2008	Audited 2009	Audited 2010	Audited 2011	Audited 2012	Audited 2013	Audited 2014	Audited 2015	Audited 2016	Audited 2017	Unaudited as of 9/30/18
Statement of Cash Flows, Page 5 of Audit													
Net Cash Provided by operations	492,006	(196,118)	(142,263)	28,485	34,226	60,562	55,207	40,331	52,008	53,496	16,584	25,552	22,695
Net Cash used by investing activities	1,748,731	10,206	58,861	(13,083)	8,633	(125)	48,982	27,484	30,057	12,313	18,389	10,833	13,260
Principal payments	(1,279,242)	(233,657)	(224,024)	25,572	25,463	26,688	29,788	29,415	30,935	32,568	28,502	25,497	23,497
<b>Increase (decrease) in CASH</b>	<b>22,517</b>	<b>27,333</b>	<b>22,900</b>	<b>15,996</b>	<b>130</b>	<b>33,999</b>	<b>(23,563)</b>	<b>(16,568)</b>	<b>(8,984)</b>	<b>8,615</b>	<b>(30,307)</b>	<b>(10,778)</b>	<b>(14,062)</b>
Operating Bank Account	22,517	49,850	72,750	88,746	88,876	122,875	99,312	84,744	73,760	82,375	52,068	41,290	29,144
Reserve Account	8,512	10,905	19,352	25,226	23,439	33,236	45,617	56,285	46,271	60,491	60,997	65,872	76,537



## Owner's explanation regarding the number of units receiving USDA rental assistance

### Rental Assistance:

Attached are the USDA Rental Assistance Agreements. There are two agreements. Back in 2006 when we purchased the property, USDA had them as identified separately as Project 022 with 15 units of RA and Project 034 with 9 units of RA. That adds up to 24 units of RA. Years ago, USDA began distributing any available RA to developments with a tenant identified as "most in need". That is how we picked up an additional single unit of RA to make the total 25. No new agreement was ever executed, but we do have 25 units of RA. I have attached the latest rent roll. Look in Column G, Subsidy Type. R/A means USDA Rental Assistance and N/A means No Assistance. This shows 25 tenants with RA.

**RENTAL ASSISTANCE AGREEMENT**

CASE NO. 49-018-202227362
PROJECT NO. 022

This Agreement is effective on the 1st day of April, 2006

between Clifton Charger Properties, LP  
"borrower") and its successors and the United States of America acting through the Rural Housing Service ("the Government") pursuant to section 521(a)(2)(A) of Title V of the Housing Act of 1949.

In consideration of the mutual covenants set forth, the parties agree as follows:

**Section 1** The Government agrees to provide rental assistance in accordance with its governing rules and regulations for the number of units of housing provided according to the attached Form RD 3560-51 (Part III), "Multiple Housing Obligation-Fund Analysis," or RD 3560-55, "Multiple Family Housing Transfer of Rental Assistance," for the project located at 503 South Ave. F, Clifton, TX 76634

and known as Clifton Charger consisting of 24 units. The Government will pay the difference between the Government approved shelter cost for the project and the monthly tenant contribution as calculated and certified for each tenant household on Form RD 3560-8, "Tenant Certification." Additional attachments of Form 3560-51 (Part III) or Form RD 3560-55 may be made to, and shall become a part of, this Agreement when properly identified by case number, project number, dated, and duly executed by both parties.

**Section 2** The borrower agrees to abide by the present and future regulations of the Government in the administration of this program.

**Section 3** Borrower agrees to use due diligence in the verification and certification of tenants' incomes.

**Section 4** In the event that any tenant suffers a hardship because rental assistance may not be available in the project because of the limitations on the number of units from the Government, the borrower may request additional units. If the Government provides additional units, then copies of the obligation screens will be attached by the Government to, and become a part of, this Agreement.

**Section 5** Borrower agrees to comply with Government priorities for selecting tenants that receive rental assistance.

**Section 6 Provisions Applicable if the Borrower is a Cooperative -**

When the Borrower is a Cooperative:

(a) The term "tenant or occupant" will include a member of a cooperative. The term "household contribution" or "rent" will include the charges under the occupancy agreement between the member and the cooperative.

(b) A member of a cooperative approved for rental assistance shall agree that upon a sale of their membership, any equity attributable to supplemental rent payments will be paid to the Government through the cooperative.

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0189. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and*



**MULTIPLE FAMILY HOUSING  
TRANSFER OF RENTAL ASSISTANCE**


TRANSFEROR DATA		TRANSFeree DATA	
1. BORROWER NAME-TRANSFEROR C L I F T O N   M A N O R   I N C		6. BORROWER NAME-TRANSFEROR C L I F T O N   C H A R G E R	
2. BORROWER CASE NUMBER 4 9 0 1 8 0 7 5 1 4 3 5 7 9 8		7. BORROWER CASE NUMBER 4 9 0 1 8 0 2 0 2 2 2 7 3 6 2	
3. PROJECT NAME-TRANSFeree C L I F T O N   M A N O R		8. PROJECT NAME-TRANSFeree C L I F T O N   C H A R G E R	
4. PROJECT NO. 0 2 2	5. LOAN TYPE R R H	9. PROJECT NO. 0 2 2	10. LOAN TYPE R R H
11. RA AGREEMENTS FROM TRANSFEROR		12. RA AGREEMENTS TO TRANSFeree	
11a. AGREEMENT NOS. 0 5 0 1 0 0	11b. NO. UNITS 0 1 5	12a. AGREEMENT NOS. 0 5 0 1 0 0	12b. NO. UNITS 0 1 5
13. TRANSFER CODE 2 1 - LN TRANSFER-ALL      3 - RA TRANSFER-PARTIAL 2 - RA TRANSFER-ALL      4 - ACQUISITION		14. DATE OF TRANSFER 0 4 2 7 0 6	

15. REMARKS

Clifton Manor, project 022 being transferred to Clifton Charger Properties.

16. DATE OF APPROVAL APR 27 2006, 20\_\_

UNITED STATES OF AMERICA  
RURAL HOUSING SERVICE

By  \_\_\_\_\_  
SIGNATURE OF APPROVING OFFICIAL  
STATE DIRECTOR  
RURAL DEVELOPMENT

**RENTAL ASSISTANCE AGREEMENT**

CASE NO.	49-018-202227362
PROJECT NO.	034

This Agreement is effective on the 1st day of April, 2006

between Clifton Charger Properties, LP  
"borrower") and its successors and the United States of America acting through the Rural Housing Service ("the Government") pursuant to section 521(a)(2)(A) of Title V of the Housing Act of 1949.

In consideration of the mutual covenants set forth, the parties agree as follows:

**Section 1** The Government agrees to provide rental assistance in accordance with its governing rules and regulations for the number of units of housing provided according to the attached Form RD 3560-51 (Part III), "Multiple Housing Obligation-Fund Analysis," or RD 3560-55, "Multiple Family Housing Transfer of Rental Assistance," for the project located at 100 South Avenue Q, Clifton, TX 76634

and known as Clifton Charger consisting of 16 units. The Government will pay the difference between the Government approved shelter cost for the project and the monthly tenant contribution as calculated and certified for each tenant household on Form RD 3560-8, "Tenant Certification." Additional attachments of Form 3560-51 (Part III) or Form RD 3560-55 may be made to, and shall become a part of, this Agreement when properly identified by case number, project number, dated, and duly executed by both parties.

**Section 2** The borrower agrees to abide by the present and future regulations of the Government in the administration of this program.

**Section 3** Borrower agrees to use due diligence in the verification and certification of tenants' incomes.

**Section 4** In the event that any tenant suffers a hardship because rental assistance may not be available in the project because of the limitations on the number of units from the Government, the borrower may request additional units. If the Government provides additional units, then copies of the obligation screens will be attached by the Government to, and become a part of, this Agreement.

**Section 5** Borrower agrees to comply with Government priorities for selecting tenants that receive rental assistance.

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When the Borrower is a Cooperative:

(a) The term "tenant or occupant" will include a member of a cooperative. The term "household contribution" or "rent" will include the charges under the occupancy agreement between the member and the cooperative.

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*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0189. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and*



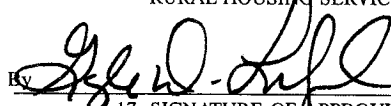


**MULTIPLE FAMILY HOUSING  
 TRANSFER OF RENTAL ASSISTANCE**

TRANSFEROR DATA				TRANSFeree DATA			
1. BORROWER NAME-TRANSFEROR CLIFTON MANOR INC				6. BORROW NAME-TRANSFEROR CLIFTON CHARGER			
2. BORROWER CASE NUMBER 490180751435798				7. BORROWER CASE NUMBER 490180202227362			
3. PROJECT NAME-TRANSFeree CLIFTON MANOR				8. PROJECT NAME-TRANSFeree CLIFTON CHARGER			
4. PROJECT NO. 034		5. LOAN TYPE RRH		9. PROJECT NO. 034		10. LOAN TYPE RRH	
11. RA AGREEMENTS FROM TRANSFEROR				12. RA AGREEMENTS TO TRANSFeree			
11a. AGREEMENT NOS. 050100		11b. NO. UNITS 009		12a. AGREEMENT NOS. 050100		12b. NO. UNITS 009	
13. TRANSFER CODE 2 1 - LN TRANSFER-ALL 2 - RA TRANSFER-ALL 3 - RA TRANSFER-PARTIAL 4 - ACQUISITION				14. DATE OF TRANSFER 042706			

15. REMARKS  
 Clifton Manor, project 034 being transferred to Clifton Charger Properties.

16. DATE OF APPROVAL APR 27 2006, 20\_\_

UNITED STATES OF AMERICA  
 RURAL HOUSING SERVICE  
  
 17. SIGNATURE OF APPROVING OFFICIAL  
 STATE DIRECTOR  
 RURAL DEVELOPMENT

## CHAPTER 7: RENTS, SHELTER COST, AND UTILITY ALLOWANCES

### 7.1 INTRODUCTION

The purpose of the low interest rate loans that the Agency makes is to enable borrowers to set rents at rates that are affordable to low- and moderate-income tenants, the target occupants for Agency-financed multi-family housing. Rents provide the necessary income stream to maintain and operate the housing. Thus, the Agency has a twofold interest in maintaining the rent streams in multi-family housing to protect the value of the property at affordable rates.

This chapter presents the program rules regarding rents, occupancy charges, and utility allowances for multi-family housing projects and the Agency's procedures for determining borrower compliance, including those for Farm Labor Housing projects. After reading this chapter, the Loan Servicer will understand the various types of project rents and how they are set, how rents are to be paid by tenants and collected and reported on by the borrower, and the procedure for changing rents in a project. They will also learn how security deposits are set and when they may be collected.

The Agency defines "rent" as the amount established as a charge for occupancy in a rental unit of Agency-financed multi-family housing. Rents must be established at the same rate for all similar units in the housing project: basic or note rent plus the utility allowance (when used) or the occupancy charge plus the utility allowance. If the utility costs are included in the rent, the rent will equal shelter costs.

Unless otherwise noted, for purposes of this discussion the term "rents" refers to both rents and occupancy charge, and "tenants" refers to both tenant and members of a cooperative.

### SECTION 1: RENT REQUIREMENTS

#### 7.2 RENT REQUIREMENTS BY PROJECT TYPE [7 CFR 3560.202]

##### A. Major Rent Levels

Subject to Agency approval, borrowers set project rents and utility allowances based on debt service and reasonable operating and maintenance expenses. Projects will have one or more of the following four rents:

- **Note rent** is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in *Form RD 3560-52, Promissory Note*.
- **Basic rent** is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in *Form RD 3560-52* reduced by the interest credit agreement.

- **U.S. Department of Housing and Urban Development (HUD) contract rent** is the rental charge established for housing receiving project-based HUD Section 8 rental subsidies in accordance with 24 CFR Part 880 or Part 884, as applicable.
- **Low-income housing tax credit (LIHTC) rent** is the rental charge established in accordance with LIHTC requirements.

**B. Rent Levels by Project Type**

These rent levels will apply depending upon the project type as follows:

- Plan I projects, direct and full-profit projects with loans made prior to 1968, and unrestricted Farm Labor Housing projects all have rents that are note rate only. Tenants all pay the same rent depending upon the size of their unit.
- Plan II projects have a minimum rent that is the basic rent and a ceiling rent that is the note rate rent. Tenants without rental subsidies (see Chapter 8, Rental Subsidies, for details) pay a rent within that range, based on their incomes. Tenants with rental assistance pay the basic rent, although the rental subsidy may pay all or a portion of the rent on behalf of the tenant.
- HUD Section 8 projects with interest credit have a minimum basic rent, a maximum note rate rent, and a HUD rent.
- HUD Section 8 projects without interest credit have a note rate rent and a HUD rent.

Exhibit 7-1 summarizes the rents that appear in each project type.

<b>Exhibit 7-1</b>	
<b>Rents by Project Type</b>	
<b>Project Type</b>	<b>Rents</b>
Plan I projects	Note rent
Plan II projects	Note, basic
Section 8/515 projects without interest credit	Note rent, HUD contract rent
Section 8/515 projects with interest credit	Note rent, basic rent, HUD contract rent
Early projects (pre-1968, direct loan and full profit projects)	Note rent
Labor housing—On Farm	No rent or note rent
Labor housing—Off Farm	Note
Congregate housing/group homes	Note rent, basic rent
Cooperatives	Note rent, basic rent

to the difference between the note rent for a unit and the basic rent.

#### **D. Unit Rents for Ineligible Tenants**

There will be times when ineligible tenants occupy multi-family housing units. Such tenants must pay rent based on the type of project they occupy.

##### ***1. Surcharge for Ineligible Tenants in Plan I Projects***

Ineligible tenants occupying a Plan I project must pay the established note rate rent plus a rent surcharge of 25 percent of the established rent. A Plan I project is defined in 7 CFR 3560.11.

##### ***2. Income-Ineligible Tenants in Plan II Projects***

Income-ineligible tenants occupying Plan II projects must pay the note rate rent. A Plan II project is defined in 7 CFR 3560.11.

#### **E. Unit Rents for Site Managers, Caretakers, and Owner-Occupied Units**

When used as a revenue producing unit at approved rental rates, the salary paid to the site manager and/or caretaker will be included in the project operation and maintenance expenses. The same amount will be included in the annual income of the site manager and/or caretaker. The site manager and/or caretaker may be an eligible or ineligible tenant and their rent contribution will be based on their total income from all sources as shown on the tenant certification form.

When the unit is used as a non-revenue producing unit, the project cost of providing the unit will be treated the same as those of other non-revenue producing portions of the project. Project rental rates will be established as if the unit did not exist as living quarters. Debt payment will be as if the units were rented at basic rent. A tenant certification form will not be prepared for this situation.

With prior approval of the State Director, an owner may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or site manager. If the unit is a revenue-producing unit, rental rates will apply to the borrower as they would to any other caretaker or manager.

#### **F. Unit Rents for Low Income Housing Tax Credit Units**

##### ***1. Setting and Collecting Rents***

Unit rents in projects with LIHTCs will be set in accordance with regular Agency program rules. Two examples of setting such rents are provided in Exhibit 7-3. The Field Office must be aware that the LIHTC program prohibits owners from charging tenants more than a certain amount of rent in LIHTC units. Borrowers who do this risk recapture of their tax credits and stiff penalties. While the law does not allow the borrower to collect basic rent from the tenant if it exceeds the LIHTC limitation, overage

may be collected from the tenant in only those projects with 1991 and later tax credit allocations, if necessary, according to *Form RD 3560-8* even if that rent exceeds the LIHTC limitations.

Overage. That portion of a tenant's net tenant contribution that exceeds basic rent up to note rent. Full overage is an amount equal to the difference between the note rent for a unit and the basic rent.

Plan I. A type of interest subsidy available to borrowers prior to October 27, 1980. Budgets and rental rates developed for Plan I loans are based on a 3 percent loan amortization.

Plan II. A type of interest subsidy available to borrowers operating on a limited profit basis. Budgets and rental rates developed for Plan II loans are based on both the loan being amortized at the interest rate shown on the promissory note and at a 1 percent subsidized rate.

Predetermined Amortization Schedule System (PASS). A system where loan payments are applied based on an amortization schedule.

Prepayment. Payment in full of the outstanding balance on an Agency loan prior to the note's originally scheduled maturity date.

Program requirements. All provisions related to MFHMFH contained in the loan document, grant agreement, statute, regulation, handbook, or administrative notice.

Promissory note. A legal document containing conditions (interest rate and timing) for repayment of indebtedness.

Real estate owned (REO) property. The real estate owned by the Agency acquired through voluntary conveyance, foreclosure or other action.

Rehabilitation. Rehabilitation is when the remodeling of a property is of a complex nature involving structural repairs or when two or more of the life cycle cost components are included in the remodeling of a property.

Related facilities. Facilities in a MFHMFH project that are related to the housing and are in addition to rental units, (e.g., community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply).

Rent. The amount established as a charge for occupancy in a rental unit of Agency-financed MFH. Rents must be established at the same rate for all similar units in the housing project. The following terms are used to describe rents for various program purposes.

(1) Note rent is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in the promissory note.

(2) Basic rent is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in the promissory note reduced by the interest credit agreement.

(3) HUD contract rent is the rental charge established for housing receiving project-based Section 8 rental subsidies in accordance with 24 CFR part 880 or part 884, as applicable.

(4) Low-income housing tax credit (LIHTC) rent is the rental charge established in accordance with LIHTC requirements.

**NOTICE TO TENANTS (MEMBERS) OF PROPOSED RENT (OCCUPANCY CHARGE) AND/OR UTILITY ALLOWANCE CHANGE**

Date Posted: October 1, 2018

You as a tenant (member) are hereby notified that, subject to Rural Development approval, rents (occupancy charge) and/or utility allowances will be changed effective January 1, 2019 (at least 60 days from this posting or other time frame if required by State law) Clifton Manor Apartments (Project Owner Name) has filed with Rural Development, United States Department of Agriculture, a request for approval of a change in the monthly rent (occupancy charge) rates and/or utility allowances of the Clifton Manor Apartments for the following reasons:

- |                       |                    |
|-----------------------|--------------------|
| 1. Maintenance costs  | 2. Property Taxes  |
| 3. Property Insurance | 4. Management fees |

Planned rent (occupancy charge) changes are as follows:

Unit Size	Present Rent (Occupancy Charge)		Proposed Rent (Occupancy Charge)		Amount Charged
	Basic	Note Rate	Basic	Note Rate	
1 – Bedroom	\$ 435	\$ 478	\$ 440	\$ 460	\$ 5
2 – Bedroom	\$ 506	\$ 583	\$ 511	\$ 616	\$ 5

Planned utility allowance changes are as follows:

Unit Size	Present Utility Allowance	Proposed Utility Allowance	Amount Charged
1 – Bedroom	\$ 62	\$ 67	\$ 5
2 – Bedroom	\$ 80	\$ 85	\$ 5

All materials justifying the proposed changes have been reviewed by Rural Development Servicing Official during the 20 – day period immediately following the posting of this notice. Comments or objections should include reasons or information you feel should be considered by the Rural Development Servicing Official. Your comments or objections must be filed prior to, October 20, 2018 with the Rural Development Servicing Official, Mr. Jay Tyler, at the Servicing Office located at 1502 Hwy 77 Hillsboro, TX 76645-0313.

These comments will be reviewed by the Rural Development Servicing Official and forwarded to the Rural Development approval official who will decide if the change(s) should be approved.

Each tenant (member) will be notified in writing of the Rural Development decision to approve or deny the change. The approved rents and utility allowances will then be effective upon the effective date given above. If the approved change cannot be made effective by such date, an additional notice will be posted and the tenants (members) will be notified in writing that new rents (occupancy charges) and utility allowances will be effective at the next rent (occupancy charge) due date following the additional notice and the Rural Development approval.

By Borrower/Borrower's Representative: *Janie Anderson*

THIS INSTITUTION IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER.







United States Department of Agriculture

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November 29, 2017

Linda Farrell  
Hamilton Properties  
P. O. Box 162358  
Fort Worth, Texas 76161

RE: FY 2018 Proposed Budget effective January 1, 2018 for Clifton Charger Properties, LP.

Dear Management Agent:

We have reviewed and approved your proposed FY 2018 Multi Family Housing Project budget with rent increase and/or utility change for the referenced property. The approved budget and notice of approved rent and/or utility allowance change is enclosed.

Also enclosed please find the management certification and management plan addendums.

Should you have any questions, or need additional information, please contact J. L. (Jay) Tyler, Jr., at (254) 582-7328 x 128 or by email at [j.tyler@tx.usda.gov](mailto:j.tyler@tx.usda.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "J. Tyler, Jr." with a stylized flourish at the end.

for  
SANDRA M. MICKLITZ  
Area Director

Enclosure(s)

**Rural Development • Hillsboro Area Office**  
1502 Hwy. 77 North - Hillsboro, Texas 76645  
Voice (254) 582-7328 Ext. 4 • Fax 1-844-496-7984

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov).

## Proposed Budget

Project Name: CLIFTON MANOR APTS State: 49 Servicing Office: 614 County: 18  
 Borrower Name: CLIFTON-CHARGER PROPERTIES LP Borr ID: 482205422 Prj Nbr: 04-8 Paid Code: Active  
 Classification: C Fiscal Year: 2018 Version: 01/01/2018 TRANSMITD Totals: By Project Analyzed: N

Item	Current Budget	Actual	Proposed Budget	Comment
Effective Dates:	01/01/2017	01/01/2017	01/01/2018	
Ending Dates:	12/31/2017	12/31/2017	12/31/2018	
<b>PART I - CASH FLOW STATEMENT</b>				
<b>Operational Cash Sources</b>				
1. Rental Income	234,360.00		234,360.00	
2. RHS Rental Assist. Received				
3. Application Fee Received				
4. Laundry And Vending	1,200.00		1,200.00	
5. Interest Income	0.00		0.00	
6. Tenant Charges	30.00		30.00	
7. Other - Project Sources	0.00		0.00	
8. Less (Vcncy @ Cntgncy Allw)	-17,577.00		-23,436.00	
9. Less (Agncy Aprvd Incentv)	0.00		0.00	
10. Sub-Ttl [(1 thru 7)-(8@9)]	218,013.00		212,154.00	
<b>Non-Operational Cash Sources</b>				
11. Cash - Non Project	0.00		0.00	
12. Authorized Loan (Non-RHS)	0.00		0.00	
13. Transfer From Reserve	9,260.00		13,380.00	
14. Sub-Total (11 thru 13)	9,260.00		13,380.00	
15. Total Cash Sources (10+14)	227,273.00		225,534.00	
<b>Operational Cash Uses</b>				
16. Ttl O&M Exp (From Part II)	161,669.20		162,933.00	
17. RHS Debt Payment	14,797.44		8,062.32	
18. RHS Payment (Overage)				
19. RHS Payment (Late Fee)				
20. Reductn In Prior Yr Pybles				
21. Tenant Utility Payments				
22. Transfer to Reserve	14,220.00		14,220.00	
23. RTN Owner/NP Asset Mgt Fee	0.00		0.00	
24. Sub-Total (16 thru 23)	190,686.64		185,215.32	
<b>Non-Operational Cash Uses</b>				
25. Authzd Debt Pymnt (NonRHS)	26,726.70		26,726.70	
26. Capital Budget (III 4-6)	9,260.00		13,380.00	
27. Miscellaneous	0.00		0.00	
28. Sub-Total (25 thru 27)	35,986.70		40,106.70	
29. Total Cash Uses (24+28)	226,673.34		225,322.02	
30. Net (Deficit) (15-29)	599.66		211.98	
<b>Cash Balance</b>				
31. Beginning Cash Balance	63,897.38		52,242.75	
32. Accrual To Cash Adjustment				
33. Ending Cash Bal (30+31+32)	64,497.04		52,454.73	

Project Name: CLIFTON MANOR APTS State: 49 Servicing Office: 614 County: 18  
 Borrower Name: CLIFTON-CHARGER PROPERTIES LP Borx ID: 482205422 Prj Nbr: 04-8 Paid Code: Active  
 Classification: C Fiscal Year: 2018 Version: 01/01/2018 TRANSMITD Totals: By Project Analyzed: N

Item	Current Budget	Actual	Proposed Budget	Comment
Effective Dates:	01/01/2017	01/01/2017	01/01/2018	
Ending Dates:	12/31/2017	12/31/2017	12/31/2018	
<b>PART II - O&amp;M EXPENSE SCHEDULE</b>				
1. Maint. @ Repairs Payroll	0.00		0.00	
2. Maint. @ Repairs Supply	8,400.00		8,400.00	
3. Maint. @ Repairs Contract	18,720.00		18,000.00	
4. Painting	8,400.00		6,000.00	
5. Snow Removal	0.00		0.00	
6. Elevator Maint./Contract	0.00		0.00	
7. Grounds	17,520.00		17,520.00	
8. Services	2,880.00		1,500.00	
9. Cptl Bgt(Part V operating)	0.00		860.00	
10. Other Operating Expenses	0.00		0.00	
11. Sub-Ttl O&M (1 thru 10)	55,920.00		52,280.00	
12. Electricity	8,820.00		9,540.00	
13. Water	10,080.00		10,212.00	
14. Sewer	2,480.00		3,540.00	
15. Fuel (Oil/Coal/Gas)	0.00		0.00	
16. Garbage @ Trash Removal	7,020.00		5,520.00	
17. Other Utilities	160.00		160.00	HIRE FIRM TO GATHER UA INFORMATION
18. Sub-Ttl Util. (12 thru 17)	28,560.00		28,972.00	
19. Site Management Payroll	18,176.20		20,008.00	
20. Management Fee	28,800.00		29,760.00	
21. Project Auditing Expense	3,750.00		3,750.00	
22. Proj. Bookkeeping/Accting	0.00		0.00	
23. Legal Expenses	200.00		222.00	
24. Advertising	720.00		720.00	
25. Phone @ Answering Service	2,040.00		2,400.00	
26. Office Supplies	900.00		900.00	
27. Office Furniture @ Equip.	0.00		0.00	
28. Training Expense	0.00		125.00	
29. Hlth Ins. @ Other Benefits	0.00		0.00	
30. Payroll Taxes	0.00		0.00	
31. Workmans Compensation	156.00		300.00	
32. Other Admin. Expenses	22.00		108.00	BANK FEES, APPLICATION FEES
33. Sub-Ttl Admin (19 thru 32)	54,764.20		58,293.00	
34. Real Estate Taxes	7,500.00		8,208.00	
35. Special Assessments	0.00		0.00	
36. Othr Taxes, Lcnses, Permts	4,545.00		4,800.00	TDHCA FEES, RRHA MEMBERSHIP, PARTNERSHIP FEES
37. Property @ Liability Ins.	10,296.00		10,296.00	
38. Fidelity Coverage Ins.	84.00		84.00	
39. Other Insurance	0.00		0.00	
40. Sub-Ttl Tx/In (34 thru 39)	22,425.00		23,388.00	
41. Ttl O&M Exps (11+18+33+40)	161,669.20		162,933.00	

Project Name: CLIFTON MANOR APTS State: 49 Servicing Office: 614 County: 18  
 Borrower Name: CLIFTON-CHARGER PROPERTIES LP Borr ID: 482205422 Prj Nbr: 04-8 Paid Code: Active  
 Classification: C Fiscal Year: 2018 Version: 01/01/2018 TRANSMITD Totals: By Project Analyzed: N

Item	Current Budget	Actual	Proposed Budget	Comment
Effective Dates:	01/01/2017	01/01/2017	01/01/2018	
Ending Dates:	12/31/2017	12/31/2017	12/31/2018	
<b>PART III - ACCT BUDGET/STATUS</b>				
<b>Reserve Account</b>				
1. Beginning Balance	66,827.20		65,097.15	
2. Transfer to Reserve	14,220.00		14,220.00	
<b>Transfer From Reserve</b>				
3. Operating Deficit	0.00		0.00	
4. Cptl Bgt (Part V reserve)	9,260.00		13,380.00	
5. Building @ Equip Repair	0.00		0.00	
6. Othr Non-Operating Expenses	0.00		0.00	
7. Total (3 thru 6)	9,260.00		13,380.00	
8. Ending Balance [(1+2)-7]	71,787.20		65,937.15	
<b>General Operating Account</b>				
Beginning Balance				
Ending Balance				
<b>Real Estate Tax And Ins Escrow</b>				
Beginning Balance				
Ending Balance				
<b>Tenant Security Deposit Acct</b>				
Beginning Balance				
Ending Balance				
Number of Applicants on Waiting List	0	Reserve Acct. Req. Balance	57,000.92	
Number of Applicants Needing RA		Amount Ahead/Behind	7,914.42	

Project Name: CLIFTON MANOR APTS State: 49 Servicing Office: 614 County: 18  
 Borrower Name: CLIFTON-CHARGER PROPERTIES LP Borr ID: 482205422 Prj Nbr: 04-8 Paid Code: Active  
 Classification: C Fiscal Year: 2018 Version: 01/01/2018 TRANSMITD Totals: By Project Analyzed: N

PART IV RENT SCHEDULE

A. CURRENT APPROVED RENTS/UTILITY ALLOWANCE: 01/01/2017

Unit Description						Rental Rates			Potential Income From Each Rate			Utility
Type	Size	HC	Rev	Unit	Number	Basic	Note	HUD	Basic	Note	HUD	Allowance
N	1	N			8	435	478	435	41,760	45,888	41,760	64
N	2	Y			3	506	583	506	18,216	20,988	18,216	69
N	2	N			27	506	583	506	163,944	188,892	163,944	69
N	1	Y			2	435	478	435	10,440	11,472	10,440	64
CURRENT RENT TOTALS									234,360	267,240	234,360	

EFFECTIVE DATE OF RENTS/UTILITY ALLOWANCE: 01/01/2017

Unit Description					Utility Types					
Type	Size	HC	Rev	Unit	Elect	Gas	Sewer	Trash	Other	Total Allow
N	1	N			64	0	0	0	0	64
N	2	Y			69	0	0	0	0	69
N	2	N			69	0	0	0	0	69
N	1	Y			64	0	0	0	0	64

B. PROPOSED CHANGE OF RENTS/UTILITY ALLOWANCE: 01/01/2018

Unit Description						Rental Rates			Potential Income From Each Rate			Utility
Type	Size	HC	Rev	Unit	Number	Basic	Note	HUD	Basic	Note	HUD	Allowance
N	1	N			8	435	478	435	41,760	45,888	41,760	62
N	2	Y			3	506	583	506	18,216	20,988	18,216	80
N	2	N			27	506	583	506	163,944	188,892	163,944	80
N	1	Y			2	435	478	435	10,440	11,472	10,440	62
PROPOSED RENT TOTALS									234,360	267,240	234,360	

EFFECTIVE DATE OF RENTS/UTILITY ALLOWANCE: 01/01/2018

Unit Description					Utility Types					
Type	Size	HC	Rev	Unit	Elect	Gas	Sewer	Trash	Other	Total Allow
N	1	N			62	0	0	0	0	62
N	2	Y			80	0	0	0	0	80
N	2	N			80	0	0	0	0	80
N	1	Y			62	0	0	0	0	62

Project Name: CLIFTON MANOR APTS State: 49 Servicing Office: 614 County: 18  
 Borrower Name: CLIFTON-CHARGER PROPERTIES LP Borr ID: 482205422 Prj Nbr: 04-8 Paid Code: Active  
 Classification: C Fiscal Year: 2018 Version: 01/01/2018 TRANSMITD Totals: By Project Analyzed: N

Item	Proposed Number Units/Items	Proposed From Reserve	Actual From Reserve	Proposed From Operating	Actual From Operating	Actual Total Cost	Total Actual Units/Items
Effective Dates:	01/01/2017	01/01/2018	01/01/2017	01/01/2018	01/01/2017	01/01/2017	01/01/2017
Ending Dates:	12/31/2017		12/31/2017		12/31/2017	12/31/2017	12/31/2017
<b>ANNUAL CAPITAL BUDGET</b>							
<b>Appliances</b>							
Appliances - Range	2	1,710.00	0.00	0.00	0.00	0.00	0
Appliances - Refrigerator	2	1,260.00	0.00	0.00	0.00	0.00	0
Appliances - Range Hood	1	350.00	0.00	0.00	0.00	0.00	0
Appliances - Washers @ Dryers	0	0.00	0.00	0.00	0.00	0.00	0
Appliances - Other	2	760.00	0.00	0.00	0.00	0.00	0
<b>Carpet and Vinyl</b>							
Carpet @ Vinyl - 1 Br.	2	2,400.00	0.00	0.00	0.00	0.00	0
Carpet @ Vinyl - 2 Br.	3	4,500.00	0.00	0.00	0.00	0.00	0
Carpet @ Vinyl - 3 Br.	0	0.00	0.00	0.00	0.00	0.00	0
Carpet @ Vinyl - 4 Br.	0	0.00	0.00	0.00	0.00	0.00	0
Carpet @ Vinyl - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Cabinets</b>							
Cabinets - Kitchens	0	0.00	0.00	0.00	0.00	0.00	0
Cabinets - Bathroom	0	0.00	0.00	0.00	0.00	0.00	0
Cabinets - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Doors</b>							
Doors - Exterior	0	0.00	0.00	0.00	0.00	0.00	0
Doors - Interior	0	0.00	0.00	0.00	0.00	0.00	0
Doors - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Window Coverings</b>							
Window Coverings - Detail	21	0.00	0.00	210.00	0.00	0.00	0
Window Coverings - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Heat and Air Conditioning</b>							
Heat @ Air - Heating	0	0.00	0.00	0.00	0.00	0.00	0
Heat @ Air - Air Conditioning	0	0.00	0.00	0.00	0.00	0.00	0
Heat @ Air - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Plumbing</b>							
Plumbing - Water Heater	0	0.00	0.00	0.00	0.00	0.00	0
Plumbing - Bath Sinks	0	0.00	0.00	0.00	0.00	0.00	0
Plumbing - Kitchen Sinks	0	0.00	0.00	0.00	0.00	0.00	0
Plumbing - Faucets	0	0.00	0.00	0.00	0.00	0.00	0
Plumbing - Toilets	1	0.00	0.00	250.00	0.00	0.00	0
Plumbing - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Major Electrical</b>							
Major Electrical - Detail	0	0.00	0.00	0.00	0.00	0.00	0
Major Electrical - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Structures</b>							
Structures - Windows	0	0.00	0.00	0.00	0.00	0.00	0
Structures - Screens	0	0.00	0.00	0.00	0.00	0.00	0
Structures - Walls	0	0.00	0.00	0.00	0.00	0.00	0
Structures - Roofing	0	0.00	0.00	0.00	0.00	0.00	0
Structures - Siding	0	0.00	0.00	0.00	0.00	0.00	0
Structures - Exterior Painting	0	0.00	0.00	0.00	0.00	0.00	0
Structures - Other	0	0.00	0.00	0.00	0.00	0.00	0

Project Name: CLIFTON MANOR APTS State: 49 Servicing Office: 614 County: 18  
 Borrower Name: CLIFTON-CHARGER PROPERTIES LP Borr ID: 482205422 Prj Nbr: 04-8 Paid Code: Active  
 Classification: C Fiscal Year: 2018 Version: 01/01/2018 TRANSMITD Totals: By Project Analyzed: N

Item	Proposed Number Units/Items	Proposed From Reserve	Actual From Reserve	Proposed From Operating	Actual From Operating	Actual Total Cost	Total Actual Units/Items
Effective Dates:	01/01/2017	01/01/2018	01/01/2017	01/01/2018	01/01/2017	01/01/2017	01/01/2017
Ending Dates:	12/31/2017		12/31/2017		12/31/2017	12/31/2017	12/31/2017
<b>Paving</b>							
Paving - Asphalt	0	0.00	0.00	0.00	0.00	0.00	0
Paving - Concrete	0	0.00	0.00	0.00	0.00	0.00	0
Paving - Seal and Stripe	0	0.00	0.00	0.00	0.00	0.00	0
Paving - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Landscape and Grounds</b>							
Lndscp@Grnds - Landscaping	0	0.00	0.00	0.00	0.00	0.00	0
Lndscp@Grnds - Lawn Equipment	0	0.00	0.00	0.00	0.00	0.00	0
Lndscp@Grnds - Fencin	0	0.00	0.00	0.00	0.00	0.00	0
Lndscp@Grnds - Recreation Area	0	0.00	0.00	0.00	0.00	0.00	0
Lndscp@Grnds - Signs	0	0.00	0.00	0.00	0.00	0.00	0
Lndscp@Grnds - Other	0	2,400.00	0.00	0.00	0.00	0.00	0
<b>Accessibility Features</b>							
Accessibility Features - Detail	0	0.00	0.00	0.00	0.00	0.00	0
Accessibility Features - Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Automation Equipment</b>							
Automation Equip. -Site Mngt.	0	0.00	0.00	0.00	0.00	0.00	0
Automation Equip. -Common Area	0	0.00	0.00	0.00	0.00	0.00	0
Automation Equip. -Other	0	0.00	0.00	0.00	0.00	0.00	0
<b>Other</b>							
List: ?	0	0.00	0.00	400.00	0.00	0.00	0
List: ?	0	0.00	0.00	0.00	0.00	0.00	0
List: ?	0	0.00	0.00	0.00	0.00	0.00	0
<b>Total Capital Expenses</b>	<b>0</b>	<b>13,380.00</b>	<b>0.00</b>	<b>860.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0</b>

Project Name: CLIFTON MANOR APTS	State: 49	Servicing Office: 614	County: 18
Borrower Name: CLIFTON-CHARGER PROPERTIES LP	Borr ID: 482205422	Prj Nbr: 04-8	Paid Code: Active
Classification: C	Fiscal Year: 2018	Version: 01/01/2018 TRANSMITD	Totals: By Project Analyzed: N

Part VI - SIGNATURES, DATES AND COMMENTS

Warning	Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."
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I HAVE READ THE ABOVE WARNING STATEMENT AND I HEREBY CERTIFY THAT THE FOREGOING INFORMATION IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

9-29-17  
(Date Submitted)

HAMILTON PROPERTIES CORP  
(Management Agency)

MA141427  
(MA#)

11-29-17  
(Date)

Christ Anderson  
(Signature of Borrower or Borrower's Representative)

Regional District Mgr  
(Title)

Shri Chenoweth, Area Specialist  
Agency Approval (Rural Development Approval Official):

11/29/17  
(Date)



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Project Name: CLIFTON MANOR APTS	State: 49	Servicing Office: 614	County: 18
Borrower Name: CLIFTON-CHARGER PROPERTIES LP	Borr ID: 482205422	Prj Nbr: 04-8	Paid Code: Active
Classification: C	Fiscal Year: 2018	Version: 01/01/2018 TRANSMITD	Totals: By Project Analyzed: N

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SPVS Comment:  
Batched/ II 091817

Narrative:

Clifton Manor Apartments is a 40 unit family unit. We currently have eleven vacancies, we have suffered with lots of vacancies this past year as many as 11 at one time. The rehab was completed during 2006 and many items are starting to break down and repairs and maintenance are increasing. We have budgeted for 4 vacancies but they are way higher. There will be utility change needed this year. There is no longer HUD available in Clifton. We have 15 units that do not get rental assistance. Additional rental assistance would be helpful for this property. Also the income limits set by TDHCA is set at 50 percent. This is making it difficult to rent to individuals that can pay base rent. There is no newspaper in Clifton, There is no Senior center in Clifton. Many of the things that would bring people to the community are missing.

**MULTIPLE FAMILY HOUSING PROJECT BUDGET  
UTILITY ALLOWANCE**

PROJECT NAME CLIFTON MANOR APARTMENTS		BORROWER NAME CLIFTON CHARGER PROPERTIES LP		BORROWER ID AND PROJECT NO. 482205422 048	
Loan/Transfer Amount \$ 0.00		Note Rate Payment \$ 0.00		IC Payment \$ 0.00	
Reporting Period <input type="checkbox"/> Annual <input type="checkbox"/> Quarterly <input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Proposed	Budget Type <input type="checkbox"/> Initial <input checked="" type="checkbox"/> Regular Report <input type="checkbox"/> Rent Change <input type="checkbox"/> SNR <input type="checkbox"/> Other Servicing	Project Rental Type <input checked="" type="checkbox"/> Family <input type="checkbox"/> Elderly <input type="checkbox"/> Congregate <input type="checkbox"/> Group Home <input type="checkbox"/> Mixed <input type="checkbox"/> LH	Profit Type <input type="checkbox"/> Full Profit <input checked="" type="checkbox"/> Limited Profit <input type="checkbox"/> Non-Profit	The following utilities are master metered: <input type="checkbox"/> Electricity <input type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Sewer <input checked="" type="checkbox"/> Trash <input type="checkbox"/> Other	
				<input checked="" type="checkbox"/> I hereby request 4 units of RA. Current number of RA units 25	
				Borrower Accounting Method <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Accrual	

**PART I - CASH FLOW STATEMENT**

BEGINNING DATES >  
ENDING DATES >

**OPERATIONAL CASH SOURCES**

	CURRENT BUDGET ( 01/01/2018 ) ( 12/31/2018 )	ACTUAL ( 01/01/2018 ) ( 08/31/2018 )	PROPOSED BUDGET ( 01/01/2019 ) ( 12/31/2019 )	COMMENTS or (YTD) Current Vs Proposed
1. RENTAL INCOME .....	234,360.00	121,301.13	236,760.00	0.00
2. RHS RENTAL ASSISTANCE RECEIVED .....		78,148.50		0.00
3. APPLICATION FEES RECEIVED .....		0.00		0.00
4. LAUNDRY AND VENDING .....	1,200.00	552.00	600.00	0.00
5. INTEREST INCOME .....	0.00	0.00	0.00	0.00
6. TENANT CHARGES .....	30.00	10.00	30.00	0.00
7. OTHER - PROJECT SOURCES .....	0.00	0.00	0.00	0.00
8. LESS (Vacancy and Contingency Allowance) .....	( 23,436.00)		( 23,676.00)	( 0.00)
9. LESS (Agency Approved Incentive Allowance) .....	( 0.00)		( 0.00)	( 0.00)
10. SUB-TOTAL [(1 thru 7) - (8 & 9)] .....	212,154.00	200,011.63	213,714.00	0.00

**NON-OPERATIONAL CASH SOURCES**

11. CASH-NON PROJECT .....	0.00	0.00	0.00	0.00
12. AUTHORIZED LOAN (Non-RHS) .....	0.00	0.00	0.00	0.00
13. TRANSFER FROM RESERVE .....	13,380.00	0.00	13,380.00	0.00
14. SUB-TOTAL (11 thru 13) .....	13,380.00	0.00	13,380.00	0.00

**15. TOTAL CASH SOURCES (10 + 14) .....**

225,534.00	200,011.63	227,094.00	0.00
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**OPERATIONAL CASH USES**

16. TOTAL O&M EXPENSES (From Part II) .....	162,933.00	154,614.05	161,926.00	0.00
17. RHS DEBT PAYMENT .....	8,062.32	8,062.32	8,062.32	0.00
18. RHS PAYMENT (Overage) .....		2,289.00		0.00
19. RHS PAYMENT (Late Fee) .....		0.00		0.00
20. REDUCTION IN PRIOR YEAR PAYABLES .....		0.00		0.00
21. TENANT UTILITY PAYMENTS .....		0.00		0.00
22. TRANSFER TO RESERVE .....	14,220.00	14,220.00	14,220.00	0.00
23. RETURN TO OWNER / NP ASSET MANAGEMENT FEE .....	0.00	0.00	0.00	0.00
24. SUB-TOTAL (16 thru 23) .....	185,215.32	179,185.37	184,208.32	0.00

**NON-OPERATIONAL CASH USES**

25. AUTHORIZED DEBT PAYMENT (Non-RHS) .....	26,726.70	26,726.40	26,726.40	0.00
26. ANNUAL CAPITAL BUDGET (From Part III, Lines 4-6) .....	13,380.00	0.00	13,380.00	0.00
27. MISCELLANEOUS .....	0.00	0.00	0.00	0.00
28. SUB-TOTAL (25 thru 27) .....	40,106.70	26,726.40	40,106.40	0.00

**29. TOTAL CASH USES (24 + 28) .....**

225,322.02	205,911.77	224,314.72	0.00
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**30. NET CASH (DEFICIT) (15 - 29) .....**

211.98	-5,900.14	2,779.28	0.00
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**CASH BALANCE**

31. BEGINNING CASH BALANCE .....	52,242.75	54,308.21	48,408.07	0.00
32. ACCRUAL TO CASH ADJUSTMENT .....		0.00		0.00
33. ENDING CASH BALANCE (30 + 31 + 32) .....	52,454.73	48,408.07	51,187.35	0.00

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not to be required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0189. The time required to complete this information collection is estimated to average 2 1/2 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.

**PART II - OPERATING AND MAINTENANCE EXPENSE SCHEDULE**

	CURRENT BUDGET	ACTUAL	PROPOSED BUDGET	COMMENTS or (YTD)
1. MAINTENANCE AND REPAIRS PAYROLL .....	0.00	0.00	0.00	0.00
2. MAINTENANCE AND REPAIRS SUPPLY .....	8,400.00	7,450.07	8,400.00	0.00
3. MAINTENANCE AND REPAIRS CONTRACT .....	18,000.00	19,973.31	18,000.00	0.00
4. PAINTING .....	6,000.00	2,460.00	3,600.00	0.00
5. SNOW REMOVAL .....	0.00	0.00	0.00	0.00
6. ELEVATOR MAINTENANCE CONTRACT .....	0.00	0.00	0.00	0.00
7. GROUNDS .....	17,520.00	9,600.00	10,000.00	0.00
8. SERVICES .....	1,500.00	585.00	800.00	0.00
9. ANNUAL CAPITAL BUDGET (From Part V - Operating) .....	860.00	77.88	860.00	0.00
10. OTHER OPERATING EXPENSES (Itemize) .....	0.00	0.00	0.00	0.00
11. SUB-TOTAL MAINT. & OPERATING (1 thru 10) .....	52,280.00	40,146.26	41,660.00	0.00
12. ELECTRICITY <input type="checkbox"/> If master metered .....	9,540.00	10,472.91	10,500.00	0.00
13. WATER <input type="checkbox"/> check box on .....	10,212.00	14,815.55	14,820.00	0.00
14. SEWER <input type="checkbox"/> front .....	3,540.00	5,375.52	5,376.00	0.00
15. FUEL (Oil / Coal / Gas) .....	0.00	0.00	0.00	0.00
16. GARBAGE & TRASH REMOVAL .....	5,520.00	5,582.28	5,600.00	0.00
17. OTHER UTILITIES .....	160.00	180.00	180.00	0.00
18. SUB-TOTAL UTILITIES (12 thru 17) .....	28,972.00	36,426.26	36,476.00	0.00
19. SITE MANAGEMENT PAYROLL .....	20,008.00	19,222.29	20,008.00	0.00
20. MANAGEMENT FEE .....	29,760.00	26,178.00	30,720.00	0.00
21. PROJECT AUDITING EXPENSE .....	3,750.00	3,760.00	4,050.00	0.00
22. PROJECT BOOKKEEPING / ACCOUNTING .....	0.00	0.00	0.00	0.00
23. LEGAL EXPENSES .....	222.00	378.00	222.00	0.00
24. ADVERTISING .....	720.00	0.00	400.00	0.00
25. TELEPHONE & ANSWERING SERVICE .....	2,400.00	2,629.52	2,640.00	0.00
26. OFFICE SUPPLIES .....	900.00	1,200.00	900.00	0.00
27. OFFICE FURNITURE & EQUIPMENT .....	0.00	184.01	0.00	0.00
28. TRAINING EXPENSE .....	125.00	300.00	0.00	0.00
29. HEALTH INS. & OTHER EMP. BENEFITS .....	0.00	0.00	0.00	0.00
30. PAYROLL TAXES .....	0.00	0.00	0.00	0.00
31. WORKMAN'S COMPENSATION .....	300.00	145.86	180.00	0.00
32. OTHER ADMINISTRATIVE EXPENSES (Itemize) .....	108.00	256.00	108.00	0.00
33. SUB-TOTAL ADMINISTRATIVE (19 thru 32) .....	58,293.00	54,253.68	59,228.00	0.00
34. REAL ESTATE TAXES .....	8,208.00	9,225.03	9,684.00	0.00
35. SPECIAL ASSESSMENTS .....	0.00	0.00	0.00	0.00
36. OTHER TAXES, LICENSES & PERMITS .....	4,800.00	4,550.00	4,770.00	0.00
37. PROPERTY & LIABILITY INSURANCE .....	10,296.00	9,915.17	10,000.00	0.00
38. FIDELITY COVERAGE INSURANCE .....	84.00	97.65	108.00	0.00
39. OTHER INSURANCE .....	0.00	0.00	0.00	0.00
40. SUB-TOTAL TAXES & INSURANCE (34 thru 39) .....	23,388.00	23,787.85	24,562.00	0.00
41. TOTAL O&M EXPENSES (11 + 18 + 33 + 40) .....	162,933.00	154,614.05	161,926.00	0.00

**PART III - ACCOUNT BUDGETING / STATUS**

	CURRENT BUDGET	ACTUAL	PROPOSED BUDGET	COMMENTS or (YTD)
<b>RESERVE ACCOUNT :</b>				
1. BEGINNING BALANCE .....	65,097.15	65,872.34	65,097.15	0.00
2. TRANSFER TO RESERVE .....	14,220.00	14,220.00	14,220.00	0.00
<b>TRANSFER FROM RESERVE</b>				
3. OPERATING DEFICIT .....	0.00	0.00	0.00	0.00
4. ANNUAL CAPITAL BUDGET (Part V - Reserve) .....	13,380.00	0.00	13,380.00	0.00
5. BUILDING & EQUIPMENT REPAIR .....	0.00	0.00	0.00	0.00
6. OTHER NON-OPERATING EXPENSES .....	0.00	0.00	0.00	0.00
7. TOTAL (3 thru 6) .....	( 13,380.00)	( 0.00)	( 13,380.00)	( 0.00)
8. ENDING BALANCE [(1 + 2) - 7] .....	65,937.15	80,092.34	65,937.15	0.00

**GENERAL OPERATING ACCOUNT : \***

BEGINNING BALANCE .....	41,289.75	0.00
ENDING BALANCE .....	41,289.75	0.00

**REAL ESTATE TAX AND INSURANCE ESCROW ACCOUNT: \***

BEGINNING BALANCE .....	13,018.46	0.00
ENDING BALANCE .....	16,703.29	0.00

**TENANT SECURITY DEPOSIT ACCOUNT : \***

BEGINNING BALANCE .....	12,689.00	0.00
ENDING BALANCE .....	11,502.00	0.00

(\* Complete upon submission of actual expenses.)

NUMBER OF APPLICANTS ON THE WAITING LIST	0.00	RESERVE ACCT. REQ. BALANCE .....	0.00
NUMBER OF APPLICANTS NEEDING RA .....	0.00	AMOUNT AHEAD/BEHIND .....	0.00

**PART IV - RENT SCHEDULE AND UTILITY ALLOWANCE**

**A. CURRENT APPROVED RENTS / UTILITY ALLOWANCE**

UNIT DESCRIPTION			RENTAL RATES			POTENTIAL INCOME FROM EACH RATE			UTILITY ALLOWANCE
BR SIZE	UNIT TYPE	NUMBER	BASIC	NOTE RATE	HUD	BASIC	NOTE RATE	HUD	
1BR	N	8	435	478	435	41,760	45,888	41,760	62
1BR	NH	2	435	478	435	10,440	11,472	10,440	
2BR	N	27	506	583	506	163,944	188,892	163,944	
2BR	NH	3	506	583	506	18,216	20,988	18,216	
CURRENT RENT TOTALS :						<b>234,360</b>	<b>267,240</b>	<b>234,360</b>	
						BASIC	NOTE	HUD	

**B. PROPOSED RENTS - Effective Date : 01/01/2019**

UNIT DESCRIPTION			RENTAL RATES			POTENTIAL INCOME FROM EACH RATE			UTILITY ALLOWANCE
BR SIZE	UNIT TYPE	NUMBER	BASIC	NOTE RATE	HUD	BASIC	NOTE RATE	HUD	
1BR	N	8	440	460	440	42,240	44,160	42,240	62
1BR	NH	2	440	460	440	10,560	11,040	10,560	
2BR	N	27	511	616	511	165,564	199,584	165,564	
2BR	NH	3	511	616	511	18,396	22,176	18,396	
PROPOSED RENT TOTALS :						<b>236,760</b>	<b>276,960</b>	<b>236,760</b>	
						BASIC	NOTE	HUD	

**C. PROPOSED UTILITY ALLOWANCE - Effective Date : 01/01/2019**

**MONTHLY DOLLAR ALLOWANCES**

BR SIZE	UNIT TYPE	NUMBER	ELECTRIC	GAS	WATER	SEWER	TRASH	OTHER	TOTAL
1BR	N	8	67	0	0	0	0	0	67
1BR	NH	2	67	0	0	0	0	0	67
2BR	N	27	85	0	0	0	0	0	85
2BR	NH	3	85	0	0	0	0	0	85

**PART V - ANNUAL CAPITAL BUDGET**

	Proposed Number of Units/Items	Proposed from Reserve	Actual from Reserve	Proposed from Operating	Actual from Operating	Actual Total Cost	Total Actual Units/Items
<b>Appliances:</b>							
Range .....	2	1,710.00	0.00	0.00	0.00	0.00	0
Refrigerator .....	2	1,260.00	0.00	0.00	0.00	0.00	0
Range Hood .....	1	350.00	0.00	0.00	0.00	0.00	0
Washers & Dryers .....	0	0.00	0.00	0.00	0.00	0.00	0
Other : dishwashers .....	2	760.00	0.00	0.00	0.00	0.00	0
<b>Carpet &amp; Vinyl:</b>							
1BR .....	2	2,400.00	0.00	0.00	0.00	0.00	0
2BR .....	3	4,500.00	0.00	0.00	0.00	0.00	0
3BR .....	0	0.00	0.00	0.00	0.00	0.00	0
4BR .....	0	0.00	0.00	0.00	0.00	0.00	0
Other : .....	0	0.00	0.00	0.00	0.00	0.00	0
<b>Cabinets:</b>							
Kitchens .....	0	0.00	0.00	0.00	0.00	0.00	0
Bathrooms .....	0	0.00	0.00	0.00	0.00	0.00	0
Other : .....	0	0.00	0.00	0.00	0.00	0.00	0
<b>Doors:</b>							
Exterior .....	0	0.00	0.00	0.00	0.00	0.00	0
Interior .....	0	0.00	0.00	0.00	0.00	0.00	0
Other : .....	0	0.00	0.00	0.00	0.00	0.00	0
<b>Window Coverings:</b>							
List : .....	21	0.00	0.00	210.00	0.00	0.00	0
Other : .....	0	0.00	0.00	0.00	0.00	0.00	0
<b>Heating and Air Conditioning:</b>							
Heating .....	0	0.00	0.00	0.00	0.00	0.00	0
Air Conditioning .....	0	0.00	0.00	0.00	0.00	0.00	0
Other : .....	0	0.00	0.00	0.00	0.00	0.00	0
<b>Plumbing:</b>							
Water Heater .....	0	0.00	0.00	0.00	0.00	0.00	0
Bath Sinks .....	0	0.00	0.00	0.00	0.00	0.00	0
Kitchen Sinks .....	0	0.00	0.00	0.00	0.00	0.00	0
Faucets .....	0	0.00	0.00	0.00	0.00	0.00	0
Toilets .....	1	0.00	0.00	250.00	0.00	0.00	0
Other : .....	0	0.00	0.00	0.00	0.00	0.00	0
<b>Major Electrical:</b>							
List : .....		0.00	0.00	0.00	0.00	0.00	
Other : .....		0.00	0.00	0.00	0.00	0.00	
<b>Structures:</b>							
Windows .....	0	0.00	0.00	0.00	0.00	0.00	0
Screens .....	5	0.00	0.00	0.00	0.00	0.00	0
Walls .....		0.00	0.00	0.00	0.00	0.00	
Roofing .....		0.00	0.00	0.00	0.00	0.00	
Siding .....		0.00	0.00	0.00	0.00	0.00	
Exterior Painting .....		0.00	0.00	0.00	0.00	0.00	
Other : .....		0.00	0.00	0.00	0.00	0.00	
<b>Paving:</b>							
Asphalt .....		0.00	0.00	0.00	0.00	0.00	
Concrete .....		0.00	0.00	0.00	0.00	0.00	
Seal & Stripe .....		0.00	0.00	0.00	0.00	0.00	
Other : .....		0.00	0.00	0.00	0.00	0.00	
<b>Landscape &amp; Grounds:</b>							
Landscaping .....		0.00	0.00	0.00	0.00	0.00	
Lawn Equipment .....		0.00	0.00	0.00	0.00	0.00	
Fencing .....		0.00	0.00	0.00	0.00	0.00	
Recreation Area .....		0.00	0.00	0.00	0.00	0.00	
Signs .....		0.00	0.00	0.00	0.00	0.00	
Other : Tree trimming to keep off .....		2,400.00	0.00	0.00	0.00	0.00	
<b>Accessibility Features:</b>							
List : .....		0.00	0.00	0.00	0.00	0.00	
Other : .....		0.00	0.00	0.00	0.00	0.00	
<b>Automation Equipment:</b>							
Site Management .....		0.00	0.00	0.00	0.00	0.00	
Common Area .....		0.00	0.00	0.00	0.00	0.00	
Other : .....		0.00	0.00	0.00	0.00	0.00	
<b>Other:</b>							
List : Ice makers (4) .....		0.00	0.00	400.00	0.00	0.00	
List : .....		0.00	0.00	0.00	0.00	0.00	
List : .....		0.00	0.00	0.00	0.00	0.00	
<b>TOTAL CAPITAL EXPENSES</b>	<b>39</b>	<b>13,380.00</b>	<b>0.00</b>	<b>860.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0</b>

**PART VI - SIGNATURES, DATES AND COMMENTS**

**Warning :** Section 1001 of Title 18, United States Code provides : "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

I HAVE READ THE ABOVE WARNING STATEMENT AND I HEREBY CERTIFY THE FOREGOING INFORMATION IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

AGENCY APPROVAL (Rural Development Approval Official):

DATE:

**NARRATIVE &/OR COMMENTS:**

Clifton Manor Apartments is a 40 unit family unit. We currently have eleven vacancies, and we currently have 9 vacancies. The rehab was completed during 2006 and many items are starting to break down and repairs and maintenance are increasing. We have budgeted for 4 vacancies but they are way higher. There will be utility change needed this year. There is no longer HUD available in Clifton. We have 15 units that do not get rental assistance. Additional rental assistance would be helpful for this property. Also the income limits set by TDHCA is set at 50 percent. This is making it difficult to rent to individuals that can pay base rent. There is no newspaper in Clifton, There is no Senior center in Clifton. Many of the things that would bring people to the community are missing. The owner is currently running a move in special which will allow tenants to have their first full month rent free. He is covering the cost of the rent from his personal funds.

- Part I - 8. Less (Vacancy and Contingency Allowance) - higher than 10 percent
- Part II - 17. Other Utilities - hire firm to gather UA information
- Part II - 27. Office Furniture & Equipment - fax machine
- Part II - 28. Training Expense - TDHCA training
- Part II - 32. Other Administrative Expenses - bank fees, application fees
- Part II - 36. Other Taxes, Licenses & Permits - TDHCA fees, RRHA membership, partnership fees



(3) **The Income Levels of Tenants of the Development.** Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) through (F) of this paragraph. To qualify for these points, the tenant incomes must not be higher than permitted by the AMGI level. The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation . Use normal rounding for this exhibit.

22 points if at least 80% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

22 points if at least 10% of the Total Units in the Development are set-aside with incomes at or below 30% of AMGI; or

20 points if at least 60% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

18 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Total Units are at or below 30% of AMGI; or

16 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

14 points if at least 35% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI.



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## Notice of Funding Availability (NOFA) 2005 Housing Trust Fund Rental Development Program

### Multifamily Finance Production Division

The Texas Department of Housing and Community Affairs, through its **Housing Trust Fund (HTF)**, is pleased to announce the availability of Four Million Dollars (\$4,000,000) to finance, acquire, rehabilitate, and develop safe, decent and affordable rental housing for low, very low, and extremely low income individuals and families; including persons with special needs.

The Housing Trust Funds available through this NOFA will be awarded as loans and are best designed to provide gap financing to eligible multifamily rental developments. Funds will be awarded consistent with the Department's Regional Allocation Formula as required by §2306.111(d) of the Texas Government Code. Eligible Applicants include local units of government, public housing authorities, community housing development organizations, nonprofit organizations and for profit entities. TDHCA will reject any proposal violating §51.6 of the **Housing Trust Fund** rules regarding Ineligible Activities and Restrictions.

Applications must comply with the **Housing Trust Fund Rules**, this NOFA and the **Housing Trust Fund Application Submission Procedures Manual**. Applications that satisfy the eligibility criteria and threshold criteria will then be evaluated for material noncompliance, and scored according to the selection criteria outlined in the following section. Because the allocation of funding is subject to the Department's Regional Allocation Formula, each applicant will be ranked based on score and will compete against all other applications within the same Uniform State Service Region. Any funding not allocated within a specific region may be combined into other state service regions to fulfill the funding needs of the highest scoring applicants. Because of the limited funds available, each region has not been further subdivided into rural and urban/exurban allocations; however, consistent with overall statewide urban/exurban and rural allocation goals, the Department will make the first award in each region to the highest scoring rural applicant, except in regions where there are no eligible rural applications. Therefore, the highest scoring rural applicant will be granted the first award from each region based on available funding. After the top scoring rural applicant has been awarded funds, all remaining applicants will be awarded funding based on score and availability of funding within the region, regardless of their location in a rural or urban/exurban area.

Figure: Table 1 **Housing Trust Fund** Regional Allocation Formula

[Attached Graphic](#)

### Threshold Criteria

Threshold criteria for all applicants to the HTF Rental Development program are based on the criteria outlined in the HTF Rule at §§51.5-51.9, criteria detailed in this NOFA, and any additional criteria detailed in the HTF application manual. The following items are specific threshold requirements that applicants should be aware of:

**Public Notifications:** Applicants are required to fulfill the public notification requirements detailed under §49.9(f)(8)(A) of the QAP with the exception that applicants are not required to provide notification to local elected officials for Neighborhood Organizations Input as detailed by §49.9(f)(8)(A)(ii)(I) of the QAP.

**Minimum Unit Set-Aside:** All development proposals must set-aside at least 50% of the planned units in every development for persons earning at least 60% or less of the area median family income. Rents for all set-aside units are required to be affordable to the target population's income, as determined by the Department on an annual basis. Applicants should consult the HTF rent and income limitations posted on the Department's website and in the HTF Application Reference Manual.

**Experience Certification:** Applicants will be required to submit evidence of experience in housing development; the type of evidence needed is outlined in §49.9(e)(1) of the 2005 QAP. Applicants proposing a development of 36 or less units must provide evidence of having developed, through new construction or rehabilitation, 10 or more units of residential housing within the past 10 years. Applicants proposing to develop more than 36 units are required to meet the developer certification standards as provided under the QAP at §49.9(e)(1)(A). The certification forms and process is outlined in the HTF application submission manual.

**Additional Certifications:** Applicants will be required to certify that no current affordable housing tenants will be displaced and that opportunities for training and employment shall be given to low, very low, and extremely low income persons residing within the area in which the project is located, when feasible, as required by §51.6(a) and §51.9(a) respectively.

As noted in the examples above, Applicants applying for only HTF funds will find additional details on threshold requirements in the HTF application manual. Applicant submitting applications to multiple programs must meet all the requirements of the more restrictive program (i.e. an applicant for Tax Credits and HTF must meet all the requirements of the 2005 QAP and the exceptions noted for HTF are not applicable). Applicants are also encouraged to contact Department staff if they have any questions regarding their submissions.

## Scoring Criteria

The following is a list of the criteria that will be used:

**Housing Needs:** Applicants may receive up to 15 points for showing that their proposed project is consistent with local planning and on the Affordable Housing Needs Score for the place or county for which the Development is located. Applicants who can show that the development will be consistent or meet the affordable housing needs of the local municipality or community where it will be located will receive 8 points. Proof must be in the form of a letter from the local public official responsible for creation of the community's Comprehensive Plan, Consolidated Plan, or other planning documents that describe the housing needs of the community; or a letter from the community's mayor, chief executive officer (city manager), or County judge, which states that the

community does not have a comprehensive housing plan but that they support the proposed development.

Applicants may receive up to 7 additional points for the Affordable Housing Needs Score for the place or county for which the Development is located. The housing needs score can be found in the **Housing Trust Fund** Application Reference Manual.

**Targeting of Extremely Low-Income Populations:** Applicants may receive up to 15 points for reserving a portion of their units for persons earning 30% or less of the Area Median Family Income (AMFI). Applicants who reserve at least 5% of their total units for persons earning 30% or less of the AMFI shall receive 10 points. Applicants who reserve at least 10% of their total units for persons earning 30% or less of the AMFI shall receive 15 points. Reserved units will be required to meet the HTF rent and income limitations published by the Department, and will be required by the LURA.

**Support from Public Officials:** Applicants may receive a total of 6 points for letter of support from local officials. To qualify for points Applicants must submit letters of support from the State Representative and State Senator for the districts where the development is located. Applicants will receive 3 points, a maximum of 6 points, for each letter of support received by the Department by April 1, 2005.

**Leveraging of Public and Private Financing:** Applicants may receive up to 10 points for the extent to which the development will leverage the HTF with other resources, including federal resources and private sector funds, which may include commercial lenders. Applicants will receive 3 points if the percentage of Housing Trust Funds is less than 30% of total development costs. Applicants will receive 6 points if the percentage of Housing Trust Funds is less than 15% of total development costs. Applicants will receive 9 points if the percentage of Housing Trust funds is less than 5% of the total development costs. Applicants must provide evidence in the form of a commitment letter or funding agreement which clearly states the rates, terms and conditions of at least one leveraging resource and outline the total percentage of HTF funds in the development.

**Supportive Services to Tenants:** Applicants who provide supportive services to tenants may be eligible to receive up to 6 points. Six (6) points will be awarded for the provision of three (3) supportive services. Four (4) points will be awarded for the provision of two (2) supportive services. Two (2) points will be awarded for the provision of one (1) supportive service. Applicants will be required to certify that they will provide a combination of special supportive services appropriate for the proposed tenants. No fees can or will be charged to tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided free of charge. A list of acceptable supportive services will be provided in the HTF manual.

**Site Characteristics:** Applicants may receive 5 points for proposing developments that are located near community services which the Department has identified as being important to tenant needs. Applicant must show that at least four of the identified services are within one mile of the proposed development site for Urban/Exurban developments, or 2 miles for Rural Developments. The list of services and process for identifying the location and existence of services will be detailed in the HTF application submission manual.

**Accessible Housing Design:** Applicants may receive 5 points for building at least 10% of their proposed units to be accessible for persons with mobility impairments. The units must be designed to meet Fair Housing Accessibility and Section 504 Accessibility Standards. Applicants will not be

required to set-aside units for persons with disabilities, but must make them available to eligible tenants in accordance with the provisions of Section 504 of the 1973 Rehabilitation Act.

**Targeting of Special Needs Populations:** Applicants may receive 5 points for reserving at least 10% of the proposed units for special needs populations as defined by the **Housing Trust Fund** Rule at §51.3(18). Applicants serving persons with disabilities must also conform to the Department's Integrated Housing Rule and may not receive points under the Accessible Housing Design criterion.

**Cost Effectiveness of Project - (tie breaker criteria):** The Department will evaluate applicants on the cost effectiveness of their developments in the event of a tie. The Department has determined that the total subsidy per unit of **Housing Trust Fund** dollars will be the determining factor. In the case of a tie, the Applicant with the lower cost effectiveness value will be awarded funding. To calculate this number the Department will use the following equation.

$$\text{Total HTF Funds Requested} / \text{Total Number of Low-Income Units to be Set-Aside} = \text{Cost Effectiveness}$$

Example: if Applicant A has requested \$500,000 for a development that will set-aside 40 units for HTF their cost effectiveness value would be \$12,500. If Applicant B has requested \$400,000 for a development that will set-aside 50 units for HTF their cost effectiveness value would be \$8,000. In this case, with each applicant having the same score on all previous scoring criteria, Applicant B would be awarded funding.

Applicants should consult the Department prior to submission of an application package if they have any concerns or questions regarding the threshold or scoring criteria.

### **Additional Information**

The Department's Board of Directors reserves the right to change the award amount, and to award more or less than the requested amount. All **Housing Trust Fund** dollars expended on a development that is canceled prior to completion must be repaid to the Department by the Borrower. The Department will not review applications involving the refinancing of previously assisted developments not at risk of losing their affordability. All developments financed through the **Housing Trust Fund** must adhere to the Department's Integrated Housing Rule and the **Housing Trust Fund** Property Standards.

Applicants are required to remit a non-refundable application fee at the time of application submission payable to the Texas Department of Housing and Community Affairs in the amount of \$5.00 per unit for the proposed development. Payment must be in the form of a check, cashier's check or money order. Section 2306.147(b) of the Texas Government Code requires the Department to waive application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the application fee.

All interested parties are encouraged to participate in this program. The application and reference materials will be available on the Multifamily Division's section of the Department's web site at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) for the use of applicants at the time the NOFA is released in final form. For additional information please call the Multifamily Finance Production Division Office at (512) 475-3340, check the Department's web site or e-mail your request to [emily.price@tdhca.state.tx.us](mailto:emily.price@tdhca.state.tx.us).

Applicants should note §51.6 of the HTF Rule regarding restrictions on communication to ensure no violations of the rule occur. Please direct your applications to:

**Texas Department of Housing and Community Affairs**

**Multifamily Finance Production Division**

**Post Office Box 13941**

**Austin, Texas 78711-3941**

Or by courier to:

**507 Sabine, Suite 700**

**Austin, Texas 78701**

**Applications must be submitted on or before 5:00 p.m., March 1, 2005.**

**FAXED APPLICATIONS WILL NOT BE ACCEPTED.**

**TRD-200500086**

Edwina Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 10, 2005

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## Notice of Funding Availability (NOFA) Rental Housing Development Open Funding Cycle

### HOME Investment Partnerships Program

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately \$5,000,000 in federal funding from the **HOME** Investment Partnerships Program (**HOME**) to develop affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State **HOME** Rules at 10 TAC Chapter 53 ("**HOME** Rules"), the federal regulations governing the **HOME** program (24 CFR Part 92), and any other federal or state regulation that may apply to the development and operation of affordable housing units.

### Allocation of Funds

The Department has set-aside approximately \$5,000,000 in **HOME** Investment Partnership Program Funds from its 2005 federal allocation for rental development activities. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80 percent or less than the Area Median Family Income (AMFI) for the locality where the proposed development is located. At least \$2,000,000 of these funds are specifically set-aside for rental development proposals which involve the acquisition and rehabilitation of existing affordable housing that is at-risk of losing the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. The remaining \$3,000,000 in funds will be available to all eligible applicants for rental development activities. The Department will accept applications from 9 a.m. to 5 p.m. each business day, excluding federal and state holidays, on an ongoing basis until all funding has been committed, or until the current state fiscal year ends on August 31, 2005.

Applicants for the preservation set-aside must provide evidence that any stipulation to maintain affordability in the contract granting the subsidy is at-risk of expiring, or that the federally insured mortgage on the Development is eligible for prepayment, within 24 months from the date of application submission. An Application for a Development that includes the demolition of the existing units which have received any of the previously listed benefits will not qualify as an At-Risk Development unless the redevelopment will include the same site and is supplemented with HOPE VI funding or funding from the Local Housing Authority's capital grant fund.

The Department awards **HOME** funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families. Award amounts are limited to no more than \$1.5 million per development. The per unit subsidy may not exceed the per unit dollar limits established by the U.S. Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Affordable Housing Act which are applicable to the area in which



the development is located, and as published by HUD. The minimum loan amount is \$1,000 per unit. Rental developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$6,000 per unit in direct hard costs. Funds will be awarded in accordance with the rules and procedures as set forth in the State of Texas **HOME** Program rules at 10 TAC §§53.50 - 53.63. The Department may, at its discretion and based upon review of the financial feasibility of the development, determine to award **HOME** funds as either a loan or as a grant. Loans can not exceed amortization of more than 40 years.

Each development will have a two-tier affordability term. The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the **HOME** investment is less than \$15,000 per unit; 10 years if the **HOME** investment is \$15,000 to \$40,000 per unit; and 15 years if the **HOME** investment is greater than \$40,000 per unit. This first tier is subject to all federal laws and regulations regarding **HOME** requirements, recapture, net proceeds and affordability. The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years (for example, the second tier of affordability on a 10 year federal affordability term, is 20 additional years). The second tier, or remaining term, is subject only to state regulations and affordability requirements. Properties will be restricted under a land use restriction agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

### **Eligible Activities**

Eligible activities will include those permissible under the Federal **HOME** Rule at 24 CFR §92.205, the state **HOME** Rules at 10 TAC §53.54 and §53.55, and are limited by this NOFA to activities which involve the acquisition, rehabilitation and construction of affordable rental housing. Refinancing of federally financed properties is not an eligible activity. Rental development funds will be eligible for use in a participating jurisdiction, in accordance with §2306.111(c) of the Texas Government Code, which states that the Department shall expend at least 95 percent of its **HOME** funds for the benefit of non-participating small cities and rural areas that do not qualify to receive funds under the Cranston-Gonzalez National Affordable Housing Act directly from the United States Department of Housing and Urban Development. All funds not set aside under this subsection shall be used for the benefit of persons with disabilities who live in areas other than small cities and rural areas.

Applicants should be aware that there are minimum affordability standards necessary for **HOME** assisted developments. At a minimum, at least 20% of **HOME** assisted units should be affordable to persons earning 50% of the AMFI, and at least 90% of the **HOME** assisted units should be affordable to persons earning 60% of the AMFI. These minimum requirements affect only those units which are **HOME** assisted and do not supercede the minimum affordability requirements for applicants jointly applying for **HOME** and Housing Tax Credits under §42(i)(E) of the Internal Revenue Code.

### **Eligible Applicants**

The Department provides **HOME** funding from the federal government to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of local government. Applicants may be ineligible for funding if they meet any of the criteria listed in §53.52 (b) of the Department's **HOME** rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application.

### **Match Requirements**

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal **HOME** requirements. Applicants must provide firm commitments as defined in accordance with the Federal **HOME** rules at 24 CFR §92.218 and will be provided with the appropriate forms and instructions on how to report eligible match.

### **Development Requirements**

Housing units subsidized by **HOME** funds must be affordable to low, very-low or extremely low income persons. Mixed Income rental developments may only receive funds for units that meet the **HOME** program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15. Applicants serving local Participating Jurisdictions may only receive funding for those units which are specifically set-aside for persons with disabilities, in accordance with §2306.111(c) of the Texas Government Code.

All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §92.401, Texas Minimum Construction Standards, as well as the accessibility requirements to meet Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code. Applicants for rental development programs must also meet the applicable development standards of the Housing Tax Credit program rules at §49.6, as further detailed in the application manual.

### **Resolution Requirements**

The Department requires that all applications submitted must include a resolution from the applicant's direct governing body (Board of Directors or Sole Proprietor) authorizing the submission of the application.

### **Audit Requirements**

An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application submission date per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore, applications that have past due audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questioned or disallowed costs are resolved per 10 TAC §1.3(c).

### **Review Process**



The Department will be accepting applications on an ongoing basis. Applications will be accepted from 9 a.m. to 5 p.m. each business day, excluding federal and state holidays, on an ongoing basis until such time as all funding has been committed, or until the current state fiscal year ends on August 31, 2005. Applications will be accepted, reviewed and recommended to the Department's Board in accordance with Department's process for handling Open Cycle Applications detailed at §53.58(b) of the **HOME** Rule.

All applications must be submitted, and provide all documentation, as described in this NOFA, 10 TAC §53.58 of the **HOME** Rule and as further detailed in the appropriate **HOME** Rental Application Manual. Applicants should refer to the application manual, for the appropriate threshold criteria.

The **HOME** Rental Application Manual, all required application documents, a **HOME** Reference Manual, and all applicable **HOME** rules, will be available on the Department's website at [www.tdhca.state.tx.us/home.htm](http://www.tdhca.state.tx.us/home.htm). Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available **HOME** funds before an application has completed all phases of its review. In the case that all **HOME** funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new **HOME** funds become available, applications will continue onward with their review without losing their received date priority. If **HOME** funds do not become available within 90 days of the notification, the Applicant will be notified that their application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds exist under the NOFA and the application will not be processed.

The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a development. The Department reserves the right to negotiate individual elements of any application.

An Applicant may appeal decisions made by the Department in accordance with 10 TAC §1.7 and §1.8.

Parties interested in submitting an application are encouraged to arrange a pre-application meeting with the Department staff before submitting an application. To arrange a meeting on rental development applications, Applicants should contact David Danenfelzer, Multifamily Housing Administrator at (512) 475-3865.

### **Application Submission**

Application materials must be organized and submitted in the manner detailed in the application submission manual for rental developments. Applicants must submit two complete copies of all application materials.

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$500.00 per application. Please send check, cashier's check or money order; do not send cash. §2306.147(b) of the Texas Government Code requires the Department to waive application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the application fee. The application fee is not an allowable or reimbursable cost under the **HOME** Program.

Applications may be sent to:

**Multifamily Finance Production Division**

**Texas Department of Housing and Community Affairs**

**507 Sabine, Suite 700**

**Austin, TX 78701**

or via the U.S. Postal Service to:

**Multifamily Finance Production Division**

**Texas Department of Housing and Community Affairs**

**Post Office Box 13941**

**Austin, TX 78711-3941**

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular **HOME** CHDO Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and to participate in a pre-application conference when possible.

**TRD-200500085**

Edwina Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 10, 2005

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10

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Land Use Restriction Agreement for Town Parc at Tyler (HTC #02110)

**RECOMMENDED ACTION**

**WHEREAS**, Town Parc at Tyler (the Development) received a 9% Housing Tax Credit (HTC) award in 2002 to construct 96 multifamily units in Tyler, Smith County;

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

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

**WHEREAS**, Finlay Interests 18 Ltd., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

**WHEREAS**, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Town Parc at Tyler is approved as presented to this meeting, and the Acting Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Town Parc at Tyler received a 9% HTC award in 2002 for the new construction of 96 multifamily units in Tyler, Smith County. In a letter dated November 30, 2018, the Development Owner, Finlay Interests 18, Ltd. (Christopher C. Finlay), requested approval to amend the HTC LURA related to the ROFR provision.

In 2002, the Housing Tax Credit application allotted five points to the Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits dated as of March 31, 2005.

As approved in 2002, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization, if at any time after the 15<sup>th</sup> year of the Compliance Period the owner decides to sell the property. The property is currently in the 15<sup>th</sup> year of the 40-year Compliance Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the Texas Legislature passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period, and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2018 Uniform Multifamily Rules, Subchapter E, implemented administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on December 11, 2018, at the Development's onsite community clubhouse. No negative public comment was received regarding the requested amendment.

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

**FINLAY INTERESTS 18, LTD.**

1102 A1A North, Suite 206  
Ponte Vedra Beach, FL 32082

November 30, 2018

**VIA EMAIL AND FEDERAL EXPRESS**

Mr. Kent Bedell  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 02110; Town Parc at Tyler (the "**Property**")

Dear Kent:

The undersigned, being the General Partner (herein so called) of Finlay Interests 18, Ltd., a Florida limited partnership (the "**Partnership**") and the current owner of the Property, by this letter requests a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

**Request to Amend ROFR Period**

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

**LURA Amendment**

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

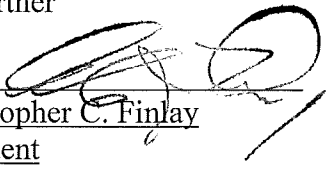
Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**FINLAY INTERESTS GP 18, LLC**  
a Florida limited liability company

By: Finlay GP Holdings, Ltd.,  
a Florida limited partnership,  
its sole member

By: Finlay Holdings, Inc.,  
a Florida corporation,  
its general partner

By:   
Name: Christopher C. Finlay  
Title: President



**FINLAY INTERESTS 18, LTD.  
1102 A1A North, Suite 206  
Ponte Vedra Beach, FL 32082**

November 30, 2018

Dear Resident:

Town Parc at Tyler (the “**Community**”) is owned by Finlay Interests 18, Ltd. (the “**Owner**”). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”) (Phone: 512-475-3800; Website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)).

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

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community’s management office/clubhouse on **Tuesday December 11, 2018, at 5 p.m.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

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

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

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

We appreciate that Town Parc at Tyler is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Town Parc at Tyler as your home.

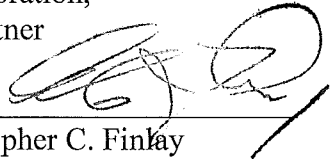
Sincerely,

**FINLAY INTERESTS 18, LTD.,**  
a Florida limited partnership

By: Finlay Interests GP 18, LLC,  
a Florida limited liability company,  
its general partner

By: Finlay GP Holdings, Ltd.,  
a Florida limited partnership,  
its sole member

By: Finlay Holdings, Inc.,  
a Florida corporation,  
its general partner

By:   
Name: Christopher C. Finlay  
Title: President

**FINLAY INTERESTS 18, LTD.  
1102 A1A North, Suite 206  
Ponte Vedra Beach, FL 32082**

November 30, 2018

**Midland Loan Servicers, a PNC Real Estate Business  
Loan No 030265953  
PO Box 25965  
Shawnee Mission, KS 66225-5965**

Dear Sir/Madam:

Finlay Interests 18, Ltd. (the “**Owner**”) is the owner of Town Parc at Tyler (the “**Community**”) which is located at 1630 Cardinal Street, Tyler, Texas 75961. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on **Tuesday December 11, 2018 at 5:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

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

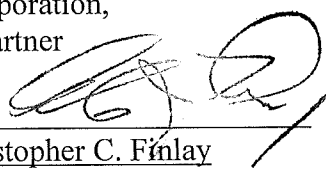
Sincerely,

**FINLAY INTERESTS 18, LTD.,**  
a Florida limited partnership

By: Finlay Interests GP 18, LLC,  
a Florida limited liability company,  
its general partner

By: Finlay GP Holdings, Ltd.,  
a Florida limited partnership,  
its sole member

By: Finlay Holdings, Inc.,  
a Florida corporation,  
its general partner

By:   
Name: Christopher C. Finlay  
Title: President

**FINLAY INTERESTS 18, LTD.  
1102 A1A North, Suite 206  
Ponte Vedra Beach, FL 32082**

November 30, 2018

Paul Lee  
Highridge Costa Investors, LLC  
330 W. Victoria Street  
Gardena, CA 90248-3522  
D) 424.258.2876  
(F) 424.258.2877  
Email: [paul.lee@housingpartners.com](mailto:paul.lee@housingpartners.com)

Dear Paul:

Finlay Interests 18, Ltd. (the “**Owner**”) is the owner of Town Parc at Tyler (the “**Community**”) which is located at 1630 Cardinal Street, Tyler, Texas 75961. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on **Tuesday December 11, 2018 at 5:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

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

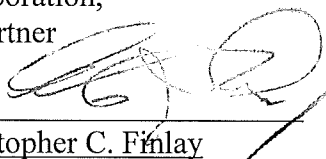
Sincerely,

**FINLAY INTERESTS 18, LTD.,**  
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By: Finlay Interests GP 18, LLC,  
a Florida limited liability company,  
its general partner

By: Finlay GP Holdings, Ltd.,  
a Florida limited partnership,  
its sole member

By: Finlay Holdings, Inc.,  
a Florida corporation,  
its general partner

By:   
Name: Christopher C. Finlay  
Title: President

## Minutes of Meeting/Public Hearing

### Finlay Interests 18, Ltd./Town Parc at Tyler

**Date and Time:** - Tuesday, December 11, 2018, 5:00 PM CST

**Venue:** – Clubhouse of Town Parc at Tyler, 2202 WNW Loop 323, Tyler, Texas 75702

**In attendance:** See attached sign in sheet

**Agenda Item:** Owner's request to Texas Department of Housing and Community Affairs ("TDHCA") to amend the Tax Credit Land Use Restriction Agreement to reduce the nonprofit right of first refusal period from a two-year period to a 180-day period.

#### **Summary of the discussions:**

1. In order to help finance the construction and development of the Town Parc at Tyler fifteen years ago, the Owner received tax credits from the IRS via the state agency TDHCA.
2. As part of the application and approval of the tax credits, TDHCA placed a restriction on the property (in the land use restriction agreement) that requires the Owner, if it decides to sell the Community after December 31, 2018, to give a nonprofit organization a "right of first refusal" to purchase the Community for a period of up to two years.
3. To be consistent with a change in Texas law, that two-year period can now be reduced from two years to 180 days with the consent of TDHCA, for which Owner has requested TDHCA's consent.
4. TDHCA's rules require that notice of this request to shorten the ROFR period and amend the LURA accordingly be provided to all residents of the Community, along with any current lenders and tax credit investors, and that this public meeting be held so that any comments, concerns or questions can be addressed by Owner.
5. This change will **not** affect the residents' current lease agreement, rent payment, or security deposit. Residents will **not** be required to move out of their homes or take any other action because of this change. If TDHCA approves the request, the Community will not change at all from its current form.
6. In making its decision whether to approve Owner's request, TDHCA considers the opinions and views of the members of the Community. Information from this meeting will be submitted by the Owner for consideration by TDHCA's governing board at its next available meeting (to be held on January 17<sup>th</sup>, 2019).

7. Any resident may submit their concerns in writing to TDHCA via email to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us) or mail them to:

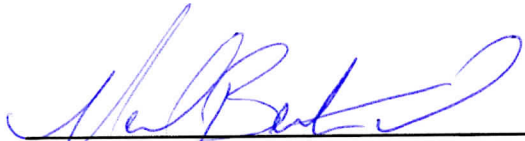
Texas Department of Housing and Community Affairs  
Asset Management Division  
221 East 11th Street  
Austin, Texas 78701

**Comments/questions from persons in attendance:**

1. Will My RENT CHANGE?  
Item #1 addressed as follows: ALL CONTRACTS IN PLACE  
REMAIN UNCHANGED
2. \_\_\_\_\_  
Item #2 addressed as follows: \_\_\_\_\_

**Additional Items (if any) addressed at the meeting:** \_\_\_\_\_

The Meeting came to an end at 5:20



**Signed and certified by Owner's representative**

**Name:** NEIL BERTRAND

**Title:** VICE PRESIDENT



PUBLIC HEARING/MEETING HELD AT  
TOWN PARC AT TYLER

ATTENDANCE LIST

December 11, 2018

Name	Representing (if applicable)	Email Address/Tel. No
NEIL BERTRAND	FINLAY INTERBEST 18	
Amanda Miles	Town Parc Tyler	
Karlinda Pace	Town Parc Tyler	
Nancy Williams		
Shawanda Jones	Town Parc Tyler	
Ample Jackson		
Vivian Ingram	Town Parc Tyler	

1p

BOARD ACTION REQUEST

COMPLIANCE DIVISION

JANUARY 17, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10 Subchapter F and an order adopting new 10 TAC Chapter 10 Subchapter F, concerning Compliance Monitoring, with changes, and directing their publication for adoption in the Texas Register.

RECOMMENDED ACTION

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

WHEREAS, at its meeting of October 18, 2018, the Board approved the proposed repeal and new rule for public comment and they were published in the Texas Register on October 26, 2018; and

WHEREAS, public comment was accepted from October 26, 2018, to November 26, 2018, and comment was received from three organizations, and a reasoned response to those comments along with changes based on comment as well as technical corrections are attached to this Board Action Request;

NOW, therefore, it is hereby

RESOLVED, that the Acting Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the adoption of the actions herein in the form presented to this meeting to be published in the Texas Register for adoption, and in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

At its meeting of October 18, 2018, the Board approved the proposed repeal of the Compliance Rule and simultaneously approved a proposed new rule. The new rule incorporates new federal guidance, eliminates unnecessary requirements, addresses tenant complaints, clarifies requirements of new Department programs, and provides guidance on how the Department will monitor for compliance with Housing Tax Credit Developments that elect the average income test under IRC §42(g).

The proposed repeal and new rule were published in the Texas Register for public comment. No comment was received on the proposed repeal. Three commenters submitted comment on the new rule as explained in the preamble included as Attachment 2. Several changes are recommended in response to these comments. For ease of reading the changes are shown in backline and strike through.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 10, Subchapter F, Compliance Monitoring

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 10, Subchapter F, Compliance Monitoring. The purpose of the repeal is to eliminate an outdated rule while adopting a new, updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to the Compliance Monitoring Rule.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to the existing procedures for Compliance Monitoring activities.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE

§2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE

§2001.024(a)(6). The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr.

Cervantes has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 26, 2018, and November 26, 2018. Comments regarding the proposed repeal were accepted in writing and by email. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on January 17, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

Chapter 10, Subchapter F Compliance Monitoring

## Attachment 2: Preamble, including required analysis, for adopting with changes new 10 TAC Chapter 10, Subchapter F Compliance Monitoring

The Texas Department of Housing and Community Affairs (the Department) adopts with changes new 10 TAC Chapter 10, Subchapter F, Compliance Monitoring §§10.601 through 10.627 with changes to the proposed text as published in the October 26, 2018, issue of the Texas Register and will be republished. The purpose of the proposed new sections are to incorporate new federal guidance, eliminate unnecessary requirements, address tenant complaints, clarify requirements of new Department programs, and provide guidance on how the Department will monitor for compliance with Housing Tax Credit Developments that elect the average income test under IRC §42(g).

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9), relating to implementation of legislation. Tex. Gov't Code Chapter 2306.053 provides for the Department to administer federal housing, community affairs, or community development programs, including the low income housing tax credit program. §§2306.0724, 2306.2631 and 2306.6728 require the Department to adopt specific rules. Internal Revenue Code §42(m) requires State Housing Finance Agencies to have a procedure for monitoring for noncompliance and notifying the Internal Revenue Service of such noncompliance. 24 CFR §§92 and 93 require the Department to adopt rules for monitoring the HOME and National Housing Trust Fund (NHTF) programs. In addition, the cooperative agreement the Department entered into with the U.S. Department of Housing and Urban Development (HUD) regarding the Section 811 program requires monitoring guidelines. These rules satisfy those requirements. There are no costs associated with this proposed rule, therefore no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to the procedures for Compliance Monitoring.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The new rule will not limit, expand or repeal an existing regulation.
7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESS OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for owners and managers of developments participating in Department programs. Other than in the case of a small or micro-business that participates in the Department's programs covered by this rule, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so.
3. The Department has determined that because this rule relates to administration of existing programs there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the existing processes used in monitoring for compliance with Department programs; therefore, no local employment impact statement is required to be prepared for the rule. Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the monitoring procedures for the Department there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new rule will be an updated clear rule and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the new rule because the activity described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not recommended for change.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 26, 2018, and November 26, 2018. Comments regarding the proposed rule were accepted in writing and by email. Public Comment was received from the Texas Affiliation of Affordable Housing Providers (Commenter 1), Accolade Property Management (Commenter 2), and the Inclusive Communities Project (Commenter 3).

1. §10.601(b)-Compliance Monitoring Objectives and Applicability (Commenter 1)

COMMENT SUMMARY: Commenter 1 suggested a change to §10.601(b) to reorganize the order of the items and adding clarity on which programs are Multifamily Direct Loan activities to read as follows:

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) - ~~(7)~~ of this subsection:

- (1) The Housing Tax Credit Program (HTC);
- ~~(2) The HOME Investment Partnerships Program (HOME);~~
- ~~(3) The Tax Exempt Bond Program (Bond);~~
- ~~(4) The Texas Housing Trust Fund Program (HTF or SHTF);~~
- ~~(5) The Tax Credit Assistance Program (TCAP);~~
- ~~(6) The Tax Credit Exchange Program (Exchange);~~
- ~~(7) The Neighborhood Stabilization Program (NSP);~~
- ~~(8) Section 811 Project Rental Assistance (811 PRA or 811) Program;~~
- ~~(9) Tax Credit Assistance Program Repayment Funds (TCAP RF); and~~
- ~~(10) The National Housing Trust Fund (NHTF).~~
- (7) Multifamily Direct Loan (MFDL):
  - (A) The HOME Investment Partnerships Program (HOME);
  - (B) The Neighborhood Stabilization Program (NSP);
  - (C) Tax Credit Assistance Program Repayment Funds (TCAP RF); and
  - (D) The National Housing Trust Fund (NHTF).

STAFF RESPONSE: Making this change would cause inconsistencies with how the term Multifamily Direct Loan is used in other Department rules. No change is being made based on this comment.

2. §10.601(d)-Compliance Monitoring Objectives and Applicability (Commenter 1)

COMMENT SUMMARY: Commenter 1 suggested that the word 'timely' be defined in §10.601(d) to manage both external and internal expectations for monitoring response reviews.

STAFF RESPONSE: Staff proposes the following change:

(d) The results of the Department's monitoring activities will be timely and properly documented and, in general, communicated to the owner in writing within 90 days of the monitoring visit.

3. §10.602(d)- Notice to Owners and Corrective Action Periods (Commenter 1)



COMMENT SUMMARY: Commenter 1 suggested adding the following sentence to §10.602(b): “(3) In the instance where an event of noncompliance is corrected prior to the issuance of a Monitoring and/or Inspection Letter, the Department may consider the review closed at the time the Monitoring and/or Inspection Letter is issued without a corrective action period.”

STAFF RESPONSE: The Department does not have the authority to make such a change. No changes are recommended to be made based on the requirements of Tex Gov’t Code §2306.6719 and Treasury Regulation §1.42-5, which both require the Department to provide a notice of noncompliance and corrective action period, even if all identified issues have already been corrected.

Tex Gov’t Code §2306.6719 states:

(c) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the department must provide the owner of a development with the following periods to correct a failure to comply with a condition or law described by Subsection (a)(1) or (2):

- (1) 30 days for a failure to file the annual owner's compliance report; and
- (2) 90 days for any other failure to comply under this section.

Treasury Regulation 1.42-5(e) states:

(e) Notification-of-noncompliance provision -

(1) In general. Under the notification-of-noncompliance provisions, the Agency must be required to give the notice described in paragraph (e)(2) of this section to the owner of a low-income housing project and the notice described in paragraph (e)(3) of this section to the Service.

(2) Notice to owner. The Agency must be required to provide prompt written notice to the owner of a low-income housing project if the Agency does not receive the certification described in paragraph (c)(1) of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in paragraph (c)(2)(ii) of this section, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of section 42.

#### 4. §10.605(d)- Elections under IRC §42(g) (Commenter 1 and 2)

COMMENT SUMMARY: Commenter 1 and 2 expressed opposition and confusion regarding §10.605(d) which encouraged owners to designate households that receive rental assistance at the level indicated by the contract rent because it is a best practice or good policy recommendation, not a requirement.

STAFF RESPONSE: The language has been removed from the rule.

#### 5. §10.610(b)- Written Policies and Procedures (Commenter 1)

COMMENT SUMMARY: The commenter stated: Based on the 8823 Guide, it would appear that the refundable fees for holding a unit would not be included in the rent computation. If this fee is limited to out-of-pocket costs, it would limit the tenant’s ability to hold a unit until the lease is executed. With respect to TDHCA’s position, TAAHP requests guidance on what evidence would

support out-of-pocket costs associated with a refundable security deposit used to secure a unit. The commenter suggested that the rule should read as follows:

~~(iii) Fees and/or deposits required as part of the application process. Developments with HOME, NHTF, NSP, Section 811 and/or TCAP RF units cannot collect an application deposit for units designated under these programs. Owners of HTC, TCAP and Exchange Developments are discouraged from collecting an application deposit. If an application deposit is collected it must soon after be converted into a refundable security deposit.~~

(I) No fees or deposits may be collected to place a household or applicant on a waiting list.

(II) All deposit collected must be fully refundable and comply with applicable program rules.

STAFF RESPONSE: Staff is not recommending changes be made. The rule as written reflects the guidance received by the Department from the IRS and HUD regarding the allowability of fees. The changes proposed by the commenter would not provide owners and managers of affordable housing with the information needed to operate their property compliantly.

A "refundable security deposit used to secure a unit" is a holding fee or an application deposit. The IRS has indicated through informal guidance to the Department: "Technically, the application deposit is an impermissible fee, whether or not it is refundable, so I would discourage the owners from collecting the application deposit amount since it is above and beyond the cost of the application processing. However, if the application deposit is collected and soon after converted to a security deposit that is refundable then they have effectively changed the nature of the amount to a refundable fee associated with renting a low income housing unit."

#### 6. §10.610(j)- Written Policies and Procedures (Commenter 2)

COMMENT SUMMARY: The commenter stated:

"Clarification sought for an existing household that receives rental assistance doesn't have to be placed on waiting list. 8823 Audit Guide states that when units transfer designations are swapped. Based on this sentence, a waiting list exception is allowed for household receiving rental assistance? Isn't this inconsistent with the manner other households are treated?"

STAFF RESPONSE: The commenter appears to be conflating the requirements related to maintaining a waiting list for lower rent units with the requirements for transfers. The rule does not require Developments to place households that have Section 8 assistance on a waiting list for a lower rent unit because it is unlikely to significantly change the amount of rent the household will pay. Under the Section 8 program, households pay rent based on percentage of their actual income and allowable deductions; the amount of rent paid by a Section 8 household is unlikely to be affected by the rent limit for the unit.

The rule requires Developments to have a policy regarding transfers, and does not have an exception for households receiving rental assistance. No changes made based on this comment.

#### 7. §10.614(h)- Utility Allowances (Commenter 1)

COMMENT SUMMARY: Commenter stated:

"This section adds the requirement that Section 811 units have its own Utility Allowance, using the HUD model as calculated by the Department. TAAHP strongly disagrees with this proposed rule. This creates two different Utility Allowances for a property creating an inequitable application of Utility Allowance concepts at both the federal and state/TDHCA levels. In addition, it is not based on any federal rule. TAAHP recommends allowing the HTC Utility Allowance to align as the 811 Utility Allowance."

STAFF RESPONSE: The Department has recently begun monitoring the Section 811 program under rules that attempted to align the utility allowance for the 811 program with the HTC program. Unfortunately, it was determined that there are conflicts between the implementation requirements for changes in utility allowances under the HTC program and the ability to change rents for the 811 program. For the Housing Tax Credit program, changes in utility allowances must be implemented for rent due 90 days after the change. For the 811 program, rents can only be changed once per year. Since these dates often do not align, the change will resolve this conflict. The Department will endeavor to approve the utility allowance that is used for the HTC program. No changes were made based on this comment.

8. §10.615(c)- Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments (Commenter 1)

COMMENT SUMMARY: Commenter stated: "§10.615(c) Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments. TAAHP requests that the requirement giving owner the choice to recertify the households be removed from the written policies and procedures. This requirement requires tremendous time and printing to revise the criteria and there is little to no benefit for this policy. The language was previously required under previous rules and then later removed. TAAHP asks for this language to remain removed from these rules."

STAFF RESPONSE: Staff disagrees that adding a policy to a Development's rental criteria regarding income recertifications will require a tremendous amount of time. Staff disagrees that there is little to no benefit for this policy and believes that clear written policies regarding these issues will be tremendously helpful in responding to resident complaints and questions. No changes were made based on this comment.

9. General Comment (Commenter 1)

COMMENT SUMMARY: Commenter stated: "The proposed rule removes the Compliance Committee as an option to informally appeal a decision by the Compliance Department. TAAHP understands why the reference was removed (the rule referenced no longer acknowledged a Compliance Committee); however, TAAHP requests a similar appeal policy be added to the Compliance Rule so owners have recourse to challenge the Department if there is a disagreement on whether or not a finding or other determination is merited."

STAFF RESPONSE: Although the Compliance Committee no longer exists, if there is a disagreement on whether or not a finding or other determination is merited owners can contact the executive staff of the Department, the IRS, or HUD. No changes were made based on this comment.

#### 10. General Comment (Commenter 3)

Comment: Commenter stated that TDHCA does not include any provision for monitoring owner compliance with local, health, safety and building codes. The commenter further stated that: "TDHCA has the legal obligation to include a procedure for monitoring LIHTC projects' compliance with local health, safety and building codes including City of Dallas Code Chapter 27, ARTICLE VIII, HABITUAL CRIMINAL PROPERTIES. The proposed regulation provides only for monitoring compliance with UPCS standards. The owner's obligation to self report violations of local habitability codes does not eliminate TDHCA's obligation to comply with 26 U.S.C.A. § 42 (m)(l)(B)(iii) and 26 C.F.R. § 1.42-5(d)(2)." The commenter provided a "Nuisance Risk Property Team Open Cases by Division" report that listed four TDHCA monitored properties.

STAFF RESPONSE: Treasury Regulation §10.42-5 does not require State Housing Finance Agencies to contact every local health, safety and building code department in each municipality of the state. Rather, the Regulation says:

(2) Inspection standard. For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency must review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) of this section and must determine -

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD ( 24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii) to determine by inspection whether the project meets local health, safety, and building codes.

The Department monitors for this requirement, through the Annual Owner's Compliance Report (AOCR). The AOCR requires the following two items be responded to:

Has each unit and/or building been suitable for occupancy (ready for move in), taking into account local, health and safety codes, or other habitability standards (Treasury Regulation 1.42-5(c)(1)(vi))?

Has the state or local government unit (other than TDHCA) responsible for making building code inspections issued a report of a violation for any unit and/or building (i.e. local code, health, safety inspections) (Treasury Regulation 1.42-5(c)(1)(vi))?

Treasury Regulation §1.42-5(a) requires state housing finance agencies to notify the Internal Revenue Service of any noncompliance of which the agency becomes aware. The Department appreciates the Commenter bringing to our attention that there may be noncompliance at four properties in Dallas. TDHCA has contacted the owners of the four properties listed on the report provided by the Commenter, and will take appropriate action. No changes to the rule were made based on this comment.

The Board approved the final order adopting the repeal on January 17, 2019.

STATUTORY AUTHORITY. The rule is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§10.601.Compliance Monitoring Objectives and Applicability.

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

(A) The U.S. Department of Housing and Urban Development (HUD);

(B) The U.S. Department of the Treasury (Treasury);

(C) The Internal Revenue Service (the "IRS"); and

(D) Applicable state laws and rules;

(2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;

(3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;

(4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;

(5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;

(6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department's affordable rental programs; and

(7) To provide a transparent system whereby all interested parties, including residents, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) - (10) of this subsection:

(1) The Housing Tax Credit Program (HTC);

(2) The HOME Investment Partnerships Program (HOME);

(3) The Tax Exempt Bond Program (Bond);

(4) The Texas Housing Trust Fund Program (HTF or SHTF);

(5) The Tax Credit Assistance Program (TCAP);

(6) The Tax Credit Exchange Program (Exchange);

(7) The Neighborhood Stabilization Program (NSP);

(8) Section 811 Project Rental Assistance (811 PRA or 811) Program;

(9) Tax Credit Assistance Program Repayment Funds (TCAP RF); and

(10) The National Housing Trust Fund (NHTF).

(c) Monitoring activity evaluates the physical condition of the Developments and whether they are being operated in documented compliance with program requirements.

(d) The results of the Department's monitoring activities will be ~~timely and properly~~ documented and, ~~in general,~~ communicated to the owner in writing within 90 days of the monitoring visit.

(e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws, rules, regulations, orders, and other applicable legal requirements.

(f) The capitalized terms or phrases used herein are defined in this title. Any other capitalized terms in this subchapter shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the "Code") §42, the HOME Final Rule, and other federal or Department

rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

§10.602. Notice to Owners and Corrective Action Periods.

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a ~~thirty (30)~~ day Corrective Action Period for failure to file the AOCR, and a ~~ninety (90)~~ day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six ~~(6)~~ months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ~~ninety (90)~~ day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional ~~ten (10)~~ calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional ~~ten (10)~~ calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not

required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or previous participation review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

§10.603. Notices to the Internal Revenue Service (HTC Developments during the Compliance Period).

(a) Even when an Event of Noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. When required, IRS Form 8823 generally will be filed not later than ~~forty-five~~ (45) days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six ~~(6)~~ years beyond the Department's filing of the respective IRS Form 8823.

(c) The Department will send the Owner of record copies of any IRS Forms 8823 submitted to the IRS.

§10.604. Options for Review.

(a) If, during the Corrective Action Period, an Owner supplies evidence of continual compliance, the issue of noncompliance will be dropped, and no further action will be taken (e.g., for HTC properties, IRS Form 8823 will not be filed with the IRS).

(b) If, following the submission of corrective action documentation, Compliance staff continues to find the Owner in noncompliance, the Owner may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to the inclusion or exclusion of tenant income, assets, or appropriate household size, the National Center for Housing Management (NCHM) can be contacted. In order to obtain guidance from NCHM, the requestor must have an active Certified Occupancy Specialist designation. If no representative of the owner has this designation, Department staff may make the request on the owner's behalf.



(2) If the compliance matter is related to the Housing Tax Credit program, Owners may contact the IRS Program Analyst for guidance or request that Department staff contact the IRS for general guidance without identifying the taxpayer. The issue will be handled in accordance with the guidance received from the IRS.

(3) If the compliance matter is related to the HOME, NHTF or NSP program, Owners may contact the U.S. Department of Housing and Urban Development Texas Field Office for guidance. The issue will be handled in accordance with guidance received from a HUD official with oversight responsibility, provided it is clear and can be corroborated (e.g., such guidance is provided in writing).

(4) Owners may request Alternative Dispute Resolution (ADR). An Owner may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution). Note that even if the Department and Owner are engaged in ADR, the Department must meet Treasury Regulation §1.42-5 and file IRS Form 8823 within forty-five (45) days after the end of the Corrective Action Period. Therefore, it is possible that the Owner and Department may still be engaged in ADR when an IRS Form 8823 is filed. Should this happen, the form, including all Owner-supplied documentation, will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. Although the violation will be reported to the IRS within the required timeframes, it will not be considered part of an applicant's compliance history nor subject to administrative penalties pending the outcome of the ADR process.

#### §10.605.Elections under IRC §42(g).

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 (20 percent of the Units restricted at the 50 percent income and rent limits), 40/60 (40 percent of the Units restricted at the 60 percent income and rent limits) or the average income test.

(b) HTC projects must meet the required election under IRC §42(g) no later than the end of the first year of the Credit Period. Developments in the first year of the credit period that elect the average income test should lease Units in a manner to ensure that at all times, the average income and rent of the occupied units at the project does not exceed 60%. Example 605(1): A 100 Unit project places in service in April. If by October of that year, 50 of the Units are occupied and the other 50 have never been occupied, the designations of the 50 occupied Units must be equal to or less than 60% AMI and the percentage represented at application.

(c) Owners that elect the average income test under IRC §42(g) must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% Unit designations across all Unit Types in a manner that does not violate fair housing laws.

~~(d) Owners that elect the average income test under IRC §42(g) are encouraged to designate households that receive rental assistance at the level indicated by the contract rent for the Unit. Example 605(2): A household with a Housing Choice Voucher (i.e., Section 8) from the local Housing Authority occupies a one bedroom Unit. The household's annual income is between 20% and 30% of AMI. The household pays \$100 in rent, and the Housing Authority pays \$750 in rent.~~

~~The contract rent of \$850 is more than the 50% rent limit, but less than the 60% rent limit. The Owner should designate this household as a 60% household and lease the units required at the lower AMI tiers to households that do not receive rental assistance, unless when the household executes a lease there are no lower AMI tiers for the household to rent.~~

(~~e~~) Until and unless the Internal Revenue Service or the Treasury Department issues conflicting guidance, the Department will examine the actual gross rent and income of all households to determine if projects that elected average income test are at or below the federal minimum of 60% AMI.

#### §10.606.Construction Inspections.

(a) Owners are required to submit evidence of final construction within ~~thirty (30)~~ calendar days of completion in a format prescribed by the Department. Owners are encouraged to request a final construction inspection promptly to allow the Department to inspect Units prior to occupancy to avoid disruption of households in the event that corrective action is required. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws, and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(b) During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility requirements. In addition, a Uniform Physical Condition Standards inspection may be completed.

(c) IRS Form(s) 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

#### §10.607.Reporting Requirements.

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

(1) 9% Housing Tax Credit Developments - no later than the date prescribed in §10.402(g) of this chapter relating to the 10 Percent Test;

(2) 4% Housing Tax Credit Developments - no later than the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements); or

(3) For all other multifamily developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection

(e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2015. The first report is due April 30, 2017, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

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

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

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

(1) "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data requested in the Annual Owner's Financial Certification (AOFC).

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

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

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are

due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

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

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

(i) Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed ~~thirty~~(30) days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as a non-material amendment, subject to the fee described in §11.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

#### §10.608.Record Keeping Requirements.

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.607 of this chapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low-Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations and executed contracts or Land Use Restriction Agreements. In general, retention schedules include, but are not limited to, the provision of subsections (c) - (g) of this section.

(c) HTC records must be retained for at least six ~~(6)~~ years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six ~~(6)~~ years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for NHTF, TCAP-RF, and HOME rental Developments must comply with the provisions of 24 CFR §92.508(c) and 24 CFR §93.407(b), which generally requires retention of rental housing records for five (5) years after the Affordability Period terminates.

(e) Retention of records for NSP rental Developments must comply with the provisions of 24 CFR §570.506, which generally requires retention of rental housing records for five ~~(5)~~ years after the Department has closed out the grant with HUD.

(f) Texas Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three ~~(3)~~ years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including, but not limited to, the Application and Development costs and documentation, must be retained for at least five ~~(5)~~ years after the Affordability Period terminates.

(g) Section 811 PRA tenant records must be maintained for the term of tenancy plus three years. After the end of the record retention period, all Enterprise Income Verification (EIV) data must be destroyed.

(h) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

(i) All required records must be made available on site when an onsite monitoring occurs.

§10.609. Notices to the Department.

If any of the events described in paragraphs (1) - (6) of this section occur, written notice must be provided to the Department within the respective timeframes. Failure to do so will result in a finding of noncompliance and may be taken into consideration during previous participation reviews in accordance with Chapter 1 Subchapter C of this title, or in enforcement actions in accordance with Chapter 2 of this title.

(1) Written notice must be provided at least ~~thirty (30)~~ days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership, requiring that they complete and provide a Previous Participation Review Form;

(2) Notification must be provided within ~~thirty (30)~~ days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10 percent of the Units are occupied and the date on which 50 percent of the Units are occupied, and notice must occur within ~~ninety (90)~~ days of each such date;

(4) Within ~~thirty~~ (30) days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure; and

(5) Within ~~ten~~ (10) days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's CMTS must be updated.

(6) Owners of Developments that participate in the Section 811 PRA program are required to notify the Department about the availability of units as described in §10.624 of this subchapter.

#### §10.610.Written Policies and Procedures.

(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation. If an owner fails to follow their written policies and procedures it will be cited as noncompliance with this section.

(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section available in the leasing office and anywhere else where applications are taken. Developments that accept electronic applications must post to their website the tenant selection criteria and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) All policies must have an effective date. Any changes require a new effective date.

(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the wait list at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or wait list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.

(1) The criteria must be reasonably related to the applicant's ability to perform under the lease and include:

(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:

(i) The income and rent limits;

(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and

(iii) Fees and/or deposits required as part of the application process. Developments with HOME, NHTF, NSP, Section 811 and/or TCAP RF units cannot collect an application deposit for units designated under these programs. Owners of HTC, TCAP and Exchange Developments are discouraged from collecting an application deposit. If an application deposit is collected it must soon after be converted into a refundable security deposit. No fees or deposits may be collected to place a household or applicant on a waiting list.

(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.

(C) Occupancy Standards. If fewer than 2 persons (over the age of 6) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.

(D) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.

(E) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibility criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission. A property may not have a preference unless it is either in a recorded LURA which has been approved by the Department or is required by a program in which the Owner is participating which requires the preference. Owners that include preferences in their leasing criteria due to other federal financing must provide either written approval from HUD, USDA, or VA for such preference or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of

a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and

(B) A timeframe ~~(not to exceed 14 calendar days)~~ in which the Owner will respond to a request that is compliant with 10 TAC §1.204(b)(3) and (d).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Wait List Policy. Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the wait list;

(B) Determining how lawful preferences are applied; and



(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR §8.27 and Chapter 1, Subchapter B of this title.

(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. The Development's wait list policy must inform applicants and current residents of the availability of lower rent units and the process for renting a lower rent unit. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed and must include policies regarding changes in income that address the options available in §10.615 of this subchapter. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(e) Developments that elect the income averaging test and all Developments with additional rent and occupancy restrictions must have written policies regarding changes in income that address the options available in §10.615 of this subchapter.

(f) Denied Application Policies. Owners must maintain a written policy regarding procedures for denying applications and notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven ~~(7)~~ days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and units at Developments that lease units under the Department's Section 811-PRA program. The appeals process must provide a 14 day period for the applicant to contest the reason for the denial and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process;

(B) The specific reason for which an applicant was denied, the date the decision was made; and

(C) The date the denial notice was mailed or hand-delivered to the applicant.

(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:

(A) A copy of the written notice of denial; and

(B) The Tenant Selection Criteria policy under which an applicant was screened.

(5) If an 811 applicant is being denied, within three (3) calendar days the Department point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules;

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and

(D) Include information on the appeals process if one is used by the property.

(h) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:

(1) How security deposits will be handled for both the current unit and the new unit;

(2) How transfers related to a reasonable accommodation will be addressed; and

(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.

(i) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(j) HTC Developments that have elected average income test must describe in their leasing criteria how units will be leased and inform applicants of the set asides that the Development offers. Owners must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% units designations across all unit types in a manner that does not violate fair housing laws. HTC Developments that have elected the income averaging test must maintain separate waiting lists for each of the set asides offered by the Development. The waiting lists must be available to both existing households and prospective tenants. The Development cannot provide a preference for applicants over existing households. The Development is not required to place existing households that receive rental assistance on a waiting list for a lower rent unit. Owners are encouraged to designate households that receive rental assistance at the level indicated by the contract rent for the unit.

(k) Developments that participate in the Section 811 program must have a written EIV policy that includes security practices and complies with the HUD Handbook 4350.3, Chapter 9. Owners are discouraged from adopting policies that exceed the minimum requirements established by HUD.

(l) Policies and procedures will be reviewed during monitoring visits, through resident complaints or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to [wpp@tdhca.state.tx.us](mailto:wpp@tdhca.state.tx.us). After review by the Department, Owners may make non-substantive changes to their policies. Significant changes to reviewed policies without Department approval may result in findings of noncompliance.

(m) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

#### §10.611. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3 as amended

from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using a manager's services to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers and that they exercise appropriate oversight of any manager's activities.

(b) For the initial certification of a household residing in a HOME, NHTF, NSP or TCAP RF unit at a Development committed HOME funds after August 23, 2013, owners must examine at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation).

#### §10.612.Tenant File Requirements.

(a) At the time of program designation as a low-income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents; and

(3) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this chapter (relating to Lease Requirements).

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the affordability period for all Bond developments and HOME, NSP, and TCAP RF Developments committed funds after August 23, 2013, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original student verification and can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME, NSP, and TCAP RF Developments committed funds after August 23, 2013, an individual does not qualify as a low-income or very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of properties described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the ~~fifteen~~ (15) year Compliance Period.

(B) All Bond developments with less than 100 percent of the units set aside for households with an income less than 50 percent or 60 percent of area median income.

(C) HTF Developments with Market Rate units. However, HTF Developments with other Department administered programs will comply with the requirements of the other program.

(D) HOME Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME and TCAP RF Developments:

(1) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2011 will have the years of the affordability determined in Example 612(1):

(A) Year 1: May 15, 2011 - May 14, 2012;

(B) Year 2: May 15, 2012 - May 14, 2013;

- (C) Year 3: May 15, 2013 - May 14, 2014;
- (D) Year 4: May 15, 2014 - May 14, 2015;
- (E) Year 5: May 15, 2015 - May 14, 2016;
- (F) Year 6: May 15, 2016 - May 14, 2017;
- (G) Year 7: May 15, 2017 - May 14, 2018;
- (H) Year 8: May 15, 2018 - May 14, 2019;
- (I) Year 9: May 15, 2019 - May 14, 2020;
- (J) Year 10: May 15, 2020 - May 14, 2021;
- (K) Year 11: May 15, 2021 - May 14, 2022; and
- (L) Year 12: May 15, 2022 - May 14, 2023.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2016, to May 14, 2017, and between May 15, 2022, and May 14, 2023.

(3) In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self certification that their annual income exceeds the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

(d) Tenant File requirements for Section 811 units. Files for households assisted under the Section 811 program must document the household's eligibility for the program, the deductions for which the household qualifies and the following HUD forms:

- (1) Section 811 Project Rental Assistance Application;
- (2) Verification of disability, HUD 90102;
- (3) House Rules;
- (4) Move in move out inspection form HUD 90106;
- (5) TDHCA Section 811 Waiver of Move-in inspection;

- (6) Damages (Security deposit Deductions);
- (7) Fact Sheet "How your rent is determined";
- (8) Resident Rights and Responsibilities;
- (9) EIV and You Brochure;
- (10) Verification of Age;
- (11) Verification of Social Security number;
- (12) Screening for drug abuse and other criminal activity;
- (13) 811 Tenant Selection Plan;
- (14) Supplement to Application for Federally Assisted Housing: Form 92006;
- (15) Annual Recertification Initial Notice;
- (16) Annual Recertification First Reminder Notice;
- (17) Annual Recertification Second Reminder Notice;
- (18) Annual Recertification Third Reminder Notice;
- (19) Race and Ethnic Data Reporting form: HUD 27061-H;
- (20) HUD 9887 and HUD 9887-A;
- (21) Annual unit inspection;
- (22) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD form 50059; and
- (23) HUD Model lease 92336-PRA.

§10.613. Lease Requirements.

(a) Eviction and/or termination of a lease. HTC, TCAP and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action.

(b) HOME, TCAP RF, NHTF, and NSP Developments are prohibited from evicting low-income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of

the tenancy period for transitional housing (if applicable), or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew a tenancy in HOME, TCAP RF, and NSP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least ~~thirty~~(30) days before the termination of tenancy.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. The Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons. Challenges for evictions or terminations of tenancy must be made by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(d) Developments must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c)). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) All Owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, 811 PRA, and HOME Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e).



(i) Leasing of HOME, NSP or TCAP RF units to an organization that, in turn, rents those units to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household.

(j) Housing Tax Credit units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the unit remains vacant for over 60 days. The unit will be found out of compliance under the finding "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a laminated copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, unit amenities, and services; and

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.

(m) For Section 811 units, Owners must use the HUD Model lease, HUD form 92236-PRA.

#### §10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, and 12 of this title.

(1) Building Type. The HUD Office of Public and Indian Housing ("PIH") characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_11608.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf) (or

successor Uniform Resource Locator (“URL”) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: <http://www.powertochoose.org/> (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development’s ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g., cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge); and

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found <http://comptroller.texas.gov/> (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (“MFDL”). Funds provided through the HOME Program (“HOME”), Neighborhood Stabilization Program (“NSP”), National Housing Trust Fund (“NHTF”), Repayments from the Tax Credit Assistance Program (“TCAP RF”), or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (“RUBS”); and

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet.

(A) For HTC, TCAP, Exchange buildings, Bonds, and HTF include:

(i) Utilities paid by the resident directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except Developments funded with MFDL funds, which are addressed in subsection (d) of this section.

(1) Rural Housing Services ("RHS") buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service ("IRS"), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority ("PHA"). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The Utility Allowance in this example is \$54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at <http://www.huduser.gov/portal/resources/utilallowance.html> (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than

those in effect 60 days prior to the beginning of the 90 day period described in paragraph (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at <http://www.huduser.org/portal/resources/utilmodel.html> (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g., MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review.

(l) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than in effect 60 days prior to the beginning of the 90 day period described in paragraph (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred

to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in described in paragraph (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current twelve 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within ~~forty five (45)~~ days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in paragraph (c)(3)(B), (C), (D), or (E) of this section related to Methods.

(3) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program units thirty days after the Department notifies the Owner of the allowance.

(4) HTC Buildings in which there are units under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that, sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in paragraph (c)(3)(A), (B), (C), or (D) of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.

(1) The Department will review all requests, with the exception of the methodology prescribed in paragraph (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has



chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodologies as described in paragraph (c)(3)(A) of this section related to Methods, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in paragraph (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.

Figure: 10 TAC §10.614(f)(3)

Method	Beginning of 90 Day Notification Period
Written Local Estimate	Date of letter from the Utility Provider
HUD Utility Schedule Model	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate
Actual Use Method	Date the allowance is approved by the Department

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA releases an updated scheduled.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing

office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance ("PRA") Program, the Department will establish the Utility Allowance for all 811 units. On an annual basis, the Department will calculate a Utility Allowance and provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA units, not the entire building, and is the only allowance approved for use on 811 PRA units.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with HOME/ TCAP RF funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with paragraph (c)(3)(B), (C), (D) or (E) of this section related to Methods. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and

receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department.

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with paragraph (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods.

(A) Upon request, the Compliance Division will calculate or review an allowance within 21 days but no earlier than 90 days from when the application is due.

(B) Example 614(8): An application for a 9% HTC is due March 1, 2017. The applicant would like Department approval to use an alternative method by February 15, 2017. The request must be submitted to the Compliance Division no later than January 25, 2017, three weeks before February 15, 2017.

(C) Example 614(9): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2017, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2017, (90 days prior to August 11, 2017) and no later than July 21, 2017, (21 days prior to August 11, 2017).

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to [ua\\_application@tdhca.state.tx.us](mailto:ua_application@tdhca.state.tx.us). Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method.

(I) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

§10.615.Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments.

(a) Under the Code, HTC Development Owners may elect 20 percent of the Units restricted at the 50 percent income and rent limits (20/50), 40 percent of the Units restricted at the 60 percent income and rent limits (40/60) or income averaging. Many Developments have additional income and rent requirements (e.g., 30 percent, 40 percent and 50 percent) that are lower than or in addition to the election requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA.

(b) The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met. Until and unless the Internal Revenue Service or Treasury Department issue conflicting guidance, the Department will examine the actual gross rent and income of all households to determine if Developments that elected income averaging have met the federal requirements and any lower additional occupancy restriction reflected in the Development's LURA.

(c) One hundred percent HTC Developments (developments with no Market Rate units) with additional rent and occupancy restrictions are neither required nor prohibited from completing annual income recertifications. The Development's written policies and procedures must specify the Development's choice.

(1) If a 100% low income development that elects the 20/50 or 40/60 test under IRC §42(g) chooses to perform annual income recertifications, all households designated as meeting the additional rent and occupancy set aside must be recertified on an annual basis; failure to do so will be cited as noncompliance with written policies and procedures but not reported to the IRS on form 8823.

(2) If a 100% low income development elects the average income test and chooses to do annual income recertifications, all households must be recertified on an annual basis; failure to do so will be cited as noncompliance with written policies and procedures but not reported to the IRS on form 8823.

(3) If the income level of the household changes, the Owner may adjust the Unit's designation and rent (up or down) in accordance with all applicable lease terms. Owners that elect the average income test under IRC §42(g) must ensure that the project still has an average income equal to or less than 60% and the percentage represented at the time of Application.

(4) Owners that do not perform annual income recertifications may not increase the rent level of a household designated towards the Development's additional rent and occupancy restrictions. Example 615(1): A household was designated as a 50% household at the time of move in. The

Development is not required to and does not perform annual income recertifications. New rent limits are released and they are higher. The Development may increase the household's rent in accordance with the lease, but not above the new 50% rent limit.

(d) Developments that elect the 20/50 or 40/60 test under IRC §42(g) and have Market Units will be monitored as described in this subsection:

(1) The HTC program requires Mixed Income projects to complete annual income recertifications and comply with the Available Unit Rule. When a household's income at recertification exceeds 140 percent of the applicable current income limit elected by the minimum set-aside, the Owner must comply with the Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance.

(2) HTC Developments that elect the 20/50 or 40/60 test under IRC §42(g) with market rate units and additional rent and occupancy restrictions must have written policies and procedures that address changes in income at recertification. Owners may comply in the following ways:

(A) Households initially certified at the 30, 40, or 50 percent income and rent limits may maintain the designation they had at initial move in unless the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation from the initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit;

(B) Owners may change the designation of a household at recertification and increase the rent accordingly provided that another household's rent is decreased to maintain the set aside requirement. Example 615(2): A 100 Unit development elected the 40/60 minimum set aside, and has an additional rent and occupancy restriction of 10 Units at 30% and 10 Units at 50%. A 30% household recertifies and their income exceeds the 30%. In accordance with the provisions of the lease, the owner may offer this household rent at a higher designation, and simultaneously lower the rent for another household that has been on the Development's waiting list for a 30% Unit; or

(C) If the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside, the household must be redesignated as over income and the Next Available Unit Rule must be followed.

(e) HTC Developments that elect income averaging test and have market rate units must have written policies and procedures that address changes in income at recertification.

(1) If the income tier of a household changes, Owners are permitted but not required to adjust the household's rent to their new designation (higher or lower) as long as the project still has an average rent of equal to or less than the federally required 60% average, or the additional occupancy restriction reflected in the LURA. If the household income increases, and re-designating the rent to the new AMI tier would cause the project average to exceed the required AMI average, the Owner will remain in compliance if the rent is restricted to the limit that maintains the required AMI average.

(2) Until and unless the Internal Revenue Service or the Treasury Department issue conflicting guidance, the Department will monitor the Available Unit Rule in the following manner for income averaging developments:

(A) If the income of the household who, at the last certification, had an income and rent less than the 60% limits exceeds 140% of the 60% limit, the household must be redesignated as over income.

(B) If the income of a household with an income or rent above the 60% level and less than or equal to the 70% limits exceeds 140% of the 70% limit, the household must be designated as over income.

(C) If the income of a household with an income or rent above the 70% level and less than or equal to the 80% limits exceeds 140% of the 80% limit, the household must be designated as over income.

(D) Owners are not required to terminate the tenancy of over income households. When the Unit occupied by an over income household is vacated, it must be reoccupied by a household with an income and rent level equal to or less than the rent level of the household that went over income. In addition, the Unit must be reoccupied by a household that restores the low income average of the project to 60% or less.

(f) Units at 80 percent area median income and rent on HTC developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10 percent of the development's Market Rate units to households at 80 percent income and rents. This section provides guidance for implementation. If the LURA requires 10 percent of the Market Rate units be leased to households at 80 percent income and rent limits, the owner must certify the 80 percent households at the time of move in only. Recertifications will not be required. Student rules do not apply to units occupied by 80 percent households. Noncompliance with the requirement to lease to 80 percent households is not reportable to the IRS on IRS Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

(g) The Department does not require Developments to lease more Units under the additional occupancy restrictions than established in their LURA. However, if a Development inadvertently designates more households than required under the additional rent and occupancy restrictions, they may only decrease to the minimum number through attrition and new move ins, not by removing designations.

#### §10.616. Household Unit Transfer Requirements for All Programs.

(a) The requirements and restrictions regarding household transfers for HTC, Exchange, and TCAP Developments are based on whether the tax credit project is 100 percent low-income or mixed income and if the owner elected to treat buildings in the project as part of a multiple building project. To determine if a Development is a multiple building project, refer to the election on IRS Form(s) 8609 line 8(b) and accompanying statements (if any). If IRS Form(s) 8609 have not yet

been issued by the Department and filed by the owner, each building is its own project. The Department may allow Owners to indicate their intended 8(b) elections and will monitor accordingly. Failure to file the same elections with the IRS may result in noncompliance, additional monitoring, an additional monitoring fee and findings of noncompliance.

(1) 100 percent low-income multiple building projects: Households may transfer to any unit in a 100 percent low-income multiple building project and retain their program designation. The household does not need to be and should not be certified at the time of transfer. The move in date remains the date the household was first designated under the program.

(2) Each building is its own project (100 percent low-income and mixed income projects).  
Developments that made the 20/50 or 40/60 election: at the time of transfer, the household must be certified and have a current annual income less than the income limit established by the minimum set aside the owner selected. Developments that elected the average income test under IRC §42(g): the household must be certified and their current designation averaged together with the designations of the other households in the project must be equal to or less than the percentage represented at the time of application.

(3) Mixed income multiple building projects: Low-income households retain their program designation when they transfer to any unit in a multiple building project if at the last annual certification their income was less than 140 percent of area median income level set by the minimum set aside.

(b) Household transfers for Bond, HTF, NHTF, HOME, TCAP RF, and NSP with floating units. Households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the household transfers to a different Unit Type, the Development must maintain the Unit Type dispersion as reflected in its LURA, by re-leasing the vacated unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(c) Household transfers for NHTF, HOME, TCAP RF, and NSP with fixed units. Households may transfer to any Unit and do not need to be certified at the time of the transfer. If the household transfers to a Unit that is not fixed, the Development must re-lease the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(d) Household Transfers in the Same Building for the HTC Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The unit designations will swap status.

(e) Household transfers for the Section 811 PRA must be approved by the Department in writing.

## §10.617.Affirmative Marketing Requirements.

(a) Applicability. Effective April 1, 2015, compliance with this section is required for all Developments with five ~~(5)~~ or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. Owners of Developments with five ~~(5)~~ or more total units must affirmatively market their units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or "Affirmative Marketing Plan") to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children. All Affirmative Marketing Plans must provide for affirmative marketing to persons with disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. Owners participating in HUD funded programs administered by the Department must use the version required by the program.

(d) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live.

(2) Advertisements and/or marketing materials must contain:

(A) The Fair Housing logo and

(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process. The information about reasonable accommodations must be in both English and Spanish.

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations at least six months prior to the anticipated date the first building is to be available for occupancy. As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six ~~(6)~~ months prior to the anticipated date the first building is to be placed in service; and



(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five ~~(5)~~ years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.

(f) Record keeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) Exception to Affirmative Marketing. If the Development has closed its waiting list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under paragraph (e)(1) of this section.

#### §10.618. Onsite Monitoring.

(a) The Department may perform an onsite monitoring review and physical inspection of any Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low-income Development. The Department will conduct:

(1) The first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review of all Developments, other than those described in paragraph (1) of this subsection, as leasing commences;

(3) During the Federal Compliance Period subsequent reviews will be conducted at least once every three ~~(3)~~ years;

(4) After the Federal Compliance Period, developments will be monitored in accordance with §10.623 of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period);

(5) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least ~~forty-eight (48)~~ hours notice will be provided); and

(7) Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(e) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

(f) In order to prepare for monitoring reviews and physical inspections and to reduce the amount of time spent onsite, Department staff must review certain requested documentation described in the onsite notification announcement. Owners are required to submit documentation by the required deadline indicated in the onsite notification announcement. Failure to submit required documentation will result in a finding of noncompliance.

#### §10.619.Monitoring for Social Services.

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met in accordance with the LURA. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite visits beginning with the first onsite review. Planned services with specific dates may suffice as evidence of compliance during the first onsite monitoring visit. Evidence of services must be submitted to the Department upon request. The first onsite visit Example 619(1): The Owner's LURA requires provision of onsite daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services. Example 619(2): The Owner's LURA requires a monetary amount to be expended on a monthly basis for

supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended as evidence that this requirement is being met.

(b) A substantive modification of the scope of tenant services requires Board approval. Such requests must comply with procedures in §10.405 of this chapter (relating to Amendments and Extensions). It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

(c) If the Development's LURA requires a monthly expenditure for the provision of services, the Department will monitor to confirm compliance. Includable costs to support the expenditure include those costs directly related to providing the service(s). Such costs can include, but are not limited to, the cost of contracting the services with a qualified provider, cost of notification of such services (for example, a monthly newsletter), and other costs that can be documented and would only be incurred as a result of the service. An Owner cannot include any costs related to the normal expense of maintaining or operating a Development, utility bills of any kind, in-kind contributions or services, cleaning or contracted janitorial services, office supplies, cost of copier or fax, costs incurred for maintenance of machinery, or volunteer hours. This list is not inclusive, but any other costs identified by the Owner shall be reviewed for consistency with this subsection.

#### §10.620. Monitoring for Non-Profit Participation, HUB, or CHDO Participation.

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm whether this requirement is being met. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB so participating is in good standing with the Texas Comptroller of Public Accounts, Texas Secretary of State and/or IRS as applicable and that it is actually materially participating in a manner that meets the requirements of the IRS. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If the HOME funds were awarded from the Community Housing and Development Organization ("CHDO") set aside on or after August 23, 2013, the Department will monitor that the Development remains controlled by a CHDO throughout the federal affordability period.

(c) If an Owner wishes to change the participating non-profit, HUB, or CHDO, prior written approval from the Department is necessary. In addition, the IRS will be notified if the non-profit is not materially participating on an HTC Development during the Compliance Period.

(d) The Department does not enforce partnership agreements or other agreements between third parties or determine fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction or other agreed resolution among the parties.

#### §10.621. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes.

(b) HTC Development Owners are required by Treasury Regulation §1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time during the compliance period to the IRS on IRS Form 8823. Accordingly, the Department will submit IRS Form 8823 for any UPCS violation.

(d) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards. Acceptable documentation includes: copies of work orders (listing the deficiency, action taken or repairs made to correct the deficiency, date of corrective action, and signature of the person responsible for the correction), invoices (from vendors, etc.), or other proof of correction. Photographs are not required but may be submitted if labeled and only in support of a work order or invoice. The Department will determine if submitted materials satisfactorily document correction of noncompliance.

(e) Selection of Units for Inspection.

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than ~~thirty (30)~~ days.

(2) Units vacant for more than ~~thirty (30)~~ days are assumed to be ready for occupancy and may be inspected. No deficiencies will be cited for inspectable items that require utility service, if utilities are turned off and the inspectable item is present and appears to be in working order.

(f) The Department will consider a request for review of a UPCS score using a process similar to the process established by the U. S. Department of Housing and Urban Development Real Estate Assessment Center. The request must be submitted in writing within ~~forty-five (45)~~ calendar days of receiving the initial UPCS inspection report and score.

(g) Examples of items that can be adjusted include, but are not limited to:

(1) Building Data Errors--The inspection includes the wrong building or a building that is not owned by the Development.

(2) Unit Count Errors--The total number of units considered in scoring is incorrect as reported at the time of the inspection.

(3) Non-Existent Deficiency Errors--The inspection cites a deficiency that did not exist at the time of the inspection.

(4) Local Conditions and Exceptions--Circumstances include inconsistencies between local code requirements and the UPCS inspection protocol, such as conditions permitted by local variance or license (e.g., child guards allowed on sleeping room windows by local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.

(5) Ownership Issues--Items that were captured and scored during the inspection that are not owned and/or not the responsibility of the Development. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining properties or the city/county/state and resident-owned appliances that are not maintained by the Owner.

(6) Modernization Work In Progress--Developments undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for an adjustment. All elements of the unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to the Department's physical inspection protocol without adjustment. Any request for a Database adjustment for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

(h) Examples of items that cannot be adjusted include, but are not limited to:

(1) Disagreements over the severity of a defect, such as deficiencies rated Level 3 that the Owner believes should be rated Level 1 or 2;

(2) Deficiencies that were repaired or corrected during or after the inspection; or

(3) Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, fair housing accessibility).

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

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

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program (for Developments that elected the 20/50 and 40/60 test under IRC §42(g) only). If Owners agreed to

additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

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

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult.

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

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

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC developments after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund (not a credit to amounts owed the Development) to the affected residents the amount of rent that was overcharged.

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

(f) Rent Adjustments for HOME, and TCAP RF Developments:

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

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

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

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

(h) Employee Occupied Units (HTC and HTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(i) Owners of HOME, NSP, TCAP-RF, and NHTF must comply with §10.403 of this chapter which requires annual rent review and approval by the Department's Asset Management Division. Failure to do so will result in a finding of noncompliance.

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

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

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

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

(2) At least once every three ~~(3)~~ years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low-Income Units. No less than five but no more than thirty-five of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project-based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units can be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;



(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first ~~fifteen~~ (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

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

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

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

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with paragraph (b)(13) of this section.

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

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

#### §10.624. Compliance Requirements for Developments with 811 PRA Units.

(a) One hundred and eighty days prior to the date an Owner expects to begin leasing, Developments that have agreed to rent Units to households assisted by Section 811 PRA must contact Department staff and begin accepting referrals. Failure to reserve the agreed upon number of Units for 811 households will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(b) Throughout the term of an 811 Use Agreement, Owners must maintain the required number of 811 households, and provide notice to the Department when an 811 household is expected to vacate. Notice must be provided 30 days prior to the date the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant, whichever is earlier. Failure to notify the Department will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(c) Compliance with 811 PRA requirements will be monitored at least once every three years, either through an onsite review or a desk review. During the review, Department staff will monitor for compliance with program eligibility which includes the following:

(1) The household must include at least one person with a disability and who is 18 years of age or older and less than 62 years of age at the time of admission into the Development; and the person with a disability must be part of one or more of the target populations for the 811 program.

(2) The household's income is less than the extremely low income limit at move in.

(3) The Owner must check the criminal history related to drug use of the household. Participants in the 811 PRA program must not include:

(A) Any member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity;

(B) Any member that is currently engaged in illegal use of drugs or for which the Owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents; and

(C) Any household member who is subject to a State sex offender lifetime registration requirement.

(4) Student Status. If the household includes a student, the student must meet all of the criteria described in HUD handbook 4350.3 par. 3-13B, as modified by the September 21, 2016, Federal Register Notice 5969-N-01.

(d) Noncompliance will be cited if the Development:

(1) Leases to a household that is not eligible in accordance with the requirements of paragraphs (c)(1) - (4) of this section;

(2) Fails to Use the Enterprise Income Verification system for documenting the household's income;

(3) Fails to properly document and calculate deductions in order to determine adjusted income (dependent, child care, disability assistance, elderly/disabled family, unreimbursed medical expenses);

(4) Fails to use the required HUD forms listed in §10.612(d) of this subchapter or the following forms when applicable:

(A) EIV summary report;

(B) EIV income report;

(C) EIV income discrepancy report;

(D) EIV No income reported;

(E) EIV no income report by health and human services or social security administration;

(F) EIV new hires report;

(G) Existing tenant search;

(H) Multiple Subsidy report;

(I) Failed EIV pre-screening report;

(J) Failed verification report;

(K) Deceased tenants report;

(L) Owner approval letter authorizing access to EIV for the EV coordinators;

(M) EIV Coordinator Access Authorization form (CAAF);

(N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and

(O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);

(5) Accepts funding that limits the ability for the Department to place the agreed upon number of 811 Units at the Development;

(6) Violates §1.15 of this title (relating to Integrated Housing);

(7) Fails to properly calculate the tenant portion of rent;

(8) Fails to use the HUD model lease;

(9) Egregiously fails to disperse 811 PRA Units throughout the Development;

(10) Fails to conduct required interim certifications; or

(11) Fails to conduct annual income recertification.

§10.625.Events of Noncompliance.

Figure: 10 TAC §10.625 lists events for which a multifamily rental development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.625 (.pdf)

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements described in §10.617 of this chapter	All Programs	No
Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division	All programs	No

Property has gone through a foreclosure	All programs	Yes
Property is never expected to comply due to failure to report or allow monitoring	All programs	yes
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non-profit issue, No if HUB issue
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC	Yes
Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No

Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc.
Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.404 of this chapter	All programs	No
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes
Casualty Loss	All programs	Yes
Failure to provide pre-onsite documentation	All programs	No
Failure to provide amenity as required by LURA	HTC	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, <u>NHTF</u> , <u>TCAP-RF</u> , Exchange and HOME/ <u>NSP</u> Developments committed funds after August 23, 2013	No
Change in ownership without department approval (other than removal of a general partner in	All programs	No

accordance with §10.406 of this chapter)		
Noncompliance with written policy and procedure requirements described in §10.610 of this subchapter	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household/ Household income above income limit upon initial occupancy	All programs	Yes
Program unit occupied by nonqualified full-time students	HTC during the Compliance Period, Bond and HOME/NSP developments committed funds after August 23, 2013, NHTF, 811 Developments	Yes
Low-Income units used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP, and Exchange	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	<u>Yes</u>
Failure to provide Tenant Income Certification and documentation	All programs	Yes

Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)	HTC, TCAP <sub>L</sub> , Exchange <sub>L</sub> , and Bond	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME <sub>L</sub> , TCAP-RF <sub>L</sub> , NHTF and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME	NA
Violation of the Integrated Housing Rule	All programs	No
Failure to resolve final construction deficiencies within corrective action period	All programs	No
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards, or other accessibility related requirements of a Department rule	HOME, NSP <sub>L</sub> , TCAP-RF <sub>L</sub> , NHTF, HTF <sub>L</sub> , and for HTC properties that were awarded after 2001	No
Noncompliance with the notice to the Department requirements described in §10.609 of this subchapter	All programs	No
Failure to reserve units for Section 811 participants	811 developments	NA
Failure to notify the Department of the availability of units	811 developments	NA
Owner failed to check criminal history and drug use of household	811 Developments	NA
Failure to use Enterprise Income Verification System	811 developments	NA
Failure to properly document and calculate adjusted income	811 developments	NA



Failure to use required HUD forms	811 developments	NA
Accepted funding that limits 811 participation	811 developments	NA
Failure to properly calculate tenant portion of rent	811 developments	NA
Failure to use HUD model lease	811 developments	NA
Failure to disperse 811 units	811 developments	NA
Failure to conduct interim certifications	811 developments	NA
Failure to conduct annual income recertification	811 developments	NA
Asset Management Division has reported that Development has failed to <u>review rents on an annual basis</u> <del>establish and maintain a reserve account</del> in accordance with §10.403 of this Chapter	HOME, NSP, TCAP RF, and NHTF	NA

§10.626.Liability.

(a) Full compliance with all applicable program requirements, including compliance with §42 of the Code, is the responsibility of the Development Owner. If the Development Owner engages a third party to address any such requirements, they are jointly and severally liable with the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the Code, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, Bond program requirements, and any other laws, regulations, requirements, or other programs monitored by the Department.

(b) On March 23, 2018, the average income test became an option under the housing tax credit program. Sections of this subchapter reflect how the Department will monitor for compliance. If the IRS provides a different interpretation, it is controlling of how the Department must address any aspects under the Internal Revenue Code.

§10.627.Temporary Suspensions of Sections of this Subchapter.

(a) Subject to the limitations stated in this section, temporary suspensions of sections of this subchapter may be granted by the Executive Director if there are extenuating circumstances which make it not possible or an undue administrative burden to comply with a requirement of this subchapter as long as substantial compliance is still in effect. For example, the Executive

Director could suspend the requirement to report online or use Department approved forms, or alter the sample size for calculating a utility allowance using the actual use method.

| (b) Under no circumstances can the Executive Director, the ~~Administrative Penalty Enforcement~~ Committee or the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD or any other federal agency when required by federal law.

| (c) Under no circumstances can the Executive Director, the ~~Administrative Penalty Enforcement~~ Committee or the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of IRS Form 8823, or any sections of 26 U.S.C. §42.

# REPORT ITEMS

2a

## TDHCA Outreach Activities, December 2018 - January 2019

*A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.*

<b>Activity</b>	<b>Event</b>	<b>Date</b>	<b>Location</b>	<b>Division</b>
Roundtable	2020 QAP Roundtable	December 6	Austin, TX	Multifamily Finance
Training	Webinar: Housing Contract System Reporting for Emergency Solutions Grants	December 12	N/A	HOME
Training	Webinar: Multifamily Environmental Requirements – the Essentials	December 14	N/A	Program Services
Public Hearing	Public hearing for Draft 2019 State of Texas Low Income Housing Plan and Annual Report	December 18	Austin, TX	Housing Resource Center
Public Hearing	Public hearing for McMullen Square Apartments	December 20	San Antonio, TX	Multifamily Finance
Roundtable	TDHCA 2019-1 Multifamily Direct Loan Annual NOFA Overview	January 10	Austin, TX	Multifamily Finance

### **Internet Postings of Note**

*A list of new or noteworthy postings to the Department's website.*

#### **Amy Young Barrier Removal**

- Added updated TDHCA Loan Submission Form
- Posted updated program administrators list

#### **Asset Management**

- Presentation, discussion, and possible action regarding material amendments to HTC Land Use Restriction Agreement (Town Parc at Tyler)
- Presentation, discussion, and possible action regarding a material amendment to the HTC, Housing Trust Fund, and HOME Land Use Restriction Agreements (Clifton Manor Apartments I and II)
- Revised content (fee amounts) for Post Award Activity Fees
- Added 2019 Asset Management Rules (revised rules in pdf format)
- Revised updated rules language for Post Award Activities Manual

**Communications:**

- Posted homepage article, “Home, Sweet Home” related to 2018 ESG awards
- Added press announcements under 2018: “Board names David Cervantes as Acting Director” and “2018 ESG Awards”
- Reviewed/replaced content for Homeownership web pages to align with Google Ads
- Posted press announcement for Ending Homelessness Fund (one year update)

**Community Affairs**

- Updated Systematic Alien Verification for Entitlements (SAVE) Frequently Asked Questions

**Compliance**

- Posted updated General Information on the Inspection Process form
- Replaced Onsite Monitoring Forms

**HOME and Homeless:**

- Added 2018 HOME Single Family Program Open Cycle application documents and NOFA amounts
- Added FY2018 Sample Monthly Performance and Expenditure Report spreadsheet and FY2018 Monthly Performance Report Guide
- Added Housing Contract System Reporting for ESG webinar and handout
- Updated HOME Single Family draw Workbook forms
- Updated HOME Program Intake Application

**Housing Resource Center**

- Added A Guide to Understanding Mental Health Systems and Services in Texas Department of Housing and Community Affairs (TDHCA)
- Added Third Substantial Amendment to the 2015-2019 State of Texas Consolidated Plan (adding HOPWA goal and activity)

**Internal Audit:**

- 2018 Report on the Internal Audit review of the Loan Servicing Division, Report on the Internal Audit Review of the HOME Fund-Tracking Program and Annual Internal Audit Report for Fiscal Year 2018

**Multifamily:**

- Added 2019 Application Guides and Workshop Materials (MF Bond Pre-Application Submission Timeline)
- Added webinar videos, Q&As, Section 811 PRA supplement packet under 2019 MF Uniform Application (supporting information), Previous Participation Form, Control Form
- Posted updated list of 2019 Declared Disaster Areas
- Added dates for the 2019 75-day Deadlines for Outstanding Documentation
- Posted 2019 QCP Neighborhood Information Packet
- Posted 2019 Governor Approved Qualified Allocation Plan (10 TAC Chapter 11)
- Added 2019 DRAFT Multifamily Uniform Application, Pre-Application Template, Electronic Filing Agreement, Ceiling Summary, Direct Loan Unit Calculator Tool, Uniform Application Templates, submission system instructions
- Added 2019 Multifamily Programs Procedures Manual, Certifications
- Updated 2018 4% HTC Bond Status Log
- Updated 2019 HTC Site Demographic Characteristics Report

- Replaced 2018 9% HTC Award and Waiting List, 2018 HTC Award Limits and Estimated Regional Allocation
- Added 2019 Multifamily Housing Revenue Bond Rules
- Added 2019-1 Multifamily Direct Loan Annual NOFA
- Added 2019 4% HTC Applications, Individually Imaged Bond Applications

**NOFA**

- Amended year/amount/deadline information for 2018-1 Multifamily Direct Loan

**Program Services**

- Posted Residential Anti-Displacement and Relocation Assistance Plan (reflects December 5, 2018 dateline)

**Public Comment:**

- Comment period open for Proposed Repeal and New 10 TAC Chapter 7, Homelessness Programs, Subchapter C, Emergency Solutions Grants
- Comment period open for Proposed Amendment of 10 TAC Chapter 23, Subchapter B, Availability Of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, And Resale And Recapture Of Funds, §23.24
- Comment period open for Proposed Amendment of 10 TAC Chapter 23, Subchapter E, Contract for Deed Program, §23.51 concerning Contract for Deed General Requirements
- Comment period open for Draft 2019 State of Texas Low Income Housing Plan and Annual Report
- Comment period open for Proposed Amendment of 10 TAC Section 8.7 Program Regulations and Requirements
- Comment period open for Proposed Repeal and New 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations
- Comment period open for Proposed Repeal and New 10 TAC Section 5.801, Project Access Initiative
- Comment period open for Proposed New 10 TAC, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, Section 1.410 Determination of Alien Status for Program Beneficiaries
- Comment period open for Proposed New 10 TAC, Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, Section 1.411 Administration of Block Grants under Chapter 2105 of the Texas Gov't Code

**Purchasing:**

- Updated list of No-Bid contracts as required by state

**Section 811 PRA Program**

- Updated application packet/veteran status

**Frequently Used Acronyms**

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
		NOFA	Notice of Funding Availability
		NSP	Neighborhood Stabilization Program

CHDO	Community Housing Development Organization	OIG	Office of Inspector General
		QAP	Qualified Allocation Plan
CMTS	Compliance Monitoring and Tracking System	QCP	Quantifiable Community Participation
		REA	Real Estate Analysis
CSBG	Community Services Block Grant Program	RFA	Request for Applications
		RFO	Request for Offer
ESG	Emergency Solutions Grants Program	RFP	Request for Proposals
FAQ	Frequently Asked Questions	RFQ	Request for Qualifications
HBA	Homebuyer Assistance Program	ROFR	Right of First Refusal
HHSCC	Housing and Health Services Coordination Council	SLIHP	State of Texas Low Income Housing Plan
HHSP	Homeless Housing and Services Program	TA	Technical Assistance
HRA	Homeowner Rehabilitation Assistance Program	TBRA	Tenant Based Rental Assistance Program
HRC	Housing Resource Center	TICH	Texas Interagency Council for the Homeless
HTC	Housing Tax Credit	TSHEP	Texas Statewide Homebuyer Education Program
HTF	Housing Trust Fund		
HUD	U.S. Department of Housing and Urban Development	TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
IFB	Invitation for Bid	WAP	Weatherization Assistance Program



2b

**BOARD REPORT ITEM**

**LEGAL DIVISION**

**JANUARY 17, 2019**

Report regarding a request for a permitted exception to the federal regulation of conflict of interest, found at 24 CFR §570.489(h), for the Neighborhood Stabilization Program

**BACKGROUND**

The Neighborhood Stabilization Program (NSP) is authorized by HR 3221, the Housing and Economic Recovery Act of 2008, and funded through the U.S. Department of Housing and Urban Development (HUD). TDHCA has administered the program through local entities such as units of general local government and nonprofit organizations, and the program includes holding abandoned or foreclosed properties and redeveloping them into affordable housing.

The Community Development Block Grant Program (CDBG) is the regulatory basis for the NSP. Regulations for CDBG can be found at 24 CFR §570 *et seq.* and apply to the NSP. These regulations address various issues and requirements, including conflicts of interest.

In terms of assistance under NSP, the general rule is that no employee, agent, consultant, officer, or elected or appointed official who exercises responsibilities, gains inside information, or makes decisions relating to CDBG activities may obtain a financial interest or benefit, either for themselves or for their family member for a certain period of time.

Because such conflicts do occur, a conflict of interest exception is contemplated at 24 CFR §570.489(h), (the Conflict Regulation). The Conflict Regulation itemizes the requirements that must be fulfilled for HUD to grant an exception, upon request by the state. The requirements include:

1. A disclosure of the nature of the conflict, including a public disclosure and a description how the disclosures were made, and
2. **An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local laws.** (Emphasis added)

Once items 1 and 2 have been satisfied, the cumulative effect of the following factors, as applicable, will also be considered. A brief description of the factors are:

- i. Whether the exception would provide a cost-benefit or a significant level of expertise to the program that would not otherwise be available;
- ii. Whether competitive bidding or negotiation was utilized;

- iii. Whether the affected person is part of a group or class of low or moderate income individuals intended to be assisted;
- iv. Whether the affected person has withdrawn from their functions;
- v. Whether the benefit or interest was present before the affected person came to the job; and
- vi. Whether undue hardship will result.

The NSP at TDHCA received its first request for an exception to the Conflict Regulation from a local non-profit: Affordable Homes of South Texas, Inc. (AHSTI), which serves as a contract administrator. In administering the NSP, an employee of AHSTI applied to purchase a property supported by the NSP. However, because she is an employee of AHSTI, she is currently unable to purchase the property unless an exception to the Conflict of Interest Regulation is granted by HUD. The property is a single family residence, and the individual employee at AHSTI seeking to purchase it is of low income, is seeking to purchase the property to use as her residence, and (but for the conflict of interest) is otherwise qualified to purchase the property.

AHSTI satisfied the requirements outlined in item 1 and provided documentation of the factors outlined in i-vi above, as well as an opinion from its legal counsel regarding the satisfaction of the factors and a lack of conflict with local and state laws. However, only an “attorney for the state” may provide an opinion that will satisfy the federal conflict regulation, as required in number 2, above. Accordingly, HUD did not accept AHSTI’s request for exception.

The information and documentation submitted to TDHCA from AHSTI indicates that that the AHSTI employee is not an employee of the state, that the real property resource at issue is a HUD resource being administered through TDHCA, and is subject to federal regulations and exceptions. Therefore, relying on the accuracy of the information and documentation presented by AHSTI, this report to the Board concludes that, following a general review of potentially germane conflict of interest provisions in Texas statute, it does not appear to TDHCA General Counsel that the interest of the individual employee of AHSTI seeking to purchase the property, in and of itself, violates state law. This conclusion is exclusively applicable in this instance, is not an opinion of law on behalf of the State of Texas, and may not be relied upon outside this transaction.

# ACTION ITEMS

3a

**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action on Resolution No. 19-022 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Residential Mortgage Revenue Bonds, Series 2019A, approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject

**RECOMMENDED ACTION**

Adopt attached resolution.

**BACKGROUND**

At the Board meeting of November 8, 2018, the Board granted approval to begin the process of issuing single family mortgage revenue bonds for origination of mortgage loans to low, very low, and moderate income homebuyers. The Board approved up to \$175 million in tax-exempt bonds (the 2019A Bonds) and up to \$25 million in taxable bonds (the 2019B Bonds). Based on the bond structure and current market conditions, staff is seeking approval for the issuance of Texas Department of Housing and Community Affairs, Residential Mortgage Revenue Bonds, Series 2019A (the 2019A Bonds). Staff is not recommending issuance of the 2019B Bonds at this time. The Board also delegated authority to staff to select the underwriting team for the 2019A Bonds. Jefferies was selected to serve as the senior managing underwriter, and J.P. Morgan, Piper Jaffray & Co., Ramirez & Co., Inc., and RBC Capital Markets were named as co-managers.

The Department has two active single family indentures, the Single Family Mortgage Revenue Bond Indenture, and the Residential Mortgage Revenue Bond (RMRB) Indenture. The 2019A Bonds will be issued under the RMRB Indenture and are expected to be rated AAA/AA+ by Moody's Investors Service, Inc. and Standard & Poor's Ratings Services, respectively. The 2019A Bonds will be tax-exempt, fixed rate bonds. Total proceeds (par plus premium) will not exceed \$175 million, and will be used to (i) purchase mortgage-backed securities (MBS), the principal and interest of which is guaranteed by Ginnie Mae or Fannie Mae, (ii) finance a portion of the down payment assistance, lender compensation, and second loan servicing fees related to the underlying mortgage loans, and (iii) pay a portion of the costs of issuance related to the 2019A Bonds. Bond proceeds are expected to be invested in a Guaranteed Investment Contract (GIC) until expended.

The bonds are expected to be issued as a modified traditional single family mortgage revenue bond structure, with serial bonds, term bonds, and Planned Amortization Class (PAC) bonds. The PAC bonds and a portion of the serial and term bonds are expected to be sold at a significant premium and will not be subject to redemption prior to the optional redemption date, currently expected to be July 1, 2028, other than to meet tax or other statutory requirements.

The 2019A Bonds are expected to price in early February 2019 and to close in March 2019. MBS can be purchased with proceeds of the 2019A Bonds until December 1, 2019, with the unexpended proceeds redemption occurring January 1, 2020. The Department currently averages approximately \$45 million per month in issuance of MBS backed by tax-exempt bond eligible loans. As such, bond proceeds are expected to be fully utilized well in advance of the unexpended proceeds redemption.

Borrower options for loans originated with proceeds of the 2019A Bonds are expected to include a low mortgage rate option for up to 30% of the proceeds; borrowers choosing this option do not receive down payment and closing cost assistance. The remaining proceeds will be used for mortgage loans that provide four points of down payment and closing cost assistance in the form of a 0%, non-amortizing, 30-year second loan that is due on sale or refinance, with a first mortgage at a higher rate than the low mortgage rate option.

The contribution by the Department for the 2019A Bonds will not exceed \$10.5 million to be used to fund down payment and closing cost assistance, to pay costs related to the acquisition of qualifying mortgage loans including the payment of lender compensation and servicing fees for second mortgage loans, and to pay all or a portion of the costs of issuance of the 2019A Bonds. The contribution will be funded from amounts on deposit in the RMRB indenture and other single family-related funds. Capitalized interest of up to \$2.5 million will be paid from the RMRB indenture as necessary.

A copy of the Exhibits for Resolution 19-022 can be found online at the Department's Board Meeting Information Center website: <http://www.tdhca.state.tx.us/board/meetings.htm>.

Staff recommends approval of Resolution 19-022.

## **RESOLUTION NO. 19-022**

RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS RESIDENTIAL MORTGAGE REVENUE BONDS, SERIES 2019A; APPROVING THE FORM AND SUBSTANCE OF RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing 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 "Board") from time to time) at prices they can afford; and

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; and

WHEREAS, the Department and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), have executed and delivered that certain Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987, as amended and supplemented from time to time (the "RMRB Indenture"), providing for the issuance from time to time by the Department of one or more series of its Residential Mortgage Revenue Bonds; and

WHEREAS, the Department has a single family mortgage purchase program (the "Program") to fund all or a portion of the Department's single family loan production; and

WHEREAS, pursuant to Resolution No. 17-003, the Board approved Program Guidelines setting forth the general terms of the mortgage loans to be originated under the Program (the "Mortgage Loans") and authorized execution and delivery of (i) a Mortgage Acquisition, Pooling and Servicing Agreement setting forth the terms under which Idaho Housing and Finance Association (the "Servicer"), will review, acquire, package and service the Mortgage Loans, and (ii) a Master Mortgage Origination Agreement in connection with the acceptance of new lenders in the Program; and

WHEREAS, Section 302 of the RMRB Indenture authorizes the issuance of additional Bonds for the purposes of acquiring Mortgage Loans or participations therein, payment of costs of issuance, funding of reserves, payments of certain Department expenses and refunding bonds; and

WHEREAS, the Board has determined to authorize the issuance of the Department's Residential Mortgage Revenue Bonds, to be known as its Residential Mortgage Revenue Bonds, Series 2019A (the "Bonds") pursuant to the RMRB Indenture for the purpose of providing funds to make and acquire qualifying mortgage loans through the purchase of mortgage backed securities ("Mortgage Certificates"), to provide down payment and closing cost assistance and to pay a portion of the costs of issuance; and

WHEREAS, the Board desires to authorize the execution and delivery of the Thirty-Third Supplemental Residential Mortgage Revenue Bond Trust Indenture (the "Supplemental Indenture") in substantially the form attached hereto relating to the Series 2019A Bonds; and



WHEREAS, the Board has further determined that the Department should enter into a Bond Purchase Agreement relating to the sale of the Bonds (the “Bond Purchase Agreement”) with Jefferies, as representative of the group of underwriters listed in the Bond Purchase Agreement (the “Underwriters”), in substantially the form attached hereto setting forth certain terms and conditions upon which the Underwriters will purchase the Bonds from the Department and the Department will sell the Bonds to the Underwriters; and

WHEREAS, the Board has determined to authorize the execution and delivery of a 2019 A Supplement to Depository Agreement relating to the Bonds (the “Depository Agreement”), by and among the Department, the Trustee and the Texas Treasury Safekeeping Trust Company, in substantially the form attached hereto to provide for the holding, administering and investing of certain moneys and securities relating to the Bonds; and

WHEREAS, the Board has been presented with a draft of a preliminary official statement to be used in the public offering of the Bonds (the “Official Statement”) and the Board desires to approve such Official Statement in substantially the form attached hereto; and

WHEREAS, the Board desires to authorize the execution and delivery of a Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) in substantially the form attached hereto between the Department and the Trustee; and

WHEREAS, the Board has determined to authorize the investment of a portion of the proceeds of the Bonds and any other amounts held under the RMRB Indenture with respect to the Bonds in one or more guaranteed investment contracts (the “GICs”) on or after the closing date or such other investments as the authorized representatives named herein may approve; and

WHEREAS, the Board desires to approve the use of an amount not to exceed \$10,500,000 of Department funds for any purpose authorized under the Act and the RMRB Indenture, including to provide down payment and closing cost assistance, to make and acquire qualifying mortgage loans, including payment of lender compensation, through the purchase of Mortgage Certificates and to pay a portion of the costs of issuance; and

WHEREAS, the Board desires to authorize the use of an amount not to exceed \$2,500,000 of funds on deposit under the RMRB Indenture to fund capitalized interest; and

WHEREAS, Chapter 1371, Texas Government Code, as amended (“Chapter 1371”), authorizes the Department to take other actions described in this Resolution related to issuance of the Bonds; and

WHEREAS, the Board desires to approve the forms of the Supplemental Indenture, the Bond Purchase Agreement, the Depository Agreement, the Official Statement, and the Continuing Disclosure Agreement in order to find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to further its programs in accordance with such documents by authorizing the issuance of the Bonds, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

**ARTICLE 1**  
**ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS**

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of any or all of the Bonds in one or more series or subseries and on a taxable or tax-exempt basis is hereby authorized, all under and in accordance with the RMRB Indenture, and that, upon execution and delivery of the Supplemental Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to

execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of Texas (the "Attorney General") for approval, the Comptroller of Public Accounts of the State of Texas (the "Comptroller") for registration and the Trustee for authentication, and thereafter to deliver the Bonds to or upon the order of the Underwriters.

Section 1.2 Authority to Approve Form of Documents, Determine Interest Rates, Principal Amounts, Maturities and Prices. That the Authorized Representatives of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, as amended, to fix and determine the interest rates, principal amounts and maturities of, and the prices at which the Department will sell the Bonds to the Underwriters, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative of the Bond Purchase Agreement; provided, however, that: (a) the interest rate on the Bonds shall not exceed 6.00% per annum; (b) the aggregate principal amount of the Bonds shall not exceed \$175,000,000; (c) the final maturity of the Bonds shall occur not later than January 1, 2051; (d) the price at which the Bonds are sold to the Underwriters shall not exceed 107% of the principal amount thereof; and (e) the Bonds shall be rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term debt instrument. In no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law.

Section 1.3 Approval, Execution and Delivery of the Supplemental Indenture. That the form and substance of the Supplemental Indenture are hereby approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to Supplemental Indenture, and to deliver the Supplemental Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriters pursuant to the Bond Purchase Agreement is hereby approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Underwriters.

Section 1.5 Official Statement. That the Official Statement relating to the Bonds, in substantially the form presented to the Board, is hereby approved; that prior to the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Board, are hereby authorized and directed to finalize the Official Statement for distribution by the Underwriters to prospective purchasers of the Bonds, with such changes therein as the Authorized Representatives may approve in order to permit such an Authorized Representative, for and on behalf of the Board, to deem the Official Statement relating to the Bonds final as of its date, except for such omissions as are permitted by Rule 15c2-12 of the Securities and Exchange Commission ("Rule 15c2-12"), such approval to be conclusively evidenced by the distribution of such Official Statement; and that within seven business days after the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Board, shall cause the final Official Statement, in substantially the form of the Official Statement attached hereto, with such changes as such an Authorized Representative may approve, such approval to be conclusively evidenced by such Authorized Representative's execution thereof, to be provided to the Underwriters in compliance with Rule 15c2-12.

Section 1.6 Approval of Depository Agreement. That the form and substance of the Depository Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Depository Agreement and to deliver the Depository Agreement to the Trustee and to the Texas Treasury Safekeeping Trust Company.

Section 1.7 Approval of Continuing Disclosure Agreement. That the form and substance of the Continuing Disclosure Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Continuing Disclosure Agreement and to deliver the Continuing Disclosure Agreement to the Trustee.

Section 1.8 Approval of GIC Broker; Approval of Investment in GICs. That the Executive Director, the Acting Director, or the Director of Bond Finance and Chief Investment Officer of the Department is hereby authorized to select a GIC Broker, if any, and that the investment of funds held under the RMRB Indenture in connection with the Bonds in GICs is hereby approved and that the Executive Director, the Acting Director, or the Director of Bond Finance and Chief Investment Officer of the Department is hereby authorized to complete arrangements for the investment in GICs or such other investments as the Authorized Representatives may approve.

Section 1.9 Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to execute, attest, affix the Department's seal to and deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the RMRB Indenture, the Supplemental Indenture, the Bond Purchase Agreement, the Depository Agreement, and the Continuing Disclosure Agreement.

Section 1.10 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, or in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.11 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A – Supplemental Indenture
- Exhibit B – Bond Purchase Agreement
- Exhibit C – Official Statement
- Exhibit D – Depository Agreement
- Exhibit E – Continuing Disclosure Agreement

Section 1.12 Authorized Representatives. The following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, and the Secretary or Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.13 Department Contribution. That the contribution of Department funds in an amount not to exceed \$10,500,000 to be used for any purpose authorized under the Act and the RMRB Indenture, including to provide down payment and closing cost assistance, to make and acquire qualifying mortgage loans, including payment of lender compensation, through the purchase of Mortgage Certificates and to pay a portion of the costs of issuance is hereby authorized.

Section 1.14 Use of RMRB Indenture Funds and Other Funds. That the use of an amount not to exceed \$2,500,000 of funds on deposit under the RMRB Indenture to fund capitalized interest is hereby authorized.

**ARTICLE 2**  
**APPROVAL AND RATIFICATION OF CERTAIN ACTIONS**

Section 2.1 Submission to the Attorney General of Texas. That the Board hereby approves the submission by the Department's Bond Counsel to the Attorney General of Texas, for his approval, of a transcript of the legal proceedings relating to the issuance, sale and delivery of the Bonds and execution and delivery of the Retained Mortgage Loan Agreement as a credit agreement.

Section 2.2 Engagement of Other Professionals. That the Executive Director, the Acting Director, or the Director of Bond Finance and Chief Investment Officer is authorized to engage an accounting firm to perform such functions, audits, yield calculations, verifications and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of the purchasers of the Bonds and Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law.

Section 2.3 Certification of the Minutes and Records. That the Secretary and any Assistant Secretary to the Board are hereby authorized to certify and authenticate minutes and other records on behalf of the Department for its single family mortgage revenue bond program, the issuance of the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agencies. That the Executive Director, the Acting Director, the Director of Bond Finance and Chief Investment Officer, and the Department's consultants are authorized to seek ratings from Moody's Investors Service, Inc. and Standard & Poor's Ratings Services, a Standard & Poor's Financial Service LLC business.

Section 2.5 Ratifying Other Actions. That all other actions taken or to be taken by the Executive Director and the Department's staff in connection with the issuance of the Bonds are hereby ratified and confirmed.

Section 2.6 Authorized to Invest Funds. That pursuant to Section 1371.102 and the Act, the Executive Director, the Acting Director, or the Director of Bond Finance and Chief Investment Officer is hereby authorized to undertake all appropriate actions required under the RMRB Indenture and the Depository Agreement and to provide for investment and reinvestment of all funds held under the RMRB Indenture in accordance with the RMRB Indenture.

**ARTICLE 3**  
**CERTAIN FINDINGS AND DETERMINATIONS**

Section 3.1 Purpose of Bonds. That the Board hereby determines that the purpose for which the Department may issue the Bonds constitutes "public works" as contemplated by Chapter 1371, Texas Government Code, as amended.

**ARTICLE 4**  
**GENERAL PROVISIONS**

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be limited obligations of the Department payable solely from the trust estate pledged under the RMRB Indenture to secure payment of the bonds issued under the RMRB Indenture and payment of the Department's costs and expenses for its single family mortgage revenue bond program thereunder and under the RMRB Indenture, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State.

Section 4.3 Purposes of Resolution. That the Board has expressly determined and hereby confirms that the issuance of the Bonds and the furtherance of the purposes contemplated by this Resolution accomplish a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 4.4 Notice of Meeting. That this Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 4.5 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

*[Execution page follows]*

PASSED AND APPROVED this 17th day of January, 2019.

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Chair, Governing Board

ATTEST:

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Secretary to the Board

(SEAL)

## **EXHIBITS**

ALL DOCUMENTS REFERRED TO IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL COPY OF SAID RESOLUTION, WHICH IS ON FILE IN THE OFFICIAL RECORDS OF THE DEPARTMENT, AND EXECUTED COUNTERPARTS OF SUCH EXHIBITS ARE INCLUDED IN THE OFFICIAL TRANSCRIPT OF PROCEEDINGS RELATING TO THE BONDS.

3b



**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action on Resolution No. 19-025 authorizing the form and substance of amendments to the Residential Mortgage Revenue Bond Trust Indenture, authorizing the execution of an Amended and Restated Residential Mortgage Revenue Bond Trust Indenture and other documents and instruments relating to the foregoing, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject

**RECOMMENDED ACTION**

Adopt attached resolution.

**BACKGROUND**

The Texas Department of Housing and Community Affairs (the Department) issues single family mortgage revenue bonds through two indentures, one of which is the Residential Mortgage Revenue Bond (RMRB) Indenture. This item proposes amending and restating the RMRB Indenture through the adoption and execution of an Amended and Restated Residential Mortgage Revenue Bond Trust Indenture (the Amended Indenture).

The RMRB Indenture is dated November 1, 1987, and is rated AAA/AA+ by Moody's Investors Service, Inc. and Standard & Poor's Ratings Services, respectively. Through the RMRB Indenture, the Department has issued over \$1.9 billion in bonds, with approximately \$119 million currently outstanding. Staff expects the Department to issue up to \$175 million in single family mortgage revenue bonds (the Series 2019A Bonds) through the RMRB Indenture in March 2019.

Staff has worked with the Department's Bond Counsel, Financial Advisor, and Underwriters to identify amendments to the RMRB Indenture that consolidate prior amendments to the RMRB Indenture, modify outdated provisions, facilitate bond structures currently common in single family housing finance, and provide flexibility for future bond structures. These changes will permit structures that may expand the potential buyers of the Department's single family mortgage revenue bonds, may potentially lower the Department's cost of borrowing, and should allow the Department to continue to adapt to the ever-changing single family housing bond market.

Among other things, the amendments will allow the specific terms of each series of bonds, such as interest payment dates and bond maturity dates, to be detailed in the related supplemental indenture at the time of issuance. For example, the RMRB Indenture requires that all bonds pay interest on January 1 and July 1, eliminating the possibility of monthly pay bonds. Under the Amended Indenture, the supplemental indenture for each new series of bonds will detail the specifics of that series, allowing for monthly pay bonds or other structure variations not currently permitted.

The Amended Indenture will become effective after the Department has received (1) written confirmation from the rating agencies that adoption will not adversely impact the ratings on the RMRB Indenture, (2) an opinion from Bond Counsel that the Amended Indenture is valid and binding upon the Department, (3) written consent of at least two-thirds of the holders of bonds outstanding under the RMRB Indenture, and, if necessary, (4) written consent of Fannie Mae and Freddie Mac.

Staff recommends approval of Resolution No. 19-025.

**RESOLUTION NO. 19-025**

RESOLUTION AUTHORIZING THE FORM AND SUBSTANCE OF AMENDMENTS TO THE RESIDENTIAL MORTGAGE REVENUE BOND TRUST INDENTURE; AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED RESIDENTIAL MORTGAGE REVENUE BOND TRUST INDENTURE AND OTHER DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas; (b) to issue its bonds for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Texas Housing Agency (the "Agency") or the Department, as its successor, has, pursuant to and in accordance with the provisions of the Act, issued, sold and delivered its Residential Mortgage Revenue Bonds pursuant to the Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987, as previously amended and supplemented (the "Original Indenture"), between the Department, as successor to the Agency, and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), to implement the various phases of the Department's residential mortgage revenue bond program; and

WHEREAS, the Department desires to authorize the execution and delivery of the Amended and Restated Residential Mortgage Revenue Bond Trust Indenture (the "Amended Indenture") in substantially the form attached hereto, which Amended Indenture consolidates prior amendments and contains certain additional amendments to the Original Indenture, such Amended Indenture to take effect upon receipt of the written consent of the holders of the requisite percentage of outstanding bonds issued under the Original Indenture as specified therein at the time such consent is given and upon satisfaction of the other conditions set forth in the Original Indenture; and

WHEREAS, the Governing Board desires to approve taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

## ARTICLE 1

### APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval, Execution and Delivery of the Amended Indenture. The form and substance of the Amended Indenture are hereby authorized and approved and the Authorized Representatives of the Department named in the Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Amended Indenture and to deliver the Amended Indenture to the Trustee.

Section 1.2 Execution and Delivery of Other Documents. The Authorized Representatives are each hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the Original Indenture and the Amended Indenture.

Section 1.3 Power to Revise Form of Amended Indenture. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the Amended Indenture as, in the judgment of such Authorized Representative, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of the Amended Indenture by the Authorized Representatives.

Section 1.4 Exhibit Incorporated Herein. That all of the terms and provisions of the document listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

Exhibit A - Amended Indenture

Section 1.5 Authorized Representatives. The following persons and each of them are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department, and the Secretary or Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives" and each further constitutes an "Authorized Representative of the Agency" for purposes of the Original Indenture. Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.6 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the Amended Indenture are hereby ratified and confirmed.

## ARTICLE 2

### GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[EXECUTION PAGE FOLLOWS]

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Chair, Governing Board

ATTEST:

\_\_\_\_\_  
Secretary to the Board

(SEAL)

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**AMENDED AND RESTATED  
RESIDENTIAL MORTGAGE  
REVENUE BOND TRUST INDENTURE**

BETWEEN

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., TRUSTEE

Dated as of \_\_\_\_\_ 1, 2019

Amending and Restating the  
Residential Mortgage Revenue Bond Trust Indenture  
Dated as of November 1, 1987

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AMENDED AND RESTATED RESIDENTIAL MORTGAGE REVENUE BOND  
TRUST INDENTURE

AMENDED AND RESTATED RESIDENTIAL MORTGAGE REVENUE BOND TRUST INDENTURE, dated as of the 1st day of \_\_\_\_\_, 2019 (together with any amendments and supplements hereto, the “Indenture”) made by and between the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, as successor to the Texas Housing Agency (together with any successor to its rights, duties and obligations hereunder, the “Department”), a public and official agency of the State of Texas (the “State”) duly created, organized and existing under the laws of the State, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as trustee (as successor trustee to MTrust Corp, and together with any successor trustee hereunder, the “Trustee”), amends and restates in its entirety that certain Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987 (as previously amended and supplemented, the “Prior Indenture”), between the Texas Housing Agency and MTrust Corp, as trustee (the “Original Trustee”).

WHEREAS, the Department has been created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as such may be amended from time to time (together with other laws of the State applicable to the Department, the “Act”), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide safe and sanitary housing for persons and families of low and very low income and families of moderate income (as described in the Act and as determined by the governing board of the Department from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (i) to make and acquire, and to enter into advance commitments to make and acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State; (ii) to issue its bonds for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (iii) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or participations therein or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Department and the Original Trustee previously executed and delivered the Prior Indenture, providing for the issuance from time to time of one or more series of Residential Mortgage Revenue Bonds (the “Bonds”) and for certain other purposes, all under and in accordance with the Constitution and laws of the State; and

WHEREAS, Article X of the Prior Indenture authorizes amendments and modifications to be made to the Prior Indenture in accordance with the terms of such Article X; and

WHEREAS, the Department and the Trustee now desire to amend and restate the Prior Indenture in its entirety to consolidate previous amendments to the Prior Indenture and to make such other modifications and amendments to the Prior Indenture contained herein as authorized by

Article X thereof, and the Department finds and determines that this Indenture is in furtherance of and is authorized by the Prior Indenture; and

NOW, THEREFORE, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the holders thereof from time to time, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and the Trustee do hereby mutually covenant and agree, for the equal and proportionate benefit of the respective holders from time to time of the Bonds, that the Prior Indenture is hereby amended and restated in its entirety to read as follows:

**ARTICLE I.  
DEFINITIONS, STATUTORY AUTHORITY AND INTERPRETATION**

SECTION 101. Definitions. The following terms shall, for all purposes of the Indenture, have the following meanings:

“Accreted Value” shall mean, with respect to a Deferred Interest Bond, as of any particular date of calculation, the sum of:

(i) the initial principal amount of such Bond; plus

(ii) (a) if such date of calculation precedes the date, if any, specified in the applicable Series Supplement as the date upon which such Bond shall commence to bear interest that is payable currently thereafter on a periodic basis, an amount equal to the sum of (1) the interest accrued on such Bond (or on any Bond in exchange for which or in lieu of which such Bond was issued) from the date of original issuance thereof, at the interest rate specified therein and in the applicable Series Supplement, compounded on each interest compounding date specified in the applicable Series Supplement, until the interest compounding date next preceding such date of calculation, or until such date of calculation if such date of calculation is an interest compounding date, plus (2) if such date of calculation is other than an interest compounding date, the interest accrued on such Bond (or on any Bond in exchange for which or in lieu of which such Bond was issued) from the interest compounding date next preceding such date of calculation, or from the date of original issuance thereof if such date of calculation precedes the first interest compounding date, until such date of calculation, at the rate specified therein and in the applicable Series Supplement (which amount shall be determined on the basis of straight-line interpolation between the respective values of such Bond, determined in accordance with this definition, as of the interest compounding date next preceding such date of calculation, or as of the date of original issuance thereof, if applicable, and as of the interest compounding date next following such date of calculation); provided, however, that the amount described in this clause (2) shall be considered as part of the value of such Bond only for the purpose of determining the amount payable with respect thereto upon redemption or acceleration thereof and not for the purpose of Bondholder consents, notices or any other purpose set forth in the Indenture; or

(b) if such date of calculation is on or after the date, if any, specified in the applicable Series Supplement as the date on which such Bond shall commence to bear

interest that is payable currently thereafter on a periodic basis, the interest accrued on such Bond (or on any Bond in exchange for which or in lieu of which such Bond was issued) from the date of original issuance thereof, at the interest rate specified therein and in the applicable Series Supplement, compounded on the interest compounding dates specified in the applicable Series Supplement, until such specified interest payment commencement date.

“Act” shall mean Chapter 2306, Government Code, as amended from time to time, together with other laws of the State applicable to the Department.

“Amortized Value” shall mean, with respect to an Investment Security, the value of such Investment Security calculated by dividing the total premium or discount at which such Investment Security was acquired (exclusive of accrued interest other than accrued interest paid in connection with the acquisition of such Investment Security and not yet recovered) by the number of days remaining to the maturity of such Investment Security at the time of its acquisition and multiplying the amount so calculated by the number of days since such acquisition and deducting or adding, as the case may be, the product thus obtained to the par value of such Investment Security.

“Authorized Denomination” shall mean: (i) \$5,000 Principal Amount at maturity or any integral multiple thereof; or (ii) any other amount specified as an Authorized Denomination in an applicable Series Supplement.

“Authorized Representative of the Department” shall mean the Chair or Vice Chair of the governing board of the Department, the Secretary or Assistant Secretary to the governing board of the Department, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department, or any officer or employee of the Department authorized to perform specific acts or duties by resolution duly adopted by the governing board of the Department, a copy of which shall be filed with the Trustee.

“Bond” or “Bonds” shall mean any bond or bonds, as the case may be, authenticated and delivered under and pursuant to the Indenture or the Prior Indenture.

“Bond Depository” shall mean any Person (including the Trustee) appointed by the Department in accordance with Section 913 to act as securities depository for the Bonds of one or more Series.

“Bondholder” or “Holder” shall mean, with respect to any Bond or Bonds, the registered owner of such Bond or Bonds, as shown on the Bond registration books kept by the Trustee.

“Bond Year” shall mean each twelve month period ending [December 31].

“Borrower” shall mean, when used with respect to a Mortgage Loan, the obligor on such Mortgage Loan, including an obligor by way of assumption.

“Cashflow Certificate” shall mean a written certificate signed by an Authorized Representative of the Department stating that the action described in the Letter of Instructions to

which such certificate pertains is consistent with the assumptions used in the Cashflow Statement most recently filed with the Trustee.

“Cashflow Statement” shall mean a cashflow statement conforming to the requirements of subsection 1 of Section 711.

“Commitment Fees” shall mean all moneys received by the Department from Borrowers, Mortgage Lenders and others as consideration for the Department’s commitment to make, acquire or refinance Mortgage Loans.

“Costs of Issuance” shall mean the items of expense payable or reimbursable directly or indirectly by the Department and related to the authorization, sale, issuance and remarketing of Bonds, which items of expense shall include without limiting the generality of the foregoing: travel expenses; printing costs; costs of reproducing documents; computer fees and expenses; filing and recording fees; initial fees and charges of the Fiduciaries; bond discounts, underwriting fees and remarketing fees; legal fees and charges; consulting fees and charges; auditing fees and expenses; financial advisory fees; credit rating fees; initial amounts paid to obtain Supplemental Mortgage Security or a Credit Facility; fees and charges for execution, transportation and safekeeping of Bonds; and other administrative or other costs of issuing, carrying, repaying and remarketing Bonds and investing the Bond proceeds and costs incurred in marketing or advertising the Program.

“Cost of Issuance Fund” shall mean the Fund so designated in Section 502.

“Counsel’s Opinion” shall mean a written opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds (who may also be counsel to the Department) selected by the Department and satisfactory to the Trustee.

“Credit Facility” shall mean any credit facility securing payment of Bonds described in a Series Supplement.

“Debt Service Reserve Fund” shall mean the Fund so designated in Section 502.

“Debt Service Reserve Fund Requirement” shall mean, with respect to the Outstanding Bonds as of any date of calculation, the greater of (a) an amount equal to the aggregate with respect to all Series of the amounts, if any, specified as the Debt Service Reserve Fund Requirement for each Series in the respective Series Supplement authorizing such Series, or (b) \$0.

“Deferred Interest Bond” shall mean any Bond which, pursuant to the applicable Series Supplement, bears interest for all or part of the stated term of such Bond that is not payable currently on a periodic basis but rather that accrues and is compounded on interest compounding dates specified in such Series Supplement and is payable only at maturity or upon prior redemption or acceleration of such Bond.

“Department” shall mean the Texas Department of Housing and Community Affairs (as successor to the Texas Housing Agency), a public and official agency of the State, and its successors and assigns.

“Department Expenses” shall mean the Department’s expenses of carrying out and administering its powers, duties and functions in connection with mortgage loans and shall include without limiting the generality of the foregoing: salaries, supplies, utilities, labor, materials, office rent, maintenance, furnishings, equipment, machinery and apparatus; expenses for data processing, insurance premiums, legal, accounting, management, consulting and banking services and expenses; the fees and expenses of the Fiduciaries; mortgage loan servicing fees; Costs of Issuance not paid from proceeds of Bonds; payments to pension, retirement, health and hospitalization funds; amounts paid to obtain and maintain Supplemental Mortgage Security; and any other expenses required or permitted to be paid by the Department under the provisions of the Act, this Indenture and any Supplemental Indenture.

“Depository” shall mean any bank or trust company appointed by the Department in accordance with Section 914 as a depository of moneys and securities held under the Indenture.

“Event of Default” shall mean an Event of Default as such term is defined in Section 802.

“Expense Fund” shall mean the Fund so designated in Section 502.

“Fair Market Value” shall mean, as of any particular date of valuation: (i) as to Investment Securities the bid and asked prices of which are published on a regular basis in a financial journal or publication of general circulation in the United States of America, the bid price for such Investment Securities so published on or most recently prior to the date of valuation by the Trustee or any Depository; (ii) as to Investment Securities the bid and asked prices of which are not published on a regular basis in a financial journal or publication of general circulation in the United States of America, the average bid price on such Investment Securities at the date of valuation by the Trustee or any Depository, as reported by any two nationally recognized dealers in such Investment Securities, or (iii) as to any Investment Security the bid prices of which are available through a nationally recognized service providing electronic access to market information on such Investment Security, the current bid price for such Investment Security as indicated through the electronic transmission of such price through such service as of the time of valuation by the Trustee.

“FDIC” shall mean the Federal Deposit Insurance Corporation or any successor agency or instrumentality of the United States of America.

“FHA” shall mean the United States Department of Housing and Urban Development, Federal Housing Administration, or its successor.

“Fiduciary” or “Fiduciaries” shall mean the Trustee, any Paying Agent, any Bond Depository, any Depository, or any or all of them, as may be appropriate.

“Fund” or “Funds” shall mean any one or more, as the case may be, of the separate special trust funds created and established in Section 502 or in a Supplemental Indenture in accordance with subsection 2 of Section 502.

“Government Obligations” shall mean direct obligations of, or obligations the principal of and interest on which are guaranteed by the full faith and credit of, the United States of America.



“Indenture” shall mean this Amended and Restated Residential Mortgage Revenue Bond Trust Indenture, as the same may be amended or supplemented from time to time by Supplemental Indentures in accordance with the terms hereof.

“Interest Fund” shall mean the Fund so designated in Section 502.

“Investment Security” or “Investment Securities” shall mean and include any one or more of the following securities, if and to the extent the same are at the time legal for investment of Department funds:

- (i) Government Obligations;
- (ii) FHA debentures;
- (iii) Obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by any agency or instrumentality of the United States of America acting pursuant to authority granted by the Congress of the United States, including, without limitation the following: Federal National Mortgage Association (excluding mortgage-backed securities valued at greater than par on the portion of unpaid principal and mortgage-backed securities representing payments of principal only or interest only with respect to the underlying loans); Federal Home Loan Mortgage Corporation; the Government National Mortgage Association; Student Loan Marketing Association; or other successor agencies;
- (iv) Obligations issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes, preliminary loan notes or project notes issued by public agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;
- (v) Debt obligations (excluding obligations that do not have a fixed par value and/or the terms of which do not provide for payment of a fixed dollar amount at maturity or redemption) of any Person, but only if such debt obligations are rated by each Rating Agency in a category at least as high as the rating then assigned to the Bonds by each such Rating Agency;
- (vi) Federal funds, unsecured certificates of deposit, time deposits and banker’s acceptances (in each case, having maturities not in excess of one year) of any bank the short-term unsecured debt obligations of which are rated by each Rating Agency in the highest category for short-term obligations;
- (vii) Certificates of deposit and time deposits which are fully insured as to principal and interest by the FDIC;
- (viii) Commercial paper having maturities not in excess of one year rated by each Rating Agency in the highest category for short-term obligations;

(ix) Money market funds rated by each Rating Agency in the highest category for money market funds;

(x) Repurchase agreements the subject of which are obligations described in clauses (i), (ii), (iii) or (iv) above, with: (A) any Person whose long-term unsecured general indebtedness is rated by each Rating Agency in a category at least as high as the rating then assigned to the Bonds by each such Rating Agency, or if the term of such repurchase agreement does not exceed one year, whose short-term unsecured general indebtedness is rated by each Rating Agency in the highest category for short-term obligations; and (B) with any member of the Association of Primary Dealers;

(xi) Investment agreements secured or unsecured as required by the Department, with any Person whose long-term unsecured general indebtedness is rated by each Rating Agency in a category at least as high as the rating then assigned to the Bonds by each such Rating Agency or, if the term of such investment agreement does not exceed one year, whose short-term unsecured general indebtedness is rated by each Rating Agency in the highest category for short-term obligations; and

(xii) Investment securities described in any Supplemental Indenture the inclusion of which in the definition of Investment Securities for purposes of the Indenture will not adversely affect, in and of itself, any rating then assigned to the Bonds by a Rating Agency, as evidenced by a letter from each such Rating Agency.

“Letter of Instructions” shall mean a written directive and authorization to the Trustee or any Depository specifying the period of time for which such directive and authorization shall remain in effect, executed by an Authorized Representative of the Department.

“Mortgage” shall mean any mortgage securing a Mortgage Loan.

“Mortgage Certificate” shall mean a mortgage-backed security that evidences beneficial ownership of a mortgage pool, that satisfies the requirements of the applicable Series Supplement and that is purchased from amounts identified in the applicable Series Supplement and pledged by the Department to the Trustee pursuant to this Indenture.

“Mortgage Documents” shall mean, with respect to each Mortgage Loan: (i) the Mortgage Note; (ii) the Mortgage; (iii) all documents evidencing primary mortgage insurance or mortgage guaranties with respect to such Mortgage Loan; (iv) all documents evidencing hazard insurance and flood insurance, if any, and special hazard insurance with respect to the residential property securing such Mortgage Loan; (v) all documents evidencing Supplemental Mortgage Security related to such Mortgage Loan; and (vi) all other documents related to such Mortgage Loan required to be held and maintained in the custody of the Department or the Trustee.

“Mortgage Lender” shall mean any bank or trust company, mortgage banker approved by Fannie Mae or Freddie Mac, national banking association, savings bank, savings and loan association, non-profit corporation, mortgage company, the Department, any financial institution or governmental agency and any other entity approved by the Department provided such mortgage lender is authorized to make mortgage loans satisfying the requirements of Section 705.

“Mortgage Loan” shall mean: (i) any loan evidenced by a Mortgage Note and secured by a Mortgage which satisfies the requirements of Section 705, which is made, acquired or refinanced from amounts in the Mortgage Loan Fund or from other moneys of the Department (including amounts derived from temporary indebtedness incurred in anticipation of the issuance of Bonds), and which is pledged by the Department to the Trustee pursuant to the Indenture; and (ii) any evidence of participation in a loan described above. In the proper context, Mortgage Loan may mean and include a Mortgage Certificate.

“Mortgage Loan Fund” shall mean the Fund so designated in Section 502.

“Mortgage Note” shall mean any note, bond or other instrument evidencing a Borrower’s obligation to repay a Mortgage Loan.

“Mortgage Loan Principal Payment” shall mean, with respect to any Mortgage Loan, all amounts representing: (i) scheduled payments of principal thereof; and (ii) Mortgage Loan Principal Prepayments other than portions, if any, of Mortgage Loan Principal Prepayments representing any penalty, fee, premium or other additional charge for the prepayment of principal which may be paid pursuant to the terms of a Mortgage Loan.

“Mortgage Loan Principal Prepayment” shall mean any moneys received or recovered by the Department from any payment of or with respect to principal (including any penalty, fee, premium or other additional charge for prepayment of principal which may be provided by the terms of a Mortgage Loan) on any Mortgage Loan other than the scheduled payments of principal called for by such Mortgage Loan, whether (i) by voluntary prepayment made by the Borrower, (ii) as a consequence of the damage, destruction or condemnation of the mortgaged premises or any part thereof (other than insurance moneys received or recovered and used in accordance with the provisions of this Indenture to repair or reconstruct the mortgaged premises which were the subject of insurance proceeds), (iii) by the sale, assignment, endorsement or other disposition of such Mortgage Loan by the Department, (iv) in the event of a default thereon by the Borrower, by the acceleration, sale, assignment, endorsement or other disposition of such Mortgage Loan by the Department or by any other proceedings taken by the Department, (v) from any special hazard insurance policy or standard hazard insurance policy covering mortgaged premises, (vi) from any Supplemental Mortgage Security; or (vii) from any proceeds received from any private mortgage insurer, the FHA, the VA, the RD or any other agency or instrumentality of the United States of America in respect of any primary mortgage insurance or guaranty of a Mortgage Loan.

“Mortgage Reserve Fund” shall mean the Fund so designated in Section 502.

“Mortgage Reserve Fund Requirement” shall mean, with respect to the Outstanding Bonds as of any date of calculation, the greater of (a) an amount equal to the aggregate with respect to all Series of the amounts, if any, specified as the Mortgage Reserve Fund Requirement for each Series in the respective Series Supplement authorizing such Series, or (b) \$0.

“Outstanding” shall mean, when used with reference to Bonds, as of any date, Bonds theretofore or thereupon being authenticated and delivered under the Indenture except:

- (i) Bonds cancelled by the Trustee or delivered to the Trustee for cancellation at or prior to such date;

(ii) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to Article III or Section 406 or Section 1006; and

(iii) Bonds deemed to have been paid as provided in Section 1102.

“Paying Agent” shall mean, with respect to any Series, any bank or trust company appointed by the Department in accordance with Section 912 to act as paying agent for the Bonds of such Series.

“Person” shall mean any individual, public or private corporation, district, authority, municipality, political subdivision or other agency or entity of the State or the United States of America, and any incorporated city, town or village, whether operating under general or special law or under its home rule charter, and any partnership, limited liability company, association, firm, trust, estate, or any other entity whatsoever.

“Principal Amount” shall mean: (i) with respect to any Deferred Interest Bond or Deferred Interest Bonds, the Accreted Value thereof; and (ii) with respect to any other Bond or Bonds, the principal amount thereof.

“Principal Fund” shall mean the Fund so designated in Section 502.

“Prior Indenture” shall mean the Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987, between the Texas Housing Agency and MTrust Corp, as trustee, as supplemented and amended by the Prior Supplemental Indentures.

“Prior Supplemental Indentures” shall mean the indentures supplemental to or amendatory of the Prior Indenture, adopted prior to the date hereof and in accordance with Article X thereof.

“Program” shall mean the several mortgage loan programs established by the Department pursuant to which the Department makes, acquires or refinances Mortgage Loans, whether such Mortgage Loans were part of the Trust Estate at the time of such making, acquisition or refinancing or became part of the Trust Estate as a result of a pledge by the Department to the Trustee pursuant to a Supplemental Indenture.

“Rating Agency” shall mean, as of any particular date, any nationally-recognized credit rating agency whose rating has been requested or consented to in writing by the Department and is then in effect with respect to the Bonds.

“RD” shall mean Rural Development.

“Redemption Price” shall mean with respect to any Bond, the portion of the Principal Amount thereof, plus the redemption premium, if any, payable upon the redemption of such Bond, as specified in the applicable Series Supplement.

“Refunding Bonds” shall mean all Bonds, whether issued in one or more series, authenticated and delivered on original issuance for the purpose of refunding Outstanding Bonds, and all Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to Article III or Sections 406 or 1006.

“Residual Revenues Fund” shall mean the Fund so designated in Section 502.

“Revenue Fund” shall mean the Fund so designated in Section 502.

“Revenues” shall mean: (i) all amounts paid or required to be paid with respect to principal and interest or otherwise from time to time on the Mortgage Loans, including Mortgage Loan Principal Payments, and including any such amounts held by Persons collecting such amounts on behalf of the Department, after deducting any fees required to be paid for accounting, collection and other services required in connection with servicing of the Mortgage Loans; (ii) all interest received on or profits derived from investing moneys or securities held in the Funds and paid or to be paid into the Revenue Fund; and (iii) any other income, revenues or receipts of the Department which are defined by a Supplemental Indenture as Revenues and pledged to the Trustee as part of the Trust Estate pursuant to a Supplemental Indenture; provided, however, that “Revenues” shall not include fees paid to Mortgage Lenders to service Mortgage Loans, payments made in order to obtain or maintain primary mortgage insurance or guaranties with respect to one or more Mortgage Loans; payments made in order to obtain or maintain fire and other hazard insurance with respect to Mortgage Loans; payments required to be made with respect to Mortgage Loans for taxes, other governmental charges and other similar charges customarily required to be escrowed on mortgage loans; Commitment Fees; or amounts required to be paid or credited to Borrowers or to the United States of America pursuant to applicable federal income tax laws and regulations.

“Series” shall mean all of the Bonds designated as a Series in a Series Supplement and which are authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to Article III or Sections 406 or 1006, regardless of variations in maturity, interest rate or other provisions.

“Series Supplement” shall mean, with respect to any Bond or Series of Bonds, the Supplemental Indenture providing for the issuance of such Bond or such Series of Bonds.

“State Comptroller” shall mean the Comptroller of Public Accounts of the State of Texas or any successor thereto.

“Special Mortgage Loan Fund” shall mean the “1998/1999A Special Mortgage Loan Fund” established in the Tenth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1998, between the Department and the trustee named therein, which is hereby ratified and confirmed.

“Special Redemption Fund” shall mean the Fund so designated in Section 502.

“Supplemental Indenture” shall mean any trust indenture supplemental to or amendatory of the Indenture, executed and delivered by the Department and the Trustee in accordance with Article X.

“Supplemental Mortgage Security” shall mean (a) a mortgage pool insurance policy or any other form of credit enhancement with respect to all or any portion of the Mortgage Loans (including any mortgage pool self-insurance reserve established by the Department with respect to Mortgage Loans), other than any primary mortgage insurance or guaranties described in

paragraph 4 of subsection 1 of Section 705, or (b) any other form of credit enhancement, collateral or cashflow test specified as the Supplemental Mortgage Security for each Series in the respective Series Supplement authorizing such Series.

“Trust Estate” shall mean, as of any particular time, all the Mortgage Loans, Mortgages, Revenues, Funds, Investment Securities, properties, rights, moneys, securities and other interests and estates which at such time are pledged and assigned to the Trustee pursuant to the Indenture.

“Trustee” shall mean The Bank of New York Mellon Trust Company, N.A. (as successor trustee to MTrust Corp), a national banking association, and its successors in trust under the Indenture.

“VA” shall mean the United States Veterans Administration or any successor federal agency or instrumentality.

SECTION 102. Authority for This Indenture. This Amended and Restated Residential Mortgage Revenue Bond Indenture is adopted pursuant to the provisions of the Act and the Prior Indenture.

SECTION 103. Recitals, Table of Contents, Titles and Headings. The terms and phrases used in the recitals of this Indenture have been included for convenience of reference only and the meaning, construction and interpretation of such words and phrases for purposes of this Indenture shall be determined solely by reference to Section 101. The table of contents, titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Indenture or any provision hereof or in ascertaining intent, if any question of intent should arise.

SECTION 104. Interpretation. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, words of the singular number shall be construed to include correlative words of the plural number and vice versa. References in the Indenture to numbered Articles, Sections or portions thereof shall refer to the respective Articles and Sections of the Indenture, unless expressly specified otherwise. The terms “hereof,” “herein,” “hereunder” and similar terms shall refer to the Indenture as a whole and not to any particular provision of the Indenture. The Indenture and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of the Indenture.

SECTION 105. Effective Date of this Indenture. This Amended and Restated Residential Mortgage Revenue Bond Trust Indenture is dated as of \_\_\_\_\_ 1, 2019, but became effective on \_\_\_\_\_, 2019, which date was the forty-first day following the Department’s filing with the Trustee of the proof of the mailing of the notice to the Bondholders required by Section 1004 of the Prior Indenture to the effect that this Indenture has been consented to by the Holders of the percentage of aggregate principal amount of Bonds required by Article X of the Prior Indenture.

SECTION 106. Prior Supplemental Indentures. The provisions of the Prior Supplemental Indentures shall remain in full force and effect as to matters covered therein, except to the extent incorporated herein or inconsistent herewith, as long as any Bonds relating thereto are Outstanding, and any references therein to “the Indenture” shall be deemed to be to this Indenture.

SECTION 107. Numbering of Supplemental Indentures. For purposes of administrative convenience, the numbering of the Prior Supplemental Indentures shall be continued with any Supplemental Indentures relating to this Amended and Restated Residential Mortgage Revenue Bond Trust Indenture.

[END OF ARTICLE I]

**ARTICLE II.  
SECURITY OF THE BONDS**

SECTION 201. Granting Clauses. In order to secure the payment of the Principal Amount or Redemption Price of and interest on the Bonds as the same become due and payable, whether at maturity or by prior redemption, and the performance and observance of all of the covenants and conditions herein contained, and in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Holders thereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department does hereby GRANT, BARGAIN, CONVEY, ASSIGN, MORTGAGE, and PLEDGE to the Trustee and its successors in trust hereunder the following described properties and interests, direct or indirect, whether now owned or hereafter acquired (collectively, the "Trust Estate"):

1. All right, title and interest of the Department now owned or hereafter acquired in and to any agreement or amendment or supplement thereto with any Mortgage Lender who sells or services Mortgage Loans including, without limitation, all present and future rights of the Department to make claim for, collect and receive any income, revenues, issues, profits, insurance proceeds and other sums of money payable to or for the account of or receivable by the Department under such agreements (whether payable pursuant to such agreement or otherwise), to bring actions and proceedings under such agreements or for the enforcement thereof, and to do any and all things which the Department is or may become entitled to do under such agreements;

2. All right, title and interest of the Department now owned or hereafter acquired in and to the Mortgage Documents, including any amendments, extensions or renewals of the terms thereof, including, without limitation, all present and future rights of the Department to make claim for, collect and receive any income, revenues, issues, profits, insurance proceeds and other sums of money payable to or for the account of or receivable by the Department under the Mortgage Documents (whether payable pursuant to the Mortgage Notes, the Mortgages or otherwise), to bring actions and proceedings under the Mortgage Notes, the Mortgages or other Mortgage Documents, or for the enforcement thereof, and to do any and all things which the Department is or may become entitled to do under the Mortgage Documents;

3. All right, title and interest of the Department now owned or hereafter acquired in and to the moneys deposited or required to be deposited in any Fund pursuant to the provisions of this Indenture and all right, title and interest in and to the Investment Securities held in any Fund pursuant to the provisions of this Indenture;

4. All right, title and interest of the Department to the Revenues; and

5. Any and all property of every kind and nature (including, without limitation, cash, obligations or securities) which may from time to time hereafter be conveyed, assigned, hypothecated, endorsed, pledged, mortgaged, granted, or delivered to or deposited with the Trustee as additional security hereunder by the Department or anyone on its behalf, or which pursuant to any of the provisions hereof may come into the possession or control of the Trustee as security hereunder, or of a receiver lawfully appointed hereunder, all of which property the Trustee is authorized to receive, hold and apply according to the terms hereof



TO HAVE AND TO HOLD all the same, with rights and privileges appurtenant thereto, unto the Trustee and its successors in trust forever, subject, however, to all of the terms and provisions of this Indenture;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit and security of the Holders from time to time of the Bonds issued and to be issued hereunder, without preference, priority or distinction as to lien or otherwise of any Bond over any other Bond except as provided in this Indenture;

PROVIDED, HOWEVER, that if the Department, its successors or assigns, shall well and truly pay, or cause to be paid, the Principal Amount or Redemption Price of the Bonds and the interest due or to become due thereon, at the times and in the manner provided in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made into the Funds in the amounts required hereby, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee an amount sufficient to provide for payment of the entire amount due or to become due thereon as provided in this Indenture, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then, upon such payment and performance, this Indenture and the rights and liens hereby granted shall cease, determine and be void; otherwise, this Indenture is to be and shall remain in full force and effect.

SECTION 202. Time of Pledge; Delivery of Trust Estate. The grant, conveyance, assignment, mortgage and pledge of the Trust Estate including the Revenues pursuant to the provisions of this Indenture shall be effective from and after the payment for and delivery of the Bonds. Nothing in the Indenture shall create an obligation on the part of the Department to physically deliver the Trust Estate to the Trustee except as expressly provided in this Indenture.

SECTION 203. Limited Obligations of Department. The Bonds shall be limited obligations of the Department payable solely from the Trust Estate including the Revenues. The Bonds shall constitute a valid claim of the respective Holders thereof against such Trust Estate, which is pledged to secure the payment of the Principal Amount or Redemption Price of and interest on the Bonds, and which shall be utilized for no other purpose, except as expressly authorized in this Indenture. The Bonds shall never constitute general obligations of the Department and under no circumstances shall the Bonds ever be payable from, nor shall the Holder thereof have any rightful claim to, any income, revenues, funds or assets of the Department other than those pledged hereunder as security for the payment of the Bonds.

SECTION 204. Declaration. It is hereby expressly declared that the Trust Estate hereby pledged is to be applied, disbursed, dealt with and disposed of under, upon and subject to the terms, conditions, covenants, agreements, uses and purposes set forth in this Indenture.

[END OF ARTICLE II]

### ARTICLE III.

#### AUTHORIZATION AND ISSUANCE OF BONDS, GENERAL TERMS AND PROVISIONS OF THE BONDS

SECTION 301. Authorization of Bonds. 1. The Indenture authorizes the issuance of Bonds of the Department to be designated as “Residential Mortgage Revenue Bonds” and creates a continuing pledge and lien to secure the full and final payment of the Principal Amount or Redemption Price of and interest on all the Bonds. The aggregate Principal Amount of the Bonds which may be executed, authenticated and delivered under this Indenture is not limited except as may be provided hereafter in this Indenture or as may be limited by the Act.

2. The Bonds may, if and when authorized by the Department pursuant to one or more Series Supplements, be issued in one or more Series, and the designation thereof, in addition to the name “Residential Mortgage Revenue Bonds”, shall include such further appropriate particular designation added to or incorporated in such title for the Bonds of any particular Series, as the Department may determine. Each Bond shall bear upon its face the designation so determined for the Series to which it belongs.

SECTION 302. Provisions for Issuance of Bonds. 1. Except as provided in subsection 2 of Section 306 hereof, the Bonds of each Series, other than Refunding Bonds, shall be executed by the Department for issuance under this Indenture and delivered to the Trustee and thereupon shall be authenticated by the Trustee and by it delivered to the Department or upon its order, but only upon the receipt by the Trustee of:

(1) A Counsel’s Opinion to the effect that: (i) the Department has the right and power under the Act, as amended to the date of such Counsel’s Opinion, to authorize, execute and deliver the Indenture and the Indenture has been duly and lawfully authorized, executed and delivered by the Department, is in full force and effect and is valid and binding upon the Department and no other authorization for the authorization, execution and delivery of the Indenture is required; (ii) the Indenture creates the valid pledge which it purports to create of the Trust Estate, subject to the application thereof to the purposes and on the conditions permitted by the Indenture; (iii) the Bonds of such Series have been duly and validly authorized and issued in accordance with the Act, as amended to the date of such Counsel’s Opinion, and in accordance with the Indenture; and (iv) the Bonds of such Series are valid and binding limited obligations of the Department as provided in the Indenture, are enforceable in accordance with their terms and the terms of the Indenture, and are entitled to the benefits of the Indenture and of the Act, as amended to the date of such Counsel’s Opinion; provided, however, that such Counsel’s Opinion may take exception for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors’ rights generally;

(2) A Letter of Instructions as to the authentication and delivery of such Bonds;

(3) In the case of each Series of Bonds, a copy of the applicable Series Supplement, executed by an Authorized Representative of the Department, which shall specify:

(a) The authorized original Principal Amount, designation and Series of such Bonds;

(b) The purposes for which a Series of Bonds is being issued, which shall be one or more of the following purposes: (i) the making, acquisition or refinancing of Mortgage Loans; (ii) the making of deposits in amounts, if any, required by the Indenture to be paid into one or more Funds from the proceeds of such Series of Bonds; (iii) the payment of Costs of Issuance; and (iv) the refunding of Outstanding Bonds or other bonds or notes issued by the Department under the Act;

(c) The date and the maturity date or dates of the Bonds of such Series and the original Principal Amount of the Bonds of each such maturity;

(d) The interest payment dates on the Bonds of such Series and the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates (provided that the interest on each Bond shall be payable as specified in the applicable Series Supplement);

(e) The designation of any of the Bonds of such Series that are to be Deferred Interest Bonds, the specification of the interest compounding dates for such Bonds, and a table setting forth the Accreted Value of such Deferred Interest Bonds as of the date of original issuance of such Series and as of each date specified in the applicable Series Supplement during the stated term thereof;

(f) The denominations of and the manner of dating, numbering and lettering the Bonds of such Series, provided that such Bonds shall be in Authorized Denominations;

(g) The Paying Agents and the methods and places of payment of the Principal Amount or Redemption Price of and interest on the Bonds of such Series;

(h) Subject to Article IV, the Redemption Prices and other terms upon which the Bonds of such Series shall be subject to redemption, including the manner in which such Bonds are required to be selected for redemption;

(i) The maximum amount of the Revenues relating to such Series that may be applied to pay Department Expenses and the portion thereof to be applied for Supplemental Mortgage Security;

(j) The purposes for which and the times at which Revenues relating to such Series that are held in the Residual Revenues Fund are to be applied pursuant to subsection 1 of Section 512;

(k) The purposes for which and the times at which Mortgage Loan Principal Payments deriving from the Mortgage Loans made, acquired or refinanced with the proceeds of the Bonds of such Series are to be applied pursuant to subsection 3 of Section 505;

(l) The purposes for which any amounts relating to such Series that are held in the Debt Service Reserve Fund or the Mortgage Reserve Fund that are in excess of the Debt Service Reserve Fund Requirement or the Mortgage Reserve Fund Requirement, respectively, are to be applied pursuant to subsection 2 of Section 509 and subsection 2 of Section 510, respectively;

(m) Each of the following matters with respect to the Mortgage Loans to be made, acquired or refinanced with the proceeds of the Bonds of such Series: (i) principal and interest payment characteristics; (ii) maximum term; (iii) whether or not each such Mortgage Loan is required to be secured by a first or a subordinate mortgage lien; (iv) the type of primary mortgage insurance or mortgage guaranty required to be carried, the required level of such coverage and the mortgage insurers or guarantors permitted to provide such coverage; (v) the type of Supplemental Mortgage Security required, if any; (vi) limitations, if any, relating to planned unit developments, condominium units, cooperative units, new construction and geographic concentration; (vii) the period during which the Department may disburse the proceeds of the Bonds of such Series to make, acquire or refinance such Mortgage Loans; and (viii) any other matters related to such Mortgage Loans deemed advisable by the Department which do not conflict with the requirements of the Indenture;

(n) If so determined by the Department, a description of any Investment Securities to be added to such definition pursuant to clause (xii) thereof;

(o) If so determined by the Department, provisions for the sale of the Bonds of such Series;

(p) The forms of the Bonds of such Series, the Trustee's certificate of authentication and the registration certificate of the State Comptroller; and

(q) Any other provisions deemed advisable by the Department not in conflict with the provisions of the Indenture.

(4) An amount which shall be sufficient to cause the amount on deposit in the Debt Service Reserve Fund to be at least equal to the Debt Service Reserve Fund Requirement, after giving the effect to the issuance of such Series of Bonds, for deposit in the Debt Service Reserve Fund;

(5) Such amounts to be deposited in other Funds as shall be specified in the Series Supplement;

(6) A certificate of an Authorized Representative of the Department to the effect that the Department is not, at the time of the issuance of the Series, committing an Event of Default under the Indenture;

(7) A Cashflow Statement giving effect to the issuance of such Bonds;

(8) A Letter of Instructions as to the investment of the proceeds of such Bonds and related amounts;

(9) If required by the Act, the opinion of the Attorney General of Texas containing such matters with respect to the Bonds or the proceedings therefor as may be required by law, or a judgment of a district court of the State of Texas validating the issuance of such Bonds;

(10) If required by the Act, the certificate of registration of such Bonds from the State Comptroller; and

(11) Such further documents and moneys as are required by the provisions of Article X or any Supplemental Indenture.

2. Except as provided in subsection 2 of Section 306 hereof, the Refunding Bonds of each Series shall be executed by the Department for issuance under the Indenture and delivered to the Trustee and thereupon shall be authenticated by the Trustee and by it delivered to the Department or upon its order, but only upon the receipt by the Trustee of:

(1) The documents and moneys referred to in paragraphs (1), (2), (3), (4), (5), (8), (9), (10) and (11) of subsection of 1 in this Section;

(2) A Cashflow Statement giving effect to the issuance of such Refunding Bonds and the redemption of Bonds to be refunded;

(3) If the Bonds to be refunded are to be called for redemption, an irrevocable Letter of Instructions to the Trustee, to give due notice of redemption of all the Bonds to be refunded on a redemption date or dates specified in such Letter of Instructions;

(4) An irrevocable Letter of Instructions to the Trustee, satisfactory to it, to give the notice provided for in Section 1102 to the Holders of the Bonds being refunded;

(5) Either (i) moneys in an amount sufficient to effect payment at the applicable Redemption Price (or the Principal Amount at maturity) of the Bonds to be refunded, together with accrued interest on such Bonds to the redemption (or maturity) date, which moneys shall be held by the Trustee, any Depository or any one or more of the Paying Agents, in a separate account irrevocably in trust for and assigned to the respective Holders of the Bonds to be refunded, or (ii) Government Obligations in such principal amounts, of such maturities, bearing such interest, and otherwise having such terms and qualifications, as shall be necessary to comply with the provisions of Section 1102 and any moneys required pursuant to Section 1102, which Government Obligations and moneys shall be held in trust and used only as provided in Section 1102; and

(6) Such further documents and moneys as are required by the provisions of Article X or any Supplemental Indenture.

3. Except as may otherwise be provided in the applicable Series Supplement, all the Bonds of each Series of the same maturity shall be identical in all respects, except as to interest

rate, denominations, numbers and letters. After the original issuance of Bonds of any Series no Bonds of such Series shall be issued except in lieu of or in substitution for other Bonds of such Series pursuant to Article III or Section 406 or Section 1006.

4. Notwithstanding the foregoing, no Series of Bonds may be issued under this Indenture unless there shall have been delivered to the Trustee written confirmation from each Rating Agency that the issuance of Bonds of each Series will not adversely affect the rating then in effect on any Outstanding Bonds (determined without regard to any Credit Facility).

SECTION 303. Application of Bond Proceeds. 1. The proceeds, including accrued interest, on the Bonds of each Series, other than Refunding Bonds, together with other moneys provided by the Department, shall be applied simultaneously with the delivery of such Bonds, as follows:

(1) There shall be deposited in the Revenue Fund the amount of the interest accrued on such Bonds to the date of such delivery thereof and such other amounts as shall be specified in the applicable Series Supplement;

(2) There shall be deposited in the Debt Service Reserve Fund the amount required by paragraph (4) of subsection 1 of Section 302; and

(3) There shall be deposited in the other Funds the amounts, if any, provided in the applicable Series Supplement.

2. The proceeds, including accrued interest on each Series of Refunding Bonds, shall be applied simultaneously with the delivery of such Bonds in the manner provided in the applicable Series Supplement.

SECTION 304. Medium and Method of Payment; Form and Date; Letters and Numbers. 1. The Bonds shall be payable, with respect to interest and Principal Amount or Redemption Price, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Payments of the Principal Amount or Redemption Price of and interest on the Bonds of each Series shall be made by such method or methods as may be specified in the applicable Series Supplement.

2. The Bonds of each Series shall be issued in the form of fully registered bonds without coupons.

3. The Bonds of each Series shall be dated as provided in the applicable Series Supplement. Each Bond shall bear interest from the interest payment date thereon next preceding the date of authentication of such Bond, unless such date of authentication is an interest payment date, in which case such Bond shall bear interest from such interest payment date, or unless such date of authentication is prior to the first interest payment date on such Bond, in which case such Bond shall bear interest from the date thereof or such other date set forth in the applicable Series Supplement; provided, however, that if on such date of authentication the Department is in default in the payment of interest on such Bond, then such Bond shall bear interest from the date to which interest shall have been paid.

4. Each Bond shall be lettered and numbered as provided in this Indenture and the applicable Series Supplement so as to be distinguished from every other Bond.

SECTION 305. Legends. The Bonds of each Series may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of the Indenture as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by the Department prior to the authentication and delivery thereof.

SECTION 306. Execution, Authentication and Registration of Bonds. 1. The Bonds shall be executed in the name of the Department by the manual or facsimile signature of its Chairman, Vice Chairman or other Authorized Representative of the Department, and its corporate seal (or a facsimile thereof) shall be impressed, imprinted, engraved or otherwise reproduced thereon and attested by the manual or facsimile signature of the Secretary, Assistant Secretary or other Authorized Representative of the Department, or in such other manner as may be required or permitted by a Series Supplement in accordance with the Act. In case any one or more of the Authorized Representatives who shall have signed or sealed any of the Bonds shall cease to be Authorized Representatives before the Bonds so signed and sealed shall have been authenticated and delivered by the Trustee, such Bonds nevertheless may be authenticated and delivered as herein provided, and may be issued as if the persons who signed or sealed such Bonds had not ceased to be Authorized Representatives. Any Bond of a Series may be signed and sealed on behalf of the Department by such persons as at the time of the execution of such Bonds shall be duly authorized for such purpose, although at the date borne by the Bonds of such Series such persons may not have been so authorized.

2. Except as provided in this subsection, and if required by the Act, the initial Bonds of each Series shall be registered by the State Comptroller, which registration shall be evidenced by the manual signature of the State Comptroller or his deputy and the official seal of the State Comptroller shall be impressed or placed in facsimile on the Bonds of each Series. Any Bond or Bonds issued in exchange, substitution or replacement for any other Bond or Bonds pursuant to the provisions of Article III, Section 406 or Section 1006 need not be reregistered by the State Comptroller.

3. The Bonds of each Series shall bear thereon a certificate of authentication, in the form set forth in the applicable Series Supplement, executed manually by the Trustee. Only such Bonds as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under the Indenture and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of the Trustee upon any Bond executed on behalf of the Department shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under the Indenture and that the Holder thereof is entitled to the benefits of the Indenture.

SECTION 307. Exchange of Bonds. Upon surrender of any Bonds at the principal corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the Holder or the duly authorized attorney of the Holder, such Bonds may be exchanged, at the option of the Holder thereof, and upon payment by such Holder of any charges which the Trustee or the Department may make as provided in Section 309, for a Bond or Bonds

of an equal aggregate Principal Amount and of the same Series, maturity and interest rate, in any Authorized Denomination.

SECTION 308. Transfer of Bonds. Bonds shall be transferable only upon the books of the Department, which shall be kept for that purpose at the principal, corporate trust office of the Trustee, by the Holder thereof in person or by the attorney of the Holder duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the Holder or his duly authorized attorney. Upon the transfer of any such Bond and payment of any required fees the Department shall issue in the name of the transferee a new Bond or Bonds, of the same aggregate Principal Amount and of the same Series, maturity and interest rate as the surrendered Bond, in any Authorized Denomination.

SECTION 309. Regulations with Respect to Exchanges and Transfers. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Department shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of the Indenture. All Bonds surrendered in any exchanges or transfers shall be cancelled by the Trustee. For every such exchange or transfer of Bonds, whether temporary or definitive, the Department or the Trustee shall make a charge sufficient to reimburse it or them for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and to reimburse Trustee for administrative expenses, which sum or sums shall be paid by the Holder requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. In addition, the cost, if any, of preparing each new Bond upon such exchange or transfer and any other expenses of the Department or the Trustee incurred in connection therewith shall be paid by the Holder requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Bonds issued in exchange, substitution or replacement of other Bonds may bear a certificate of the Trustee, which may be executed in facsimile, to the effect that the Series of Bonds of which the exchanged substituted or replaced Bond is a part was approved by the Attorney General of Texas or validated by a district court of the State of Texas and registered by the State Comptroller. Neither the Department nor the Trustee shall be required (a) to transfer or exchange Bonds for a period of 15 days next preceding an interest payment date on such Bonds or next preceding any selection of Bonds to be redeemed or thereafter until after the mailing of any notice of redemption; or (b) to transfer or exchange any Bonds called for redemption.

SECTION 310. Ownership of Bonds. 1. Except as provided in subsection 2 of this Section 310 and subsection 3 of Section 913, the Department, the Trustee and any Paying Agent may deem and treat the Person in whose name any Bond is registered upon the Bond registration books kept by the Trustee as the absolute owner of such Bond for all purposes of the Indenture, regardless of any notice to the contrary. All payments of the Principal Amount or Redemption Price of and interest on such Bond made to such Person or upon the order of such Person shall be valid and effectual to satisfy and discharge the liability of the Department upon such Bond to the extent of the amounts so paid.

2. If so provided in the applicable Series Supplement, payment of interest on any Bond may be made to the Person in whose name such Bond is registered as of a specified day of the month (whether or not a business day) immediately preceding the applicable interest payment date.



SECTION 311. Mutilated, Destroyed, Stolen or Lost Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Department shall execute, by facsimile signature or otherwise, and the Trustee shall authenticate and deliver, a replacement Bond, in any Authorized Denomination, of the same Series, maturity and interest rate and in an equal Principal Amount as the Bond so mutilated, lost, stolen or destroyed, provided that (i) in the case of such mutilated Bond, such Bond is first surrendered to the Department, (ii) in the case of any such lost, stolen or destroyed Bond, there is first furnished evidence of such loss, theft or destruction satisfactory to the Department together with indemnity satisfactory to the Department, (iii) all other reasonable requirements of the Department are complied with, and (iv) expenses in connection with such transaction are paid by the Holder. All Bonds so surrendered to the Trustee shall be cancelled by it. Any such replacement Bonds issued pursuant to this Section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Department, whether or not the Bonds alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Bonds issued under the Indenture, in the Trust Estate.

SECTION 312. Temporary Bonds. 1. Until the definitive Bonds of any Series are prepared, the Department may execute, in the same manner as is provided in Section 306, and, upon the request of the Department, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds except as to denominations thereof and as to exchangeability, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, with such omissions, insertions and variations as may be appropriate to temporary Bonds. The Department at its own expense shall prepare and execute and, upon the surrender of such temporary Bonds for exchange and the cancellation of such surrendered temporary Bonds, the Trustee shall authenticate and, without charge to the Holder thereof, deliver in exchange therefor, definitive Bonds, in any Authorized Denomination, of the same Series, maturity and interest rate and in any equal aggregate Principal Amount as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds authenticated and issued pursuant to the Indenture.

2. All temporary Bonds surrendered in exchange for a definitive Bond or Bonds shall be cancelled by the Trustee.

SECTION 313. Cancellation and Destruction of Bonds. Except as otherwise provided in the Indenture, all Bonds paid in full, either at or before maturity, or purchased by the Department pursuant to subsection 2 of Section 507, or subsection 3 of Section 508, shall be delivered to the Trustee when such payment or purchase is made, and such Bonds shall be cancelled promptly. Bonds so cancelled may be destroyed at any time by the Trustee, who shall execute a certificate of destruction in duplicate by the signature of one of its authorized officers describing the Bonds so destroyed. One executed certificate shall be filed with the Department and the other executed certificate shall be retained by the Trustee.

[END OF ARTICLE III]

## ARTICLE IV.

### REDEMPTION OF BONDS

SECTION 401. Privilege of Redemption and Redemption Price. Bonds shall be redeemable, upon notice as provided in this Article IV, at such times, at such Redemption Prices and upon such terms, in addition to the terms contained in this Article IV, as may be specified in the applicable Series Supplement.

SECTION 402. Redemption at the Election or Direction of the Department. In the case of any redemption of Bonds at the election or direction of the Department, the Department shall give written notice to the Trustee, in the form of a Letter of Instructions accompanied by a Cashflow Certificate, of the Department's election or direction to redeem, of the redemption date, of the Series, and of the aggregate Principal Amounts of Bonds of each maturity of such Series to be redeemed (and of each interest rate within each such maturity, if more than one), which Series, maturities, interest rates and Principal Amounts thereof to be redeemed shall be determined by the Department in its discretion, subject to such limitations with respect thereto as may be set forth in the applicable Series Supplement. Such notice shall be given at least 40 days prior to the redemption date or such shorter period as shall be acceptable to the Trustee. In the event notice of redemption shall have been given as provided in Section 405, there shall be paid prior to or on the redemption date to the appropriate Paying Agents an amount in cash which, in addition to other moneys, if any, available therefor held by such Paying Agents, will be sufficient to redeem on the redemption date at the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, all of the Bonds to be redeemed.

SECTION 403. Redemption Otherwise Than at Department's Election or Direction. Whenever by the terms of the Indenture the Trustee is required or authorized to redeem Bonds otherwise than at the election or direction of the Department, the Trustee shall select the Bonds to be redeemed in the manner required by the applicable Series Supplement, give the notice of redemption and pay out moneys available therefor in an amount sufficient to pay the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, to the appropriate Paying Agents in accordance with the terms of this Article IV.

SECTION 404. Selection of Bonds to be Redeemed. If less than all of the Bonds of the same maturity and interest rate of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Trustee in such manner as the Trustee in its discretion may deem fair and appropriate; provided, however, that any Bond redeemed in part shall be redeemed in an amount such that the unredeemed portion thereof shall equal an Authorized Denomination, and provided further that, in selecting Bonds for redemption, the Trustee shall treat each Bond in a denomination greater than the minimum Authorized Denomination as representing that number of Bonds of the minimum Authorized Denomination which is obtained by dividing the Principal Amount at maturity of such Bond by the minimum Authorized Denomination.

SECTION 405. Notice of Redemption. When the Trustee shall receive notice from the Department of its election or direction to redeem Bonds pursuant to Section 402, and when redemption of Bonds is authorized or required pursuant to Section 403, the Trustee shall give

notice, in the name of the Department, of the redemption of such Bonds, which notice shall specify the Series, maturities and interest rates of the Bonds to be redeemed, the redemption date and the method and place or places of payment of the Redemption Price of such Bonds, the conditions, if any, to such redemption, and, if less than all of the Bonds of any like Series and maturity are to be redeemed, the letters and numbers or other distinguishing marks of such Bonds so to be redeemed, and, in the case of Bonds to be redeemed in part only, such notices shall also specify the respective portions of the Principal Amounts thereof to be redeemed. Such notice shall further state that on such date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the Principal Amounts thereof, in the case of Bonds to be redeemed in part only, together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice shall be given, not more than 60 and not less than 30 days before the redemption date, by first-class mail, postage prepaid, to the Holder of each Bond which is to be redeemed in whole or in part, at the address appearing upon the registration books kept by the Trustee; provided, however, that any such notice required to be sent to a Bond Depository may be sent by any method agreed upon by the Department, the Trustee and such Bond Depository. The Trustee's obligation to give notice required by this Section 405 shall not be conditioned upon the prior payment to the Trustee of funds sufficient to pay the Redemption Price of the Bonds to which such notice relates or interest thereon to the redemption date, unless otherwise specified in the applicable Series Supplement.

SECTION 406. Payment of Redeemed Bonds. Notice having been given in the manner provided in Section 405, and, upon the occurrence of any subsequent events or satisfaction of any conditions specified in such notice, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date. If there shall be drawn for redemption less than all of a Bond, the Department shall execute, the Trustee shall authenticate and the Paying Agent shall deliver, upon the surrender of such Bond, without charge to the Holder thereof, for the unredeemed balance of the Principal Amount of the Bond so surrendered, Bonds of the same Series, maturity, interest rate and aggregate Principal Amount, in any Authorized Denomination; provided, however, that if the applicable Series Supplement provides that the Redemption Price of any Bond redeemed in part is payable without the necessity of the presentation and surrender of such Bond, then the Trustee shall note on its records the Principal Amount so paid and the remaining Outstanding Principal Amount of such Bond. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof of the same Series and maturity to be redeemed, together with interest to the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, interest on the Bonds or portions thereof of the same Series and maturity so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

SECTION 407. Conditional Notices of Redemption. The Department reserves the right to give notice of its election or direction to redeem Bonds under this Article IV conditioned upon the occurrence of subsequent events.

SECTION 408. Modification in Series Supplements. Notwithstanding any other provision of this Article IV to the contrary, the provisions of this Article IV as applied to any particular Series of Bonds may be modified or amended in the applicable Series Supplement.

[END OF ARTICLE IV]

## ARTICLE V.

### ESTABLISHMENT OF FUNDS AND APPLICATION THEREOF

SECTION 501. The Pledge Effected by the Indenture. The Bonds are limited obligations of the Department as provided in Section 203. The Bonds are payable from and secured by the Trust Estate including the Revenues. The Trust Estate shall immediately be subject to the lien and pledge of the Indenture without any physical delivery thereof or further act, and the lien and pledge of the Indenture shall be valid and binding as against all Persons having claims of any kind in tort, contract or otherwise against the Department or other party, irrespective of whether such Persons have notice thereof.

SECTION 502. Establishment of Funds. 1. The following Funds are hereby established:

- (a) Residential Mortgage Revenue Bond Mortgage Loan Fund, to be held by the Trustee;
- (b) Residential Mortgage Revenue Bond Cost of Issuance Fund, to be held by the Department;
- (c) Residential Mortgage Revenue Bond Revenue Fund, to be held by the Trustee;
- (d) Residential Mortgage Revenue Bond Interest Fund, to be held by the Trustee;
- (e) Residential Mortgage Revenue Bond Principal Fund, to be held by the Trustee;
- (f) Residential Mortgage Revenue Bond Special Redemption Fund, to be held by the Trustee;
- (g) Residential Mortgage Revenue Bond Debt Service Reserve Fund, to be held by the Trustee;
- (h) Residential Mortgage Revenue Bond Mortgage Reserve Fund, to be held by the Trustee;
- (i) Residential Mortgage Revenue Bond Expense Fund, to be held by the Department; and
- (j) Residential Mortgage Revenue Bond Residual Revenues Fund, to be held by the Trustee.

2. The Department reserves the right to establish, pursuant to a Supplemental Indenture, one or more additional Funds including, without limitation, Funds for the purpose of holding Bond proceeds for a temporary period and for such other purposes as the Department may

determine from time to time. Each such Fund shall be designated in a manner consistent with the Fund designations set forth in paragraph 1 of this Section 502.

3. The Department further reserves the right to establish, pursuant to a Supplemental Indenture, one or more accounts and subaccounts within each Fund including, without limitation, accounts and subaccounts for the purpose of accounting for Bond proceeds, Revenues and other amounts relating to one or more Series of Bonds and for such other purposes as the Department may determine from time to time. Each such account or subaccount within a Fund shall be designated in a manner that indicates the identity of such Fund and that distinguishes such account or subaccount from all other accounts and subaccounts established under the Indenture.

4. The Department further reserves the right to establish, pursuant to a Supplemental Indenture, one or more funds, accounts or subaccounts that are not within a Fund, that are not subject to the lien and pledge of the Indenture and that are not part of the Trust Estate, including, without limitation, funds, accounts and subaccounts for the purpose of holding amounts required to be rebated to Borrowers or to the United States of America, funds, accounts and subaccounts for the purpose of holding the proceeds of the remarketing of Bonds for a temporary period pending disbursement to pay the purchase price of such Bonds, and for such other purposes as the Department may determine from time to time. Each such fund, account or subaccount shall be designated in a manner that distinguishes such fund, account or subaccount from all other funds, accounts and subaccounts established under the Indenture.

5. Each Fund shall be held by the Trustee or the Department, as specified in paragraph 1 of this Section 502, in trust, separate and apart from all other funds and accounts, and the moneys therein shall be held, administered, invested and disbursed only as provided in the Indenture.

SECTION 503. Mortgage Loan Fund. 1. There shall be paid into the Mortgage Loan Fund the amounts required to be so paid by the provisions of the Indenture and each Series Supplement. There may also be paid into the Mortgage Loan Fund, at the option of the Department, any moneys received by the Department from any source unless otherwise required to be applied by this Indenture or any Supplemental Indenture.

2. The Trustee shall apply amounts in the Mortgage Loan Fund to pay the costs of making, acquiring or refinancing Mortgage Loans by the Department, including accrued interest thereon, if so directed by a Letter of Instructions; provided, however, that each such disbursement shall be within the period specified in the applicable Series Supplement or an applicable Letter of Instructions as the period during which the Department may disburse such amounts for such purpose.

3. The Trustee shall transfer amounts in the Mortgage Loan Fund to the Special Redemption Fund to pay the Redemption Price of Bonds to be redeemed, or the purchase price of Bonds to be purchased pursuant to Section 508, if so required by the Series Supplements applicable to the Bonds then Outstanding or if so directed by a Letter of Instructions accompanied by a Cashflow Certificate.

4. To the extent required by Section 513, amounts in the Mortgage Loan Fund may be applied to the payment of Principal Amount or Redemption Price of and interest on the Bonds when due.

SECTION 504. Cost of Issuance Fund. 1. There shall be paid into the Cost of Issuance Fund the amounts required to be so paid by the provisions of the Indenture and each Series Supplement.

2. Amounts in the Cost of Issuance Fund may be paid out from time to time by the Department for Costs of Issuance.

3. If at any time the amounts on deposit in the Cost of Issuance Fund are in excess of the amounts reasonably estimated by the Department to be required for the purpose of paying Costs of Issuance, then the Department may transfer the amount of such excess to the Mortgage Loan Fund or the Revenue Fund.

SECTION 505. Revenue Fund; Application of Revenues. Prior to the transfer of any other amount from the Revenue Fund the Department may transfer from the Revenue Fund an amount equal to any rebatable arbitrage to the Rebate Fund.

1. Except as provided in this Section 505, all Revenues shall promptly upon receipt by the Department be deposited in the Revenue Fund. Revenues which have been received by Persons collecting Revenues on behalf of the Department but have not yet been paid over directly to the Department by such Persons shall not be required to be so deposited until so paid over; provided that such Revenues held by such Persons shall be deemed to have been received by the Department.

2. On or before each date fixed for the payment of the principal or Redemption Price of, or the interest on, the Bonds that occurs other than on a January 1 or July 1, the Trustee shall transfer from the Revenue Fund to the Principal Fund and the Interest Fund an amount which, when added to any amounts already on deposit therein, will equal the amount of principal, Redemption Price or interest to become due and payable on the Bonds on such payment date.

3. On or before each January 1 and July 1 and each date fixed for the redemption of Bonds, the Trustee shall identify the amounts on deposit in the Revenue Fund representing Mortgage Loan Principal Payments and shall transfer such amounts to the Principal Fund, the Mortgage Loan Fund or to the Special Redemption Fund, as directed by a Letter of Instructions accompanied by a Cashflow Certificate or, in the absence of such instructions, as required by the Series Supplements applicable to the Bonds the proceeds of which were used, directly or indirectly, to acquire the Mortgage Loans from which such Mortgage Loan Principal Payments derive. Any Letter of Instructions that directs the transfer of Mortgage Loan Principal Payments from the Revenue Fund to the Mortgage Loan Fund shall specify, with respect to the Mortgage Loans to be made, acquired or refinanced with such Mortgage Loan Principal Payments, each of the matters referred to in clause (m) of paragraph (3) of subsection 1 of Section 302, all of which shall be acceptable to each Rating Agency.

4. On or before each January 1 and July 1 and each date fixed for the redemption of Bonds, the Trustee shall also transfer from the Revenue Fund all other amounts on deposit therein, for the following purposes and in the following order of priority:

(a) First, to the Interest Fund, an amount which, when added to any amounts already on deposit therein, will equal the amount of interest to become due and payable on the Bonds on such interest payment date or redemption date;

(b) Second, to the Principal Fund, an amount which, when added to any amounts already on deposit therein, will equal the Principal Amount of all Bonds maturing on such interest payment date and the Redemption Price of all Bonds becoming subject to scheduled mandatory redemption on such redemption date;

(c) Third, to the Expense Fund, the amount or amounts specified in the Series Supplements applicable to the Bonds then Outstanding as being necessary to pay Department Expenses consisting of amounts, if any, to be paid to obtain or maintain Supplemental Mortgage Security;

(d) Fourth, to the Debt Service Reserve Fund, an amount which (if any amount is required), when added to the amount already on deposit therein, will equal the Debt Service Reserve Fund Requirement;

(e) Fifth, to the Mortgage Reserve Fund, an amount which (if any amount is required), when added to the amount already on deposit therein, will equal the Mortgage Reserve Fund Requirement;

(f) Sixth, to the Expense Fund, the amount, if any, specified in a Letter of Instructions as being necessary to pay Department Expenses (other than amounts described in subparagraph (c) above), but in no event in excess of the maximum amount or amounts specified in the Series Supplements applicable to the Bonds then Outstanding;

(g) Seventh, to the Special Mortgage Loan Fund, the amount, if any, specified in the most recent Cashflow Statement as required by the applicable Series Supplement to maintain the tax-exempt status of the Bonds; and

(h) Finally, to the Residual Revenues Fund, the portion, if any, of the amount remaining in the Revenue Fund on such January 1, July 1 or redemption date after the foregoing transfers, which the Department directs by Letter of Instructions to be so transferred.

5. Notwithstanding the foregoing, no deposits shall be required to be made into the Interest Fund, Principal Fund or Special Redemption Fund if the amounts already on deposit therein are sufficient to pay the Principal Amount or Redemption Price of and interest on the Bonds in accordance with their terms.

SECTION 506. Interest Fund. The Trustee shall pay out of the Interest Fund to the respective Paying Agents, on or before each interest payment date on the Bonds and each date



fixed for the redemption of Bonds, the amount required for the payment of the interest becoming due and payable on such date. Such amounts shall be applied by the Paying Agents on and after each such date to pay the interest on the Bonds then due and payable.

SECTION 507. Principal Fund. 1. The Trustee shall pay out of the Principal Fund to the respective Paying Agents, on or before each date on which Bonds mature or become subject to scheduled mandatory redemption, the amount required for payment of the Principal Amount of the Bonds maturing and the Redemption Price of the Bonds becoming subject to scheduled mandatory redemption on such date. Such amounts shall be applied by the Paying Agents on and after each such date to pay the Principal Amount or Redemption Price of such Bonds.

2. The Department may determine to purchase Bonds from time to time at a price (excluding accrued interest to the purchase date but including any brokerage or other charges) not exceeding the greater of the Principal Amount or the applicable Redemption Price, if any, of such Bonds and, in such event, the Trustee shall apply amounts in the Principal Fund, if so directed in a Letter of Instructions, to pay the portion of the purchase price of such Bonds representing all or a portion of the Principal Amount or applicable Redemption Price thereof.

SECTION 508. Special Redemption Fund. 1. The Trustee shall pay out of the Special Redemption Fund to the respective Paying Agents, on or before each date fixed for redemption of Bonds, the amount required for payment of the Redemption Price of the Bonds becoming subject to redemption (other than scheduled mandatory redemption) on such date. Such amounts shall be applied by the Paying Agents on and after each such date to pay the Redemption Price of such Bonds.

2. The Trustee shall transfer amounts in the Special Redemption Fund to the Revenue Fund if so directed by a Letter of Instructions accompanied by a Cashflow Certificate, if the applicable notice of redemption has not been given pursuant to Section 405 and if such moneys have not been committed to the purchase of Bonds pursuant to subsection 3 of this Section 508.

3. The Department may determine to purchase Bonds from time to time and, in such event, the Trustee shall apply amounts in the Special Redemption Fund, if so directed in a Letter of Instructions accompanied by a Cashflow Statement, to pay the purchase price of such Bonds.

SECTION 509. Debt Service Reserve Fund. 1. If on any interest payment date on the Bonds, after giving effect to all transfers pursuant to Section 505, the amount in the Interest Fund shall be less than the amount required to pay the interest on the Bonds due and payable on such date or the amount in the Principal Fund shall be less than the amount required to pay the Principal Amount of the Bonds maturing on such date or the Redemption Price of Bonds becoming subject to scheduled mandatory redemption on such date, then the Trustee shall apply amounts from the Debt Service Reserve Fund to the extent necessary, and in accordance with the order of priority set forth in Section 513, to eliminate the deficiency first in the Interest Fund and second in the Principal Fund.

2. Prior to each allocation from the Revenue Fund pursuant to subsection 4 of Section 505, the Trustee shall calculate the amount of Debt Service Reserve Fund Requirement as of such date and shall determine the amount (based on the last valuation made pursuant to Section 602), if

any, then in the Debt Service Reserve Fund which is in excess of the Debt Service Reserve Fund Requirement. The Trustee shall transfer such excess to the Revenue Fund, immediately prior to such allocation, if so required by the Series Supplements applicable to the Bonds then Outstanding or if so directed by a Letter of Instructions accompanied by a Cashflow Certificate.

3. Whenever the amount in the Debt Service Reserve Fund, together with the amounts in the Principal Fund, the Interest Fund, the Special Redemption Fund and the Mortgage Reserve Fund is sufficient to fully pay all Outstanding Bonds in accordance with their terms (including the Principal Amount or Redemption Price thereof and the interest thereon), and if all Outstanding Bonds are then subject to redemption, the Trustee shall transfer the funds on deposit in the Debt Service Reserve Fund to the Special Redemption Fund and the Interest Fund, as appropriate, if so directed by a Letter of Instructions.

SECTION 510. Mortgage Reserve Fund. 1. If on any interest payment date on the Bonds, after giving effect to all transfers pursuant to Section 505, the amount in the Interest Fund shall be less than the amount required to pay the interest on the Bonds due and payable on such date or the amount in the Principal Fund shall be less than the amount required to pay the Principal Amount of the Bonds maturing on such date or the Redemption Price of Bonds becoming subject to scheduled mandatory redemption on such date, then the Trustee shall apply amounts from the Mortgage Reserve Fund to the extent necessary, and in accordance with the order of priority set forth in Section 513, to eliminate the deficiency first in the Interest Fund and second in the Principal Fund.

2. Prior to each allocation from the Revenue Fund pursuant to subsection 4 of Section 505, the Trustee shall calculate the amount of the Mortgage Reserve Fund Requirement as of such date and shall determine the amount (based on the last valuation pursuant to Section 602), if any, then in the Mortgage Reserve Fund which is in excess of the Mortgage Reserve Fund Requirement. The Trustee shall transfer such excess to the Revenue Fund, immediately prior to such allocation, if so required by the Series Supplements applicable to the Bonds then Outstanding or if so directed by a Letter of Instructions accompanied by a Cashflow Certificate.

3. Whenever the amount in the Mortgage Reserve Fund, together with the amounts in the Principal Fund, the Interest Fund, the Special Redemption Fund and the Debt Service Reserve Fund, is sufficient to fully pay all Outstanding Bonds in accordance with their terms (including the Principal Amount or Redemption Price thereof and the interest thereon), and if all Outstanding Bonds are then subject to redemption, the Trustee shall transfer the funds on deposit in the Mortgage Reserve Fund to the Special Redemption Fund and the Interest Fund, as appropriate, if so directed by a Letter of Instructions.

SECTION 511. Expense Fund. 1. Amounts in the Expense Fund may be paid out from time to time by the Department for Department Expenses and for taxes, insurance, foreclosure fees, including appraisal and legal fees, security, repairs and other expenses incurred by the Department in connection with the protection and enforcement of its rights in any Mortgage Loan and the preservation of the mortgaged property securing such Mortgage Loans.

2. If at any time the amounts on deposit in the Expense Fund are in excess of the maximum amounts required to be on deposit therein pursuant to subsection 4 of Section 505, then the Trustee shall transfer such excess to the Revenue Fund, if so directed by a Letter of Instructions.

SECTION 512. Residual Revenues Fund. 1. During such time as the Department is not meeting the asset test set forth in subsection 2 of this Section 512, amounts in the Residual Revenues Fund shall be retained in the Residual Revenues Fund or transferred to the Mortgage Loan Fund, the Special Redemption Fund, the Debt Service Reserve Fund (to the extent the amount therein is less than the Debt Service Reserve Fund Requirement) or the Mortgage Reserve Fund (to the extent the amount therein is less than the Mortgage Reserve Fund Requirement), as directed by a Letter of Instructions accompanied by a Cashflow Certificate or, in the absence of such instructions, as required by the Series Supplements applicable to the Bonds then Outstanding.

2. The Department shall be deemed to have met the asset test of this subsection 2 if: (i) the Department shall have on file with the Trustee a Cashflow Statement giving effect to a transfer and release proposed pursuant to subsection 3 of this Section 512; (ii) as of the date of such Cashflow Statement, the sum of the outstanding principal balance of the Mortgage Loans and the moneys and Investment Securities (valued at their Amortized Value in accordance with Section 604) held in all Funds (other than the Cost of Issuance Fund, the Expense Fund and any mortgage pool self-insurance reserve established by the Department with respect to the Mortgage Loans) is at least equal to 102% of the aggregate Principal Amount of Bonds then Outstanding; and (iii) amounts then on deposit in the Debt Service Reserve Fund and Mortgage Reserve Fund, equal or exceed the Debt Service Reserve Fund Requirement and the Mortgage Reserve Fund Requirement, respectively.

3. If at any time the Department meets the asset test set forth in subsection 2 of this Section 512, then the Trustee shall apply any amounts in the Residual Revenues Fund (in excess of those required to be maintained under the Indenture in order to permit the Department to continue to meet the asset test) as follows:

(i) the Trustee shall transfer such amounts to the Mortgage Loan Fund or the Special Redemption Fund or shall remit such amounts to the Department to be used for any purpose authorized or permitted by the Act, free and clear of the pledge and lien of the Indenture, if so directed by a Letter of Instructions; or

(ii) in the absence of such instructions, the Trustee shall retain such amounts in the Residual Revenues Fund.

SECTION 513. Withdrawals from Funds to Pay Debt Service. Notwithstanding any other provision of this Indenture, if, on any interest payment date on the Bonds, after giving effect to the requirements of Section 505, the amount in the Interest Fund or the Principal Fund shall be less than the amount required to pay the principal of and interest on the Bonds then due and payable, the Trustee shall transfer from the following Funds in the following order of priority the amount of such deficit and apply such amount to pay such principal and interest as necessary:

1. Residual Revenues Fund,
2. Special Redemption Fund,

3. Mortgage Reserve Fund,
4. Mortgage Loan Fund, and
5. Debt Service Reserve Fund;

provided, however, that moneys in the Special Redemption Fund which are to be used to redeem Bonds as to which notice of redemption has been given pursuant to Article IV or committed to the purchase of Bonds pursuant to Section 508, and moneys in the Mortgage Loan Fund which are to be used to make, acquire or refinance Mortgage Loans with respect to which the Department has entered into commitments with Borrowers, Mortgage Lenders or others shall not be deemed available for the payment of such principal and interest, nor shall Mortgage Loans credited to the Mortgage Loan Fund be deemed available for such purpose. If the amount in all Funds is insufficient to pay the principal of and interest on the Bonds then due and payable, the available amounts shall be applied in accordance with the provisions of Section 807.

[END OR ARTICLE V]

## ARTICLE VI.

### INVESTMENT OF MONEYS AND SECURITY FOR DEPOSITS

SECTION 601. Investment of Moneys. 1. Moneys held in the Mortgage Loan Fund, the Revenue Fund, the Interest Fund, the Principal Fund, the Special Redemption Fund, the Debt Service Reserve Fund, the Mortgage Reserve Fund and the Residual Revenues Fund shall be invested and reinvested by the Trustee or by any Depository holding all or a portion of the moneys in such Funds, in accordance with instructions from the Department (which, if given verbally, shall be confirmed promptly by a Letter of Instructions), and moneys held in the Cost of Issuance Fund and the Expense Fund shall be invested and reinvested by the Department, or by any Depository holding all or a portion of the moneys in such Funds, in accordance with instructions from the Department (which, if given verbally, shall be confirmed promptly by a Letter of Instructions), to the fullest extent practicable and if permitted by the Act, in Investment Securities the principal of which the Department estimates will be received not later than such times as shall be necessary to provide moneys when needed for payments to be made from each such Fund. Notwithstanding anything herein to the contrary, Investment Securities in all Funds shall mature not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Funds.

2. Interest earned from investing any moneys in any Fund or profits realized from any investments in any Fund shall be retained in such Fund until it contains the amount required by the Indenture to be deposited therein; thereafter such earnings and profits, net of any losses (except that which represents a return of accrued interest paid in connection with the purchase by the Department, the Trustee or any Depository of any investment), shall be transferred to the Revenue Fund.

3. If not otherwise directed in a Letter of Instructions, the Trustee shall invest cash balances in any Fund or Account in [its \_\_\_\_\_ Money Market Fund, or a comparable cash management fund if the \_\_\_\_\_ Money Market Fund shall become unavailable for any reason, so long as such fund has a rating at least as high as the then current rating on the Outstanding Bonds] [**From SF MTI: money market funds consisting exclusively of United States Treasury securities**]. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees, which may be deducted from income earned on investments.

SECTION 602. Valuation and Sale of Investments. 1. Investment Securities acquired as an investment of moneys in any Fund shall be at all times a part of such Fund and any profit realized from the liquidation of such investment shall be applied as provided in subsection 2 of Section 601 and any loss resulting from the liquidation of such investment shall be charged to the respective Fund.

2. In computing the amount in any Fund, obligations purchased as an investment of moneys therein shall be valued at their Amortized Value. The valuation of the Debt Service Reserve Fund and the Mortgage Reserve Fund shall be made as of the close of business on the fifth business day preceding each January 1 and July 1 and each date fixed for the redemption of Bonds.

3. Except as otherwise provided in the Indenture, the Trustee or any Depository shall sell at the best price obtainable, or present for redemption, any Investment Security so purchased as an investment whenever it shall be requested to do so in a Letter of Instructions or whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund held by it. Neither the Trustee nor any Depository shall be liable or responsible for making any such investment in the manner provided in this Article VI or for any loss resulting from any such investment.

SECTION 603. Payment for Authorized Investments and Trust Receipts. When Investment Securities are purchased from or through a member in good standing of the Financial Industry Regulatory Authority (or its successor), or from or through a national or state bank, the Department, the Trustee and any Depository are authorized to pay for them using moneys in the appropriate Fund and, in each case, shall obtain, as soon as may be practicable, a confirming invoice from the seller of the Investment Securities showing that the Investment Securities have been purchased by or for the account of the Department. Actual delivery of the Investment Securities to the Department, the Trustee or the Depository may be accomplished thereafter in accordance with normal and recognized practices within the securities and banking industries, including the book entry procedure of the Federal Reserve Bank. Any Investment Securities so acquired, at the direction of the Department, the Trustee, or the Depository, as applicable, may be deposited with a bank or trust company having undivided capital and surplus of at least \$50,000,000 or a federal reserve bank or branch thereof designated by the Department within or without the State of Texas, in trust, and such deposits shall be evidenced by receipts of the banks in which the Investment Securities are thus deposited.

SECTION 604. Transfer of Investments. Any transfer required to be made from one Fund to another Fund held by the same Person may be made by book transfer of any moneys or investments or portions of investments without liquidating any investments in order to make such transfer unless the moneys required to be transferred are needed to make payments out of the Fund to which such moneys were transferred at the time of transfer. Investments may also be exchanged between Funds if the Department and the Trustee determine such transfer to be the best way to preserve the Trust Estate.

SECTION 605. Security for Deposits. All moneys held under the Indenture by the Trustee or any Depository, to the extent not insured by the FDIC or represented by Investment Securities acquired with such moneys, shall be continuously and fully secured for the benefit of the Department and the Holders of the Bonds, either (a) by lodging with a Federal Reserve Bank or the Trustee, as custodian, as collateral security, Government Obligations having a Fair Market Value not less than the amount of such moneys, or (b) in such other manner as may then be required by applicable laws and regulations regarding security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that it shall not be necessary for the Trustee to give security under this Section 605 for the deposit with it of any moneys held in trust and set aside by it for the payment of the Principal Amount or Redemption Price of or interest on any Bonds.

[END OF ARTICLE VI]

## ARTICLE VII.

### PARTICULAR COVENANTS OF THE DEPARTMENT

The Department covenants and agrees with the Trustee and the Bondholders as follows:

SECTION 701. Payment of Bonds. The Department shall duly and punctually pay or cause to be paid, but solely from the Trust Estate including the Revenues, the proceeds of the Bonds, other funds pledged therefor by the Indenture, the Principal Amount or Redemption Price of and interest on every Bond at the dates and places and in the manner mentioned in the Bonds, according to the true intent and meaning thereof.

SECTION 702. Extension of Payment of Bonds. The Department shall not directly or indirectly extend or assent to the extension of the time for payment of the Principal Amount of or interest on any Bond and will not directly or indirectly be a party to any arrangement therefor without the consent of each Bondholder affected thereby. Nothing herein shall be deemed to limit the right of the Department to issue Refunding Bonds and such issuance shall not be deemed to constitute an extension of the maturity of Bonds.

SECTION 703. Power to Adopt Indenture, Issue Bonds and Pledge Trust Estate. The Department is duly authorized under the Act to create and issue the Bonds and to adopt the Indenture and to pledge the Trust Estate purported to be pledged by the Indenture in the manner and to the extent provided in the Indenture and no other authorization or consent is required therefor. The Trust Estate so pledged is and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto except the pledge granted by this Indenture and all corporate and other action on the part of the Department to that end has been and will be duly and validly taken. The Indenture has been duly and lawfully adopted by the Department, is in full force and effect and will be valid and binding upon the Department and enforceable in accordance with its terms. The Bonds and the provisions of the Indenture are and will be the valid and legally enforceable obligations of the Department in accordance with their terms and the terms of the Indenture subject only to the laws relating to bankruptcy and creditors' rights. The Department shall at all times, to the extent permitted by law, defend, preserve and protect its title to the Trust Estate, the pledge of the Trust Estate under the Indenture and all the rights of the Bondholders under the Indenture against all claims and demands of all Persons whomsoever.

SECTION 704. General. 1. The Department will at all times maintain its legal existence or assure the assumption of its obligations under the Indenture by a public or corporate body succeeding to its powers under applicable law, and it will use its best efforts to maintain, preserve and renew all the rights and powers provided to it by the Act.

2. The Department shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Department under the provisions of the Act, as amended and supplemented, the Indenture and any other law or regulation applicable to the Department.

SECTION 705. Limitations on Mortgage Loans. 1. Each Mortgage Loan made, acquired or refinanced by the Department from amounts in the Mortgage Loan Fund shall satisfy the following requirements as of the date of the making, acquisition or refinancing thereof:

(1) Each Mortgage Loan shall be a loan to provide financing, whether interim or permanent or both, for the acquisition, construction, rehabilitation or improvement of residential housing consisting of a one- to four-unit dwelling located within the State of Texas which is to be owned and occupied by persons and families of low income and families of moderate income, as determined by the Department in accordance with the Act.

(2) Each Mortgage Loan shall comply in all respects with the applicable requirements of the Act and the Series Supplement applicable to the Bonds the proceeds of which are used, directly or indirectly, to make, acquire or refinance such Mortgage Loan.

(3) Each Mortgage Loan shall be secured by a Mortgage that creates a first or subordinate lien on real property located within the State of Texas; provided, however, that each Mortgage Loan related to a cooperative dwelling unit shall be secured by a lien on the related shares of stock in the cooperative housing corporation and the proprietary lease related to the financed premises.

(4) Each Mortgage Loan: (i) shall be insured by the FHA under the National Housing Act of 1934, as amended (other than Section 245 thereof), guaranteed by the RD under the Cranston-Gonzales National Affordable Housing Act of 1990 or guaranteed by the VA under the Servicemen's Readjustment Act of 1944, as amended; or (ii) shall have (or have had at the time it was made) a principal balance not exceeding 80% of the purchase price or appraised value on the date of purchase, whichever is lower, of the mortgaged property, or be insured to the extent of any such excess by a private mortgage insurance company acceptable to each Rating Agency.

(5) Each Mortgage Loan shall have such other characteristics or be secured by such Supplemental Mortgage Security (as shall be specified in a Supplemental Indenture) such that the making, acquisition or refinancing thereof under the Indenture and the inclusion thereof as part of the Trust Estate will not impair, in and of itself, any rating on the Bonds then in effect, as evidenced by a letter from each Rating Agency.

2. Each Mortgage Loan shall be covered by a valid and subsisting title insurance policy, the benefits of which run to the Department, on the current standard American Land Title Association mortgage insurance form, or other form acceptable to the Trustee issued by a title insurer licensed to do business in the State of Texas, in an amount at least equal to the outstanding principal balance of the Mortgage Loan and the improvements on the real property securing each Mortgage Loan shall be covered by a valid and subsisting policy of hazard insurance, in an amount sufficient to compensate the mortgagee under the Mortgage Loan for a loss equal to the full amount of the unpaid balance of the Mortgage Loan and by a policy of flood insurance, if in the flood plain, in such amount as the Department deems advisable.

3. The Department shall file or record or cause to be filed or recorded such instruments as shall be necessary to vest fully in the Department legal title to all Mortgage Loans made,



acquired or refinanced with proceeds of the Bonds and all rights with respect to such Mortgage Loans.

4. This Section 705 shall not apply to any Mortgage Loans that have been or are intended to be pooled into Mortgage Certificates.

SECTION 706. Enforcement of Mortgage Loans. 1. The Department shall diligently enforce, and take all reasonable steps, actions and proceedings necessary for the enforcement of, all terms, covenants and conditions of all Mortgage Loans, including the prompt payment of all amounts due the Department thereunder. The Department shall not release the obligations of any Borrower under any Mortgage Loan (except upon the execution of a valid assumption agreement with respect to a Mortgage Loan) and shall at all times, to the extent permitted by law, defend, enforce, preserve and protect the rights and privileges of the Department and of the Bondholders under or with respect to each Mortgage Loan; provided that the Department shall have the power and authority to settle a default on any Mortgage Loan on such terms as are consistent with the Cashflow Statement most recently filed with the Trustee.

2. Whenever it shall be necessary in order to protect and enforce the rights of the Department under a Mortgage Loan and to protect and enforce the rights and interests of Bondholders under the Indenture, the Department shall take steps to enforce any policy or certificate of primary mortgage insurance or guaranty or any Supplemental Mortgage Security relating to such Mortgage Loan and to foreclose the Mortgage or enforce the security interest and to collect, hold and maintain or to sell or otherwise dispose of the property securing the Mortgage Loan which is in default under the provisions of such Mortgage Loan and if the Department deems such to be advisable, shall bid for and purchase such property at any sale thereof and acquire and take possession of such property.

3. This Section 706 shall not apply to any Mortgage Loans that have been or are intended to be pooled into Mortgage Certificates.

SECTION 707. Assignment or Disposition of Mortgage Loans or Mortgage Certificates. The Department may, at its election, sell, assign, transfer or otherwise dispose of any Mortgage Loan or Mortgage Certificate, in whole or in part, or any of the rights of the Department with respect to any Mortgage Loan or Mortgage Certificate, in whole or in part, free and clear of the lien of the Indenture, but only if a Cashflow Statement establishes that such sale, assignment, transfer or other disposition will not adversely affect the ability of the Department to pay when due the principal or Redemption Price of and interest on the Bonds and the Rating Agencies shall have confirmed that such sale, assignment, transfer or other disposition will not have an adverse effect on the rating on the Bonds. The Department may also sell any Mortgage Loan, Mortgage Certificate or other obligation evidencing or securing a Mortgage Loan if it is necessary for the Department to take such action in order to maintain the exclusion of interest from gross income for federal income tax purposes on any of the Bonds.

SECTION 708. Amendment of Mortgage Loans. The Department shall not consent or agree to or permit any amendment or modification of any Mortgage Loan which will in any manner materially impair or materially adversely affect the rights or security of the Bondholders under the Indenture in such Mortgage Loan except for amendments and modifications made in

connection with settling any default on any Mortgage Loan which are consistent with the Cashflow Statement most recently filed with the Trustee, or in connection with a refinancing of a Mortgage Loan.

SECTION 709. Limitations on Mortgage Lenders. The Department covenants that each Mortgage Lender selected for participation in the Program shall be approved by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation for the type of Mortgage Loans to be originated and serviced by such Mortgage Lender, or an institution the deposits of which are insured by the FDIC.

SECTION 710. Mortgage Loan Servicing Requirements. The Department covenants that each Mortgage Lender selected for participation in the Program that services Mortgage Loans under the Program shall be required to enter into an agreement or agreements containing the following servicing requirements relating to the Mortgage Loans:

(1) Each Mortgage Lender shall be required to service the Mortgage Loans originated and sold by it to the Department, unless the Department directs the assignment of such servicing to another Mortgage Lender.

(2) The Mortgage Loans shall be required to be serviced in accordance with the servicing standards set forth in the Federal National Mortgage Association Home Mortgage Servicer's Contract Supplement or the Federal Home Mortgage Corporation's Servicer's Guide, except as such standards are modified by the Department.

(3) Each Mortgage Lender shall be required to provide a performance bond from an insurer acceptable to the Department and in an amount acceptable to the Department.

(4) Each Mortgage Lender shall be required to provide the Department with audited financial statements on an annual basis and with monthly reports relating to Mortgage Loan originations and purchases, Mortgage Loan remittances, and Mortgage Loan delinquencies and foreclosures.

(5) Each Mortgage Lender shall be entitled to compensation for servicing Mortgage Loans in the form of a monthly servicing fee in an amount to be determined by the Department.

(6) All moneys collected by each Mortgage Lender pertaining to Mortgage Loans serviced by it may be deposited into a clearing account maintained by the Mortgage Lender; provided, however, all Revenues shall be required to be received in trust by the Mortgage Lender and shall be required to be deposited promptly to a custodial account insured by the FDIC on a daily basis subject to withdrawal on demand of the Trustee on behalf of the Department at any time.

(7) Each Mortgage Lender shall be required to remit to the Trustee, for deposit into the Revenue Fund, after deduction of its servicing fee, on or before the fifteenth day of each calendar month all moneys deposited or held in the custodial account established by such Mortgage Lender from the first day of such month through the tenth day of such

month, and on or before the fifth business day of each calendar month all moneys deposited or held in such custodial account on or before the last day of the preceding calendar month that have not been remitted to the Trustee, except that (i) any Mortgage Loan amount representing insurance proceeds shall be held in such custodial account pending the determination of whether such moneys shall be applied to the repair or the related property or constitute Mortgage Loan Principal Prepayments; (ii) any Mortgage Loan Principal Prepayment representing payment in full of a Mortgage Loan shall be remitted within five business days after receipt by the Mortgage Lender; and (iii) if at any time the amount in such custodial account shall exceed the lesser of \$100,000 or the amount then insured by the FDIC, as applicable, the Mortgage Lender shall be required to remit such amount immediately to the Trustee.

(8) A Mortgage Lender shall not be permitted to resign from its servicing duties unless a successor has been appointed and has assumed such Mortgage Lender's servicing duties and has agreed to perform such duties for the same or a lower servicing fee than the servicing fee theretofore received by such Mortgage Lender.

(9) Each Mortgage Lender shall be subject to removal from its servicing duties by the Department for cause, which shall include (A) any failure to remit Mortgage Loan payments to the Trustee as required by such agreement, (B) any failure to comply with other requirements of such agreement and failure to cure such noncompliance after reasonable notice and opportunity to cure, (C) the occurrence of a delinquency rate with respect to the Mortgage Loans serviced by such Mortgage Lender that is more than twice the delinquency rate under the Program or other comparable Department programs, and (D) the occurrence of an event of bankruptcy, insolvency or receivership with respect to such Mortgage Lender; provided, however, that such removal shall not take effect, unless the Department has assumed such Mortgage Lenders servicing responsibilities or has appointed a successor servicer and such successor has assumed such Mortgage Lender's servicing duties and has agreed to perform such duties for the same servicing fee theretofore received by such Mortgage Lender.

SECTION 711. Cashflow Statements and Cashflow Certificates. 1. Each Cashflow Statement shall consist of a written statement prepared or verified by a nationally-recognized firm having experience in preparation of mortgage revenue bond cashflows that is acceptable to the Rating Agencies, and signed by an Authorized Representative of the Department, setting forth for the then-current and each succeeding Bond Year in which Bonds are scheduled to be Outstanding a schedule of all anticipated Revenues and of all amounts expected to be withdrawn from the Funds to pay the scheduled debt service on the Bonds and to pay Department Expenses, together with a schedule of such debt service and such Department Expenses, which statement shall demonstrate the sufficiency of such Revenues to pay such scheduled debt service and such Department Expenses and to maintain the funding of the Debt Service Reserve Fund and the Mortgage Reserve Fund at the Debt Service Reserve Fund Requirement and the Mortgage Reserve Fund Requirement, respectively, and which certificate shall state the assumptions upon which the schedules and projections therein are based, which shall include the following:

- (1) the timing and amounts of Mortgage Loan Principal Prepayments;

- (2) the timing of the acquisition of Mortgage Loans or Mortgage Certificates;
- (3) the future issuance or remarketing of Bonds;
- (4) the timing and amounts of the receipt of payments of scheduled principal of and interest on Mortgage Loans and Mortgage Certificates;
- (5) the investment return on Funds and Accounts; and
- (6) availability of amounts in the Mortgage Reserve Fund and the Debt Service Reserve Fund.

2. The Department shall file a Cashflow Statement with the Trustee: (i) upon the issuance of a Series of Bonds; (ii) upon the adjustment of the interest rate or rates on a Series of Bonds, unless otherwise required by the applicable Series Supplement; (in) upon the purchase or redemption of Bonds other than as assumed in the Cashflow Statement most recently filed with the Trustee; (iv) upon the application of Mortgage Loan Principal Payments other than as assumed in the Cashflow Statement most recently filed with the Trustee; (v) upon the application of amounts in the Residual Revenues Fund other than as assumed in the Cashflow Statement most recently filed with the Trustee; (vi) upon the application of excess amounts in the Debt Service Reserve Fund or the Mortgage Reserve Fund other than as assumed in the Cashflow Statement most recently filed with the Trustee; (vii) at such times if any, as may be required by a Supplemental Indenture; and (viii) not later than two and one-half years after the date of filing of the most recent Cashflow Statement. The Department, at its option, may file a revised or amended Cashflow Statement with the Trustee at any time.

3. The Department covenants not to make, acquire or refinance Mortgage Loans or Mortgage Certificates, redeem or purchase Bonds, or otherwise take any action permitted to be taken under the Indenture, unless such action is consistent with the assumptions set forth in the Cashflow Statement most recently filed with the Trustee. The Department shall file a Cashflow Certificate with the Trustee from time to time as required by the terms of the Indenture.

SECTION 712. Accounts and Reports; Audits. 1. The Department shall keep proper books of records and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions in accordance with generally accepted accounting principles. Such books, and all other books and papers of the Department, shall, to the extent permitted by law, at all times be subject to the inspection of the Trustee or the Holders of an aggregate of not less than five percent in aggregate Principal Amount of the Bonds then Outstanding, or their duly authorized representatives. The Department shall permit the Trustee, such Bondholders, and their agents, auditors, attorneys and counsel, at all reasonable times, to make copies and extracts from the books of record and account, and will from time to time furnish, or cause to be furnished, to the Trustee such information and statements as the Trustee may reasonably request, all as may be reasonably necessary for the purpose of determining performance or observance by the Department of the covenants, conditions and obligations contained in this Indenture.

2. The Trustee shall advise the Department promptly after the end of each month of its transactions during such month relating to the Funds.

3. The Department shall annually, [within 180 days after the close of each Bond Year], file with the Trustee (with a copy to each Rating Agency), and otherwise as provided by law, a copy of an annual report for such year, accompanied by a certificate signed by an independent certified public accountant of recognized national standing or a firm of certified public accountants or recognized national standing, selected by the Department, who may be the accountant or firm of accountants who regularly audits the books of the Department. Such annual report shall include the following statements in reasonable details: (i) a statement of financial position [as of the end of such Bond Year]; and (ii) a statement of Revenues and Department Expenses [for such Bond Year]. The Department shall also have the State Auditor of the State of Texas prepare such reports as may be required by law.

SECTION 713. Creation of Liens. The Department shall not issue any bonds or other evidences of indebtedness, other than the Bonds, secured by a lien on or a pledge of the Trust Estate and shall not create or cause to be created or suffer to exist any lien, pledge, mortgage, security interest, charge or encumbrance on the Trust Estate unless such lien or pledge is subordinate or junior to the lien and pledge of the Trust Estate to the Bonds; provided, however, that nothing in the Indenture shall prevent the Department from issuing bonds, notes or other obligations (i) secured by a lien or pledge of the Trust Estate (including the Revenues) that is junior or subordinate to the lien and pledge of the Trust Estate securing the Bonds, or (ii) secured by a pledge of the Revenues to be derived on and after the date on which the pledge of the Revenues provided in the Indenture shall be discharged and satisfied as provided in Article XI. The Department specifically reserves the right to make such covenants with the holders of such bonds, notes or other obligations (not in violation with the Indenture) concerning the Trust Estate as the Department deems advisable.

SECTION 714. Further Assurances. At any and all times the Department shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further indentures, resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming the Mortgage Loans, Trust Estate, Revenues, Funds, Investment Securities held in any Fund, and the Department's right, title and interest in and to the foregoing, and all other moneys, securities and funds hereby pledged or assigned, or intended so to be, or which the Department may become bound to pledge or assign.

SECTION 715. Personnel and Servicing of Program. 1. The Department shall at all times appoint, retain and employ competent personnel for the purpose of carrying out the Program and shall establish and enforce reasonable rules, regulations, tests and standards governing the employment of such personnel at reasonable compensation, salaries, fees and charges and all persons employed by the Department shall be qualified for their respective positions.

2. The Department may pay to any Person such amounts as are necessary to reimburse such Person for the reasonable costs of any services performed for the Department.

SECTION 716. Right to Adopt Other Bond Resolutions and Indentures. The Department expressly reserves the right to adopt one or more other bond resolutions or indentures including those for programs similar to the Program and reserves the right to issue other obligations

so long as the same are not on a parity with or superior to the lien on and pledge of the Revenues or the Trust Estate.

SECTION 717. Pledge of the State of Texas. The Department, acting on behalf of the State of Texas and pursuant to Section 2306.451(b) of the Act, hereby pledges and agrees, on behalf of the State of Texas, that the State of Texas will not limit or alter the rights of the Department to fulfill the terms of this Indenture or in any way impair the rights and remedies of the Bondholders until the Bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any proceeding by or on behalf of the Bondholders, are fully met and discharged.

SECTION 718. Notice to Rating Agencies. The Department shall give written notice to each Rating Agency, by registered or certified mail, at least 30 days (or such shorter period as may be acceptable to such Rating Agency) prior to the occurrence of any of the following events:

- (a) the issuance of a Series of Bonds;
- (b) the execution and delivery of any Supplemental Indenture;
- (c) the filing of a Cashflow Statement by the Department with the Trustee;
- (d) the modification or amendment of any Supplemental Mortgage Security;
- (e) the resignation or removal of the Trustee or any Depository; and
- (f) the appointment of a successor Trustee or successor Depository.

[END OF ARTICLE VII]

## ARTICLE VIII.

### DEFAULT AND REMEDIES

SECTION 801. Remedies. Subject to the provisions of the Indenture, the Bondholders and the Trustee acting for all of the Bondholders shall be entitled to all of the rights and remedies provided in the Act, as amended and supplemented to the date of adoption of this Indenture, and to all of the rights and remedies otherwise provided or permitted by law.

SECTION 802. Events of Default. Each of the following events is hereby declared an “Event of Default” under the Indenture:

(i) if default shall be made in the due and punctual payment of the Principal Amount or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity or by redemption, or otherwise;

(ii) if default shall be made in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(iii) if default shall be made by the Department in the performance or observance of any other of the covenants, agreements or conditions on its part contained in the Indenture or in the Bonds, and such default shall continue for a period of 60 days after written notice thereof to the Department by the Trustee or to the Department and to the Trustee by the Holders of not less than 10% in aggregate Principal Amount of the Bonds Outstanding;

(iv) if the Department shall: (a) file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, arrangement, readjustment or composition of its debts or for any other relief under the federal bankruptcy laws or under any other insolvency act or law, state or federal, now or hereafter existing; (b) take any action indicating its consent to, approval of, or acquiescence in, any such petition or proceeding; (c) apply for, or consent or acquiesce in the appointment of, a receiver or a trustee of the Department or for all or a substantial part of its property; (d) make an assignment for the benefit of creditors or (e) be unable, or admit in writing its inability, to pay its debts as they mature; or

(v) if proceedings shall be commenced against the Department, without its authorization, consent or application, in bankruptcy or seeking reorganization, arrangement, readjustment or composition of its debts or for any other relief under the Federal bankruptcy laws or under any other insolvency act or law, State or Federal, now or hereafter existing, or seeking the involuntary appointment of a receiver or trustee of the Department or for all or a substantial part of its property, and the same shall continue for 90 days undismissed or undischarged or shall result in the adjudication of bankruptcy or insolvency.

SECTION 803. Notice of Default. Except as provided in Section 802, the Trustee shall not be required to give notice to the Department of any Event of Default hereunder; provided, however, that upon written request of the holders of not less than 25% in aggregate Principal Amount of the Bonds then Outstanding, the Trustee shall give written notice to the Department of any default or breach constituting an Event of Default under subparagraph (v) of Section 802 of this Indenture.

SECTION 804. Acceleration. If an Event of Default hereunder shall occur and be continuing, then the Trustee may and, upon the written request of the Holders of not less than 25% in aggregate Principal Amount of the Bonds then Outstanding, shall, by written notice delivered to the Department, declare the Principal Amount of the Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such Principal Amount and interest shall thereupon become and be immediately due and payable; subject, however, to the right of the Holders of more than 50% in aggregate Principal Amount of the Bonds then Outstanding, by written notice to the Department and to the Trustee, to annul such declaration and destroy its effect at any time if all arrears of interest upon such Bonds and the Principal Amount or Redemption Price of all Bonds then Outstanding which shall have become due and payable otherwise than by acceleration, and all other sums payable under this Indenture, except the Principal Amount of and interest on the Bonds which by such declaration shall have become due and payable, shall have been paid by or on behalf of the Department or provision satisfactory to the Trustee shall be made for such payment, and the reasonable expenses of the Trustee and of the Holders of such Bonds shall have been paid, including reasonable attorneys' fees paid or incurred, and all defaults under the Bonds or under this Indenture, except as to the payment of the Principal Amount and interest due and payable solely by reason of such declaration, shall be made good or provision deemed by the Trustee to be adequate shall be made therefor. Such annulment shall not extend to nor affect any subsequent Event of Default nor impair or exhaust any right or power consequent thereon.

SECTION 805. Other Actions by Trustee. If an Event of Default hereunder shall occur and be continuing, then the Trustee may and, upon the written request of the Holders of not less than 25% in aggregate Principal Amount of the Bonds then Outstanding, shall:

- (a) by mandamus or other suit, action or proceeding at law or in equity require the Department to perform its covenants, representations and duties under this Indenture;
- (b) bring suit upon the Bonds;
- (c) by action or suit in equity require the Department to account as if it were the trustee of an express trust for the Holders of the Bonds;
- (d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Holders of the Bonds; or
- (e) take such other steps to protect and enforce its rights and the rights of the Holders of the Bonds, whether by action, suit or proceeding in aid of the execution of any power herein granted or for the enforcement of any other appropriate legal or equitable remedy.



SECTION 806. Judicial Proceedings. If an Event of Default hereunder shall occur and be continuing, then the Trustee may, and upon written request by the Holders of not less than 25% in aggregate Principal Amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction, shall, proceed by suit or suits, at law or in equity or by any other appropriate legal or equitable remedy, to enforce payment of the principal of and interest on the Bonds under a judgment or decree of a court or courts of competent jurisdiction or by the enforcement of any other appropriate legal or equitable remedy, as the Trustee shall deem most effectual to protect and enforce any of its rights or the rights of the Bondholders hereunder.

SECTION 807. Application of Proceeds. The proceeds received by the Trustee pursuant to the exercise of any right or remedy under this Article VIII shall, together with all securities and other moneys which may then be held by the Trustee as a part of the Trust Estate, be applied in order, as follows:

(1) to the payment of the reasonable and proper charges, expenses and liabilities of the Trustee;

(2) to the payment of the interest and Principal Amount then due on the Bonds, subject to the provisions of Section 702, as follows:

(a) unless the Principal Amount of all the Bonds shall have become or have been declared due and payable,

First: To the payment to the Persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the Persons entitled thereto, without any discrimination or preference;

Second: To the payment to the Persons entitled thereto of the unpaid Principal Amount or Redemption Price of any Bonds which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the Principal Amounts or Redemption Prices due on such date, to the Persons entitled thereto, without any discrimination or preference; and

(b) If the Principal Amount of all the Bonds shall have become or have been declared due and payable, to the payment of the Principal Amount and interest then due and unpaid upon the Bonds without preference or priority of Principal Amount over interest or of interest over Principal Amount, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for Principal Amount and interest, to the Persons entitled thereto without any discrimination or preference; and

(3) to the payment of the amounts required for reasonable and necessary Department Expenses.

SECTION 808. Appointment of Receivers. If an Event of Default hereunder shall occur and be continuing, and upon filing of a bill in equity or commencement of other judicial proceedings to enforce the rights of the Trustee and the Bondholders hereunder, the Trustee shall be entitled as a matter of right, and to the extent permitted by law, to the appointment of a receiver or receivers of the Trust Estate, and the income, revenues, profits and use thereof pending such proceedings, with such powers as the court making such appointment shall confer.

SECTION 809. Trustee May Act Without Possession of Bonds. All rights of action under this Indenture or under any Bonds may be enforced by the Trustee without possession of any of the Bonds or the production thereof in any trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustee shall be brought in its name, as Trustee for the ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

SECTION 810. Trustee as Attorney in Fact. The Trustee is hereby appointed (and the Holders of the Bonds, by taking and holding same from time to time, shall be deemed to have so appointed the Trustee) the true and lawful attorney in fact of the Holders of the Bonds, with authority to make or file, in the names of the Holders of the Bonds, or on behalf of all Holders of the Bonds as a class, any proof of debt, amendment to proof of debt, petition or other document, and to do and perform any and all acts and things for and in the name of the Holders of the Bonds as a class as may be necessary or advisable, in the judgment of the Trustee, in order to have the claims of the Holders of the Bonds against the Department allowed in any equity receivership, insolvency, liquidation, bankruptcy, reorganization or other proceedings to which the Department shall be a party and to receive payment of or on account of such claims. Any such receiver, assignee, liquidator or trustee is hereby authorized by each of the Bondholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Bondholders, to pay to the Trustee any amount due for compensation and expenses of the Trustee, including counsel fees, incurred up to the date of such distribution, and the Trustee shall have full power of substitution and delegation in respect of any such powers; provided, however, that nothing herein contained shall be deemed to authorize and empower the Trustee to take any of the foregoing actions upon behalf of any Holder of any Bond issued hereunder who shall take such action in his own behalf individually or through other agents or attorneys, or to consent to, or accept or adopt, on behalf of any Holder of any Bond, any plan of reorganization or readjustment of the Department affecting the Bonds.

SECTION 811. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds, or now or hereafter existing at law or in equity or by statute.

SECTION 812. Limitation on Suits. All rights of action in respect of this Indenture shall be exercised only by the Trustee, and no Holder of any Bond issued hereunder shall have any right to institute any suit, action or proceeding at law or in equity for the appointment of a receiver or for any other remedy hereunder or by reason hereof, unless and until the Trustee shall have received a written request of the Holders of not less than 25% in aggregate Principal Amount of

the Bonds then Outstanding and shall have been furnished indemnity satisfactory to it and shall have refused or neglected for ten days thereafter to institute such suit, action or proceedings. The making of such request and the furnishing of such indemnity shall in each and every case be conditions precedent to the execution and enforcement by any Holder of any Bond of the powers and remedies given to the Trustee hereunder and to the institution and maintenance by any such Holder of any action or cause of action for the appointment of a receiver or for any other remedy hereunder, but the Trustee may, in its discretion, and when thereunto duly requested in writing by the Holders of not less than 25% in aggregate Principal Amount of the Bonds then Outstanding and when furnished indemnity satisfactory to protect it against expenses, charges and liability shall take such appropriate action by judicial proceedings or otherwise in respect of any existing default on the part of the Department as the Trustee may deem expedient in the interest of the Holders of the Bonds.

Nothing contained in this Article VIII, however, shall affect or impair the right of any Bondholder, which shall be absolute and unconditional, to enforce the payment of the Principal Amount or Redemption Price of and interest on the Bonds of such Holder, but only out of the moneys for such payment as herein provided, or the obligation of the Department, which shall also be absolute and unconditional, to make payment of the Principal Amount or Redemption Price of and interest on the Bonds, but only out of the funds provided herein for such payment, to the respective Holders thereof at the time and place stated in the Bonds.

SECTION 813. Right of Holders of the Bonds to Direct Proceedings. Notwithstanding any provision of this Indenture to the contrary, the Holder or Holders of more than 50% in aggregate Principal Amount of the Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the pursuit or exercise of any remedy available to the Trustee or any trust or power conferred on the Trustee or any other proceedings hereunder; provided, however, that such direction shall not be contrary to law or the provisions of this Indenture, and the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceeding so directed would involve it in personal liability or would be unjustly prejudicial to the Holders of the Bonds not consenting.

SECTION 814. Restoration of Rights and Remedies. If the Trustee or any Holder of a Bond has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder of a Bond, then and in every such case, the Department, the Trustee and the Holders of the Bonds, subject to any determination in such proceeding, shall be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Holders of the Bonds shall continue as though no such proceeding had been instituted.

SECTION 815. Waiver of Stay or Extension Laws. To the extent that it may lawfully do so, the Department covenants that it will not at any time insist upon, plead or in any manner whatsoever claim or take the benefit of advantage of any stay or extension law, whenever or wherever enacted, which may affect the covenants or the performance of this Indenture. The

Department also covenants that it will not otherwise hinder, delay or impede the execution of any power herein granted to the Trustee.

SECTION 816. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Bond to exercise any right or remedy accruing upon any Event of Default hereunder shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VIII or by law to the Trustee or to the Bondholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Bondholders, as the case may be.

SECTION 817. Department to Deliver Trust Estate. The Department covenants that if an Event of Default shall occur and be continuing, the Department, upon demand of the Trustee, shall deliver to the Trustee any portion of the Trust Estate not then in the possession of the Trustee and shall pay over to the Trustee (i) forthwith, all moneys, securities and funds then held by the Department in any Fund, and (ii) as promptly as practicable after receipt thereof, all Revenues.

SECTION 818. Notice to Bondholders of Default. The Trustee promptly shall give notice, by registered or certified mail, postage prepaid, to each Bondholder, of the occurrence of any Event of Default.

[END OF ARTICLE VIII]

**ARTICLE IX.  
CONCERNING THE FIDUCIARIES**

SECTION 901. Trustee Appointment and Acceptance of Duties. The Bank of New York Mellon Trust Company, N.A. is the current Trustee. The Trustee shall signify its acceptance of the duties and obligations imposed upon it by the Indenture by executing the certificate of authentication endorsed upon the Bonds, and by executing such certificate upon any Bond the Trustee shall be deemed to have accepted such duties and obligations not only with respect to the Bond so authenticated, but with respect to all the Bonds thereafter to be issued, but only, however, upon the terms and conditions set forth in the Indenture.

SECTION 902. Responsibilities of the Trustee. 1. The recitals of fact herein and in the Bonds contained shall be taken as the statements of the Department and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of the Indenture or of any Bonds issued thereunder or as to the security afforded by the Indenture, and the Trustee shall not incur any liability in respect thereof. The Trustee shall be responsible, however, for its representations contained in its certificate on the Bonds. The Trustee shall not be under any responsibility or duty with respect to the application of any moneys paid to the Department. The Trustee shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own moneys, unless properly indemnified. Subject to the provisions of subsection 2 of this Section 902, the Trustee shall not be liable in connection with the performance of its duties hereunder except for its own negligence, misconduct or default.

2. The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in the Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. Any provision of the Indenture relating to action taken or to be taken by the Trustee or the evidence upon which the Trustee may rely shall be subject to the provisions of this Section 902.

SECTION 903. Evidence on Which the Trustee May Act. 1. The Trustee, upon receipt of any notice, indenture, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document furnished to it pursuant to any provision of the Indenture, shall examine such instrument to determine whether it conforms to the requirements of the Indenture and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may or may not be counsel to the Department, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under the Indenture in good faith and in accordance therewith.

2. Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under the Indenture, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed conclusively to be proved and established by a certificate of an Authorized Representative of the Department, and

such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of the Indenture upon the faith thereof; but in its discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable.

3. Except as otherwise expressly provided in the Indenture, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the Department to the Trustee shall be sufficiently executed if executed in the name of the Department by an Authorized Representative of the Department.

SECTION 904. Compensation. The Department shall pay to the Trustee from time to time reasonable compensation for all services rendered under the Indenture, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under the Indenture. Subject to the provisions of Section 902, the Department further agrees, to the extent permitted by law, to indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to its negligence, misconduct or default. The Department also shall pay reasonable compensation to any other Fiduciaries for their services.

SECTION 905. Certain Permitted Acts. The Trustee may become the Holder of any Bonds, with the same rights it would have if it were not the Trustee. To the extent permitted by law, the Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or the Indenture, whether or not any such committee shall represent the Holders of a majority in aggregate Principal Amount of the Bonds then Outstanding.

SECTION 906. Resignation of Trustee. The Trustee may at any time resign and be discharged of the duties and obligations created by the Indenture by giving not less than 60 days' written notice to the Department of the date it desires to resign, and by giving written notice thereof, specifying the date when such resignation shall take effect, by registered or certified mail, postage prepaid, to each Bondholder, and such resignation shall take effect immediately on the appointment and acceptance of a successor Trustee pursuant to Section 908 hereof.

SECTION 907. Removal of Trustee. The Trustee may be removed, with or without cause, at any time by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the Holders of at least a majority in aggregate Principal Amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized. In addition, the Trustee may be removed, with or without cause, at any time (unless an Event of Default has occurred and is continuing) by a written instrument filed with the Trustee and signed by an Authorized Representative of the Department, stating that the governing board of the Department has adopted a resolution providing for the removal of the Trustee and the appointment of a successor Trustee; provided, however, that such written instrument shall not be effective unless the Department shall have given written notice of such proposed action, by registered or certified mail, postage prepaid, to each Bondholder, and the Department shall not have received, within the [60-day period] following the giving of such notice, written objections to such proposed action from the Holders of at least a majority in

aggregate Principal Amount of the Bonds then Outstanding, all of which shall be recited in such written instrument.

SECTION 908. Appointment of Successor Trustee. 1. In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjusted a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, a successor may be appointed by the Holders of at least a majority in aggregate Principal Amount of the Bonds then Outstanding, excluding any Bonds held by or for the account of the Department, by an instrument or concurrent instruments in writing signed and acknowledged by such Bondholders or by their attorneys-in-fact duly authorized and delivered to such successor Trustee, notification thereof being given to the Department and the predecessor Trustee; provided, nevertheless, that unless a successor Trustee shall have been appointed by the Bondholders as aforesaid, the Department by duly executed written instrument signed by an Authorized Representative of the Department shall forthwith appoint a Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders as authorized in this Section 908. The Department shall give written notice of any such appointment made by it, within 20 days after such appointment, by registered or certified mail, postage prepaid, to each Bondholder. Any successor Trustee appointed by the Department shall be superseded, immediately and without further act, by a Trustee appointed by the Bondholders.

2. If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section 908 within 45 days after the Trustee shall have given to the Department written notice as provided in Section 906 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, its removal, or for any other reason whatsoever, the Trustee (in the case of a resignation under Section 906) or the Holder of any Bond (in any case) may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

3. Any Trustee appointed under the provisions of this Section 908 in succession to the Trustee shall be a bank or trust company organized under the laws of the United States of America or any state thereof or a national banking association, and having capital stock and surplus aggregating at least \$75,000,000, which is willing and able to accept the office on reasonable and customary terms and which is authorized by law to perform all the duties imposed upon it by this Indenture.

SECTION 909. Transfer of Rights and Property to Successor Trustee. Any successor Trustee appointed under the Indenture shall execute, acknowledge and deliver to its predecessor Trustee, and also to the Department, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee; but the Trustee ceasing to act shall nevertheless, on the written request of the Department, or of the successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in

and to any property held by it under the Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Department be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the Department. Any such successor Trustee shall promptly notify the Paying Agents of its appointment as Trustee.

SECTION 910. Merger or Consolidation. Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States of America or a national banking association, and shall be authorized by law to perform all the duties imposed upon it by the Indenture, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

SECTION 911. Adoption of Authentication. In case any of the Bonds contemplated to be issued under the Indenture shall have been authenticated but not delivered, any successor Trustee may adopt the certificate of authentication of any predecessor Trustee so authenticating such Bonds and deliver such Bonds so authenticated; and in case any of such Bonds shall not have been authenticated, any successor Trustee may authenticate such Bonds in the name of the predecessor Trustee, or in the name of the successor Trustee, and in all such cases such certificate shall have the full force which it is anywhere in said Bonds or in the Indenture provided that the certificate of the Trustee shall have.

SECTION 912. Paying Agents. 1. The Department shall appoint one or more Paying Agents for the Bonds of each Series. Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by the Indenture by executing and delivering to the Department and to the Trustee a written acceptance thereof. Any Paying Agent appointed by the Department shall be a bank or trust company organized under the laws of the United States of America or any state thereof or a national banking association and having capital stock and surplus of at least \$50,000,000 which the Department determines to be capable of properly discharging its duties in such capacity and which is acceptable to the Trustee. The Department may appoint the Trustee as a Paying Agent.

2. Any Paying Agent may resign at any time and be discharged of the duties and obligations created by the Indenture by giving at least 60 days' written notice to the Department, the Trustee, and the other Paying Agents. Any Paying Agent may be removed at any time by an instrument filed with such Paying Agent and the Trustee and signed by the Department.

3. In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.



SECTION 913. Bond Depository. 1. The Department may appoint or designate a Bond Depository for the Bonds of one or more Series. In such event, the Department, the Bond Depository and the Trustee shall enter into a written agreement setting forth the respective duties and obligations of each with respect to such Bonds, which agreement shall provide that the Bond Depository will accept and hold such Bonds as the registered owner thereof and will maintain a book-entry system of recording the ownership and transfer of ownership of beneficial interests in such Bonds.

2. In the event that the Department appoints a Bond Depository for one or more Series of Bonds, the Department shall cause the initial purchaser of such Bonds to register such Bonds in the name of the Bond Depository or its nominee and to deposit such Bonds with the Bond Depository. Except as provided in subsection 3 of this Section 913, the Department and the Trustee shall be entitled to treat the Bond Depository as the absolute owner of such Bonds for all purposes of the Indenture, and neither the Department and the Trustee shall have any responsibility to the owners of beneficial interests in the Bonds. For so long as such Bonds remain registered in the name of the Bond Depository or its nominee on the Bond registration books kept by the Trustee, such owners of beneficial interests in the Bonds shall not be treated as Bondholders pursuant to the provisions of the Indenture.

3. If the Department shall have appointed a Bond Depository with respect to the Bonds of one or more Series, and if any of the events specified below shall occur, then the Department shall execute and deliver to the Trustee, and the Trustee shall authenticate and deliver, pursuant to and in accordance with Article III of the Indenture, to each Person who appears on the records of the Bond Depository as an owner of a beneficial interest in such Bonds, an exchange Bond or Bonds, in any Authorized Denomination, of the same Series, maturity and interest rate and in the same aggregate Principal Amount, as the Bonds beneficially owned by such Person, as set forth in such records:

(i) if the Bond Depository determines not to continue to act as securities depository for such Bonds and the Department is unable to locate a qualified successor Bond Depository;

(ii) if the Department determines that the Bond Depository is incapable of properly discharging its duties as securities depository for such Bonds and is unable to locate a qualified successor Bond Depository;

(iii) if the Department determines that it is in the best interests of the Department to discontinue the book-entry method system of registration of ownership of beneficial interests in such Bonds provided by the Bond Depository;  
or

(iv) if the Department determines that the continuance of the book-entry system of registration of ownership of beneficial interests in such Bonds provided by the Bond Depository might adversely affect the interests of the owners of such beneficial interests in such Bonds.

Upon the occurrence of any of the foregoing events, the Department shall provide written notice of such event to the Trustee and the Bond Depository.

SECTION 914. Depositories. 1. The Department may appoint one or more Depositories to hold all or a designated portion of the moneys and investments subject to the lien and pledge of the Indenture (other than moneys and securities required to be held in the Interest Fund, the Principal Fund and the Special Redemption Fund). In such event, the Department, the Depository so appointed and the Trustee shall enter into a written agreement setting forth the respective duties and obligations of each with respect to such moneys and investments, which agreement shall provide that the Depository shall hold, manage, invest, disburse and administer such moneys and investments in accordance with the provisions of such agreement and the Indenture. Any Depository appointed by the Department shall be: (i) the State Comptroller, acting by and through the Texas Treasury Safekeeping Trust Company, a special-purpose corporate trust company organized under the laws of the State of Texas; or (ii) a bank or trust company organized under the laws of the United States of America or any state thereof and having capital stock and surplus of at least \$50,000,000 which the Department determines to be capable of properly discharging its duties in such capacity and which is acceptable to the Trustee.

2. All moneys and securities deposited with any Depository under the provisions of the Indenture shall be held in trust for the Trustee or the Department, as applicable, and the Bondholders, and shall not be applied in any manner that is inconsistent with the provisions of the Indenture.

3. Any Depository may at any time resign and be discharged of its duties and obligations under the Indenture by giving at least 60 days' written notice to the Department and the Trustee. Any Depository may be removed at any time by the Department by a written instrument filed with the Depository and the Trustee and signed by an Authorized Representative of the Department, stating that the Board of Directors of the Department has adopted a resolution providing for the removal of such Depository.

4. In the event of the resignation or removal of any Depository, such Depository promptly shall pay over, assign and deliver any moneys and investments held by it as Depository to the successor Depository appointed by the Department or, if the Department does not appoint a successor Depository, then to the Department, with the respect to moneys and securities required to be held in the Cost of Issuance Fund or the Expense Fund, and to the Trustee, with respect to all other moneys and securities.

[END OF ARTICLE IX]

## ARTICLE X.

### SUPPLEMENTAL INDENTURES

SECTION 1001. General Provisions Concerning Supplemental Indentures. 1. The Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to provisions of this Article X. Nothing in this Article X shall affect or limit the right or obligation of the Department to adopt, make, execute, acknowledge or deliver any indenture, resolution, act or other instrument pursuant to the provisions of Section 713 or the right or obligation of the Department to execute and deliver to the Trustee any instrument which elsewhere in the Indenture it is provided shall be delivered to the Trustee.

2. Each Supplemental Indenture, when filed by the Department with the Trustee, shall be accompanied by a Counsel's Opinion stating that such Supplemental Indenture has been duly and lawfully adopted by the Department in accordance with the provisions of the Indenture, is authorized or permitted by the Indenture, and is valid and binding upon the Department.

3. The Trustee is hereby authorized to accept the delivery of any Supplemental Indenture referred to and permitted or authorized by Section 1002 or 1003 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in taking such action, shall be fully protected in relying on an opinion of counsel (which may be a Counsel's Opinion) that such Supplemental Indenture is authorized or permitted by the provisions of the Indenture.

4. No Supplemental Indenture shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto.

5. Each Supplemental Indenture executed and delivered in accordance with this Article X shall thereafter form a part of the Indenture, and all of the terms and conditions in any such Supplemental Indenture thereafter shall be a part of the terms and conditions of the Indenture.

6. For purposes of this Article X, the rights of the Holder of a Bond or of the Holders of the Bonds of a Series shall be deemed to be affected by a modification or amendment of the Indenture if the same materially and adversely affects or diminishes the rights of such Holder or Holders. In each case, the Trustee shall determine whether or not any such modification or amendment affects the rights of such Holder or Holders, and such determination shall be binding and conclusive upon the Department and all Bondholders.

SECTION 1002. Supplemental Indentures Not Requiring Bondholder Consent. The Department and the Trustee, at any time and from time to time, without the consent of the Holders of any Bonds, may execute and deliver a Supplemental Indenture for any one or more of the following purposes:

1. To authorize Bonds of a Series and, in connection therewith, to specify and determine the matters and things referred to in Article III hereof and also any other matters and things relative to such Bonds which are not contrary to or inconsistent with this Indenture as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the original issuance of such Bonds;

2. To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in the Indenture;

3. To insert such provisions clarifying matters or questions arising under the Indenture as are necessary or desirable and are not contrary to or inconsistent with the Indenture as theretofore in effect;

4. To grant to or to confer upon the Trustee for the benefit of the Bondholder any additional rights, remedies, powers, authority or security that may be lawfully granted to or conferred upon the Trustee;

5. To close this Indenture or any Supplemental Indenture against, or provide limitations and restrictions in addition to the limitations and restrictions contained in this Indenture or any Supplemental Indenture on, the delivery of Bonds or the issuance of other evidences or indebtedness;

6. To add to the covenants and agreements of the Department in this Indenture or any Supplemental Indenture, other covenants and agreements to be observed by the Department which are not contrary to or inconsistent with this Indenture or the applicable Supplemental Indentures as theretofore in effect;

7. To add to the limitations and restrictions in this Indenture or any Supplemental Indenture other limitations and restrictions to be observed by the Department which are not contrary to or inconsistent with this Indenture or the applicable Supplemental Indenture as theretofore in effect;

8. To surrender any right, power or privilege reserved to or conferred upon the Department by the terms of the Indenture, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Department contained in the Indenture.

9. To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, the Indenture or any Supplemental Indenture, of the Trust Estate or of any other moneys, securities or funds;

10. To modify any of the provisions of this Indenture or any Supplemental Indenture in any respect whatever, provided that (i) such modification shall be, and be expressed to be, effective only after all Bonds of any Series Outstanding at the date of the adoption of such Indenture or Supplemental Indenture shall cease to be Outstanding; and (ii) such Supplemental Indenture shall be specifically referred to in the text of all Bonds of any Series delivered after the date of the adoption of such Supplemental Indenture and of Bonds issued in exchange therefor or in place thereof;

11. To modify, amend or supplement this Indenture or any Supplemental Indenture in such manner as to permit, if presented, the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar Federal statute hereafter in effect or under any state Blue Sky Law;

12. To add to the definition of Investment Securities pursuant to clause (xii) thereof; or
13. To make any other change in the Indenture which does not, in the opinion of the Trustee, materially and adversely affect the rights of the Holders of the Bonds.

SECTION 1003. Supplemental Indentures Requiring Bondholder Consent. The Department and the Trustee, at any time and from time to time, may execute and deliver a Supplemental Indenture for the purpose of making any modification or amendment to the Indenture, but only with the written consent given as provided in Section 1004, of the Holders of at least two-thirds in aggregate Principal Amount of the Bonds Outstanding at the time such consent is given, and in case less than all of the several Series of Bonds then Outstanding are affected by the modification or amendment, of the Holders of at least two-thirds in aggregate Principal Amount of the Bonds of each Series so affected and Outstanding at the time such consent is given; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any particular Series and maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section 1003. Notwithstanding the foregoing, no modification or amendment contained in any such Supplemental Indenture shall permit any of the following, without the consent of each Bondholder whose rights are affected thereby: (i) a change in the terms of maturity or redemption of any Bond or of any installment of interest thereon; (ii) a reduction in the Principal Amount or Redemption Price of any Bond or in the rate of interest thereon; (iii) the creation of a lien on or a pledge of the Revenues or any part thereof, other than the lien and pledge of this Indenture or as permitted by Section 713; (iv) the granting of a preference or priority of any Bond or Bonds over any other Bond or Bonds; or (v) a reduction in the aggregate Principal Amount or classes of Bonds of which the consent of the Holders is required to effect any such modification or amendment. Nothing in this Section 1003, however, shall be construed as requiring the consent of any Bondholder in connection with the execution and delivery of any Supplemental Indenture for any purpose described in Section 1002.

SECTION 1004. Consent of Bondholders. Each Supplemental Indenture executed and delivered pursuant to the provisions of Section 1003 shall take effect only when and as provided in this Section 1004. A copy of such Supplemental Indenture (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be sent by the Department to Bondholders by registered or certified mail, postage prepaid, provided that a failure to mail such request shall not affect the validity of the Supplemental Indenture when consented to as provided in this Section 1004. Such Supplemental Indenture shall not be effective unless and until there shall have been filed with the Trustee (i) the written consents of Holders of the percentages of Outstanding Bonds specified in Section 1003, and (ii) a Counsel's Opinion stating that such Supplemental Indenture has been duly and lawfully adopted and filed by the Department in accordance with the provisions of the Indenture, is authorized or permitted by the Indenture, and is valid and binding upon the Department and enforceable in accordance with its terms and is in accordance with the Indenture; provided, however, that such Counsel's Opinion may take exception for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors' rights generally. Any such consent shall be binding upon the Bondholder giving such consent and upon any subsequent Holder of such Bonds

and of any Bonds issued in exchange therefor or in lieu thereof (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Bondholder giving such consent or a subsequent Holder of such Bonds by filing such revocation with the Trustee prior to the time when the written statement of the Trustee provided for hereinafter in this Section 1004 is filed. The fact that a consent has not been revoked likewise may be proven by a certificate of the Trustee filed with the Department to the effect that no revocation thereof is on file with the Trustee. At any time after the Holders of the required percentages of Bonds shall have filed their consents to such Supplemental Indenture, the Trustee shall make and file with the Department and the Trustee a written statement that the Holders of the required percentages of Bonds have filed such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter, the Department may give written notice to the Bondholders, stating in substance that the Supplemental Indenture (which may be referred to as a Supplemental Indenture adopted by the Department on a stated date, a copy of which is on file with the Trustee) has been consented to by the Holders of the required percentages of Bonds and will be effective as provided in the Indenture, which notice shall be sent to Bondholders by registered or certified mail, postage prepaid. The Department shall file with the Trustee proof of the mailing of such notice. A record, consisting of the papers required or permitted to be filed with the Trustee by this Section 1004, shall be proof of the matters therein stated. Such Supplemental Indenture shall be deemed conclusively binding upon the Department, the Fiduciaries and the Holders of the Bonds on the date of filing with the Trustee of the proof of the mailing of such last-mentioned notice.

SECTION 1005. Exclusion of Certain Bonds. Bonds owned or held by or for the account of the Department shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article X, and the Department shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article X. At the time of any consent or other action taken under this Article X, the Department shall furnish the Trustee a certificate of an Authorized Representative of the Department, upon which the Trustee may rely, describing all Bonds so to be excluded.

SECTION 1006. Notation on Bonds. Bonds authenticated and delivered after the effective date of any action taken as provided in this Article X may, and, if the Trustee so determines, shall bear a notation by endorsement or otherwise in form approved by the Department and the Trustee as to such action, and in that case upon demand of the Holder of any Bond Outstanding at such effective date and presentation of such Bond for the purpose at the principal office of the Trustee, or upon any transfer of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer by the Trustee as to any such action. If the Department or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and the Department to conform to such action shall be prepared, authenticated and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder, for Bonds then Outstanding, upon surrender of such Bonds for Bonds of an equal aggregate Principal Amount and of the same Series, maturity and interest rate, in any Authorized Denomination, upon surrender of such Bonds.

[END OF ARTICLE X]

## ARTICLE XI.

### DISCHARGE AND DEFEASANCE

SECTION 1101. Discharge by Payment. If the Department shall pay irrevocably or cause to be paid irrevocably, or there shall otherwise be paid, to the Holders of all Bonds the Principal Amount or Redemption Price thereof and the interest due or to become due thereon, at the times and in the manner stipulated therein and in the Indenture, then the pledge of the Trust Estate under the Indenture and all covenants, agreements and other obligations of the Department to the Bondholders, shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by the Department to be prepared and filed with the Department and, upon the request of the Department, shall execute and deliver to the Department all such instruments as may be desirable to evidence such discharge and satisfaction, and the Fiduciaries shall pay over or deliver to the Department all moneys or securities held by them pursuant to the Indenture other than moneys required for the payment of the Principal Amount or Redemption Price of and interest on Bonds not theretofore surrendered for such payment or redemption. If the Department shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Outstanding Bonds of a particular Series the Principal Amount or Redemption Price thereof and the interest due or to become due thereon, at the times and in the manner stipulated therein and in the Indenture, such Bonds shall cease to be entitled to any lien, benefit or security under the Indenture, and all covenants, agreements and obligations of the Department to the Holders of such Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

SECTION 1102. Discharge by Deposit. 1. Bonds or interest installments for the payment or redemption of which moneys shall have been set aside by the Trustee or any Paying Agent (through deposit by the Department of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in Section 1101. All Outstanding Bonds of any Series which have been redeemed or paid pursuant to this Section 1102 shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in Section 1101, if:

(i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Department shall have given to the Trustee, in form satisfactory to it, irrevocable instructions to give notice of redemption of such Bonds on said date as provided in Article IV;

(ii) there shall have been deposited with the Trustee or any Paying Agent either moneys in an amount which shall be sufficient, or Government Obligations not subject to redemption prior to the maturity thereof, the principal of and interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee or any Paying Agent at the same time, shall be sufficient, to pay when due the Principal Amount or Redemption Price of and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be; and

(iii) in the event said Bonds are not to be redeemed within the next succeeding 60 days, the Department shall have given the Trustee in form satisfactory to it irrevocable instructions to give written notice, as soon as practicable, by registered or certified mail, postage prepaid, to the Holders of such Bonds that the deposit required by clause (ii) above has been made with the Trustee or a Paying Agent and that said Bonds are deemed to have been paid in accordance with the Indenture and stating such maturity or redemption date upon which moneys are to be made available for the payment of the Principal Amount or Redemption Price of said Bonds.

Neither Government Obligations nor moneys deposited with the Trustee or a Paying Agent pursuant to this Section 1102, nor principal or interest payments on any such Government Obligations, shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Principal Amount or Redemption Price of and interest on said Bonds; provided, however, that any cash received from such principal or interest payments on such Government Obligations deposited with the Trustee or a Paying Agent, (A) to the extent such cash will not be required at any time for such purpose, shall be paid over to the Department as received by the Trustee or the Paying Agent, free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under the Indenture, if all Bonds have been redeemed or discharged, and otherwise such cash shall be deposited as Revenues, and (B) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the Principal Amount or Redemption Price of and interest to become due on said Bonds, on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Department, as received by the Trustee or the Paying Agent, free and clear of any trust, lien or pledge, if all Bonds have been redeemed or discharged, and otherwise such cash shall be deposited as Revenues.

Notwithstanding any other provision of this Indenture to the contrary, the provisions of this Article XI (including, but not limited to, the definition of "Government Obligations" in Section 101, as used in this Article XI), as applied to any particular Series of Bonds may be modified or amended in the applicable Series Supplement.

2. Anything in the Indenture to the contrary notwithstanding, any moneys held by the Trustee or any Paying Agent in trust for the payment and discharge of any of the Bonds which remain unclaimed for three years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee or such Paying Agent at such date, or for three years after the date of deposit of such moneys if deposited with the Trustee or such Paying Agent after the said date when such Bonds became due and payable, shall, at the written request of the Department, be repaid by the Trustee or such Paying Agent to the Department, as its absolute property and free from trust, and the Trustee or such Paying Agent shall thereupon be released and discharged with respect thereto and the Bondholders shall look only to the Department for the payment of such Bonds.

[END OF ARTICLE XI]



**ARTICLE XII.  
MISCELLANEOUS**

SECTION 1201. Evidence of Signatures of Bondholders. Any request, consent, revocation of consent or other instrument which the Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys-in-fact duly appointed in writing. Proof of the execution of any such instrument, or of an instrument appointing any such attorney-in-fact, shall be sufficient for any purpose of the Indenture (except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable. The fact and date of the execution by any Bondholder or his attorney of such instruments may be proved by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgements of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guarantee, certificate or affidavit shall also constitute sufficient proof of his authority.

SECTION 1202. Bonds Not Obligations of the State of Texas. The Bonds shall not be in any way a debt or liability of the State of Texas or any political subdivision thereof other than the Department and shall not create or constitute any indebtedness, liability or obligation of the State of Texas nor of any other political subdivision or be or constitute a pledge of the faith and credit of the State of Texas or of any such other political subdivision thereof but all Bonds, unless funded or refunded by other bonds of the Department, shall be payable solely from the Trust Estate including the Revenues and the Funds pledged or available for their payment as authorized in the Indenture. Each Bond shall contain on its face a statement to the effect that the Department is obligated to pay the Principal Amount or Redemption Price thereof and the interest thereon only from the Trust Estate including the Revenues and Funds of the Department pledged under the Indenture and that neither the State of Texas nor any political subdivision thereof other than the Department is obligated to pay such Principal Amount or Redemption Price and interest and that neither the faith and credit nor the taxing power of the State of Texas nor any such other political subdivision thereof is pledged to the payment of the Principal Amount or Redemption Price and interest on the Bonds.

SECTION 1203. Moneys Held for Particular Bonds. Moneys held by the Trustee or any Paying Agent for the payment of the Principal Amount or Redemption Price of and interest on particular Bonds shall, on and after the date on which such payment is due and pending such payment, be set aside and held in trust by the Trustee or such Paying Agent for the Holders of the Bonds entitled thereto. The obligation of the Trustee and the Paying Agents to hold such funds shall be governed by Title 6, Texas Property Code, as amended, which presently provides generally that all such funds which are unclaimed after three years shall be turned over to the State Comptroller, if:

(i) the Bondholder's last known address, as shown in the records of the Trustee, is in Texas; or

(ii) the Bondholder is a Texas governmental entity or a Texas corporation and (A) the Bondholder's identity is unknown or there is no known address for the Bondholder or (B) the last known address of the Bondholder is in a state whose escheat or unclaimed property law is inapplicable to such funds. If the last known address of the Bondholder is in another state, the laws of that state shall control. The Trustee and any Paying Agents shall comply with the reporting requirements of Chapter 74, Texas Property Code, as amended.

SECTION 1204. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of the Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Department, and any Bondholder and their agents and their representatives, any of whom may make copies thereof

SECTION 1205. Filing of Security Instruments. The Department hereby covenants that it will cause to be filed all necessary documents, security instruments and financing statements, and the Trustee covenants that it will cause to be filed all necessary continuation statements, under the Business and Commerce Code of the State of Texas, in such manner and in such places as may be required by law in order to perfect and to protect and maintain in force the lien and pledge of, and the security interests created by, the Indenture. The Department or the Trustee may rely on a Counsel's Opinion with respect to the necessity of any filing.

SECTION 1206. Parties Interested Herein. Nothing in the Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Department, the Trustee and the Holders of the Bonds, any right, remedy or claim under or by reason of the Indenture or any covenant, condition or stipulation thereof, and all the covenants, stipulations, promises and agreements in the Indenture contained by and on behalf of the Department shall be for the sole and exclusive benefit of the Department, the Trustee, and the Holders of the Bonds.

SECTION 1207. No Recourse on the Bonds. No recourse shall be had for the payment of the Principal Amount or Redemption Price or interest on the Bonds or for any claim based thereon or on the Indenture against any director, officer or employee of the Department or any Person executing the Bonds.

SECTION 1208. No Individual Liability. No covenant or agreement contained in the Bonds or in this Indenture shall be deemed to be the covenant or agreement of any member of the Board of Directors of the Department or the Trustee or any officer, agent, employee or representative of the Department or the Trustee in his or her individual capacity, and neither the directors, officers, agents, employees or representatives of the Department or the Trustee nor any person executing the Bonds shall be personally liable thereon or be subject to any personal liability or accountability by reason of the issuance thereof, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of this Indenture and the issuance of the Bonds.

SECTION 1209. Indenture to Constitute Contract. In consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, the Indenture shall be deemed to be and shall constitute a contract among the Department, the Trustee and the Holders of the Bonds, and the pledge made in this Indenture and the covenants and agreements therein set forth to be performed by or on behalf of the Department shall be for the equal benefit, protection and security of the Holders of any and all of the Bonds all of which, regardless of the time or times of their authentication and delivery or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or permitted by this Indenture.

SECTION 1210. Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Indenture to be given to or filed with the Department or the Trustee shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered or certified mail, postage prepaid, to the address specified below or, to such other address as may be designated in writing by the parties:

Department: Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410  
Attention: Executive Director

Trustee: The Bank of New York Mellon Trust Company, N.A.  
10161 Centurion Parkway North  
Jacksonville, Florida 32256

SECTION 1211. Governing Law. This Indenture shall be governed in all respects, including validity, interpretation and effect, by, and shall be enforceable in accordance with, the laws of the State of Texas.

SECTION 1212. Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in the Indenture on the part of the Department or the Trustee to be performed shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of the Indenture.

SECTION 1213. Successors. Whenever in the Indenture the Department is named or referred to, it shall be deemed to include the board, body, commission, authority, agency, department or instrumentality of the State of Texas succeeding to the principal functions and powers of the Department, and all the covenants and agreements in the Indenture contained by or on behalf of the Department shall bind and inure to the benefit of said successor whether so expressed or not.

SECTION 1214. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in the Indenture, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Trustee are authorized by law to remain closed, such payment may be made or act performed

or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are not authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in the Indenture and no interest shall accrue for the period after such nominal date.

SECTION 1215. Execution in Several Counterparts. This Indenture may be simultaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

[END OF ARTICLE XII]

IN WITNESS WHEREOF, the Department and the Trustee have caused this Indenture to be signed, sealed and attested on their behalf by their duly authorized representatives, all as of the date first hereinabove written.

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

By: \_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., Trustee

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

(SEAL)

3c

**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding Resolution No. 19-024 authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 92, approving the form and substance of the program manual and the program summary, authorizing the execution of documents and instruments necessary or convenient to carry out Mortgage Credit Certificate Program 92, and containing other provisions relating to the subject

**RECOMMENDED ACTION**

Adopt attached Resolution.

**BACKGROUND**

Mortgage Credit Certificates (MCCs) make homeownership more affordable for low and moderate income homebuyers. An MCC allows homebuyers to claim, on an annual basis, a direct reduction to federal income tax liability equal to the lesser of (i) the annual mortgage loan interest paid times the MCC Credit Rate (established by the Department and described herein) and (ii) \$2,000. Because the MCC reduces the borrower’s federal income tax liability, the credit amount may be used to effectively increase the borrower’s net income for loan qualification purposes. Mortgage loan interest paid by the borrower that exceeds the \$2,000 maximum credit may be claimed as an itemized deduction on the borrower’s annual federal income tax return.

**MCC Credit Example (Year 1)**

Mortgage Loan Amount	\$172,902
Mortgage Loan Interest Rate	5.50%
First Year Mortgage Interest	\$ 9,451
MCC Credit Rate	35%
Calculated Tax Credit Amount	\$ 3,308
Maximum Tax Credit Allowed	\$ 2,000
Schedule A Mortgage Interest Deduction	\$ 7,451

To be eligible for an MCC, borrowers must meet Internal Revenue Service (IRS) requirements for mortgage revenue bonds. With few exceptions, MCC recipients must be first-time homebuyers (cannot have had an ownership interest in a primary residence within the last

three years), must be within IRS income and purchase price limits, and must occupy the residence as their primary residence. MCCs cannot be issued for mortgage loans that are funded with tax-exempt bond proceeds.

MCCs require an allocation of state ceiling, also known as volume cap. The Department can exchange \$1 of single family mortgage revenue bond (SFMRB) volume cap for \$0.25 of MCC issuance authority. The par amount of mortgage loans that can receive an MCC is determined by dividing the MCC issuance authority by the MCC Credit Rate, which is established by the Department and can be no less than 10% and no greater than 50%.

Volume Cap Conversion Example		
SFMRB Bond Volume Cap	450,000,000	Max Par Amount (Bond Issue)
Exchange \$1 for \$0.25	112,500,000	MCC Issuance Authority
Divide by MCC Credit Rate (appx 35%)	321,428,571	Approximate Max Par Amount of Loans against which MCCs can be issued (cannot be financed with tax-exempt bonds)

The Department offers two MCC options. The first is a stand-alone MCC, where the Department issues an MCC for a mortgage loan that was originated and funded by a third party lender. The second option is a “combo” loan, where the Department issues an MCC for a mortgage loan that was originated and funded through the Department’s Taxable Mortgage Program, in conjunction with the Department providing down payment and closing cost assistance to the borrower in the form of a 30-year, non-amortizing, 0% interest second mortgage that is due on sale or refinance.

The Department released its current MCC program, Program 90, on October 11, 2018, using \$500 million of volume cap to provide MCCs in conjunction with approximately \$350 million in first lien mortgage loans. Other than amounts reserved for Targeted Areas (census tracts in which 70% or more of the families have incomes that are 80% of the statewide median income or below, or areas of chronic economic distress), staff expects that Program 90 volume cap will be fully committed by January 2019.

At the Board meeting of December 6, 2018, the Board authorized and staff has since completed, publication of Public Notice for Mortgage Credit Certificate Program for Program 92, which is scheduled to close in March 2019. The attached resolution seeks authorization for (i) the conversion of \$450 million of the Department’s SFMRB volume cap to MCC Authority and (ii) the issuance of new MCCs under Program 92. The resolution also seeks approval of (i) the Program Manual and Program Summary, (ii) initial MCC Credit Rates (not to exceed 40% for mortgage loans in an amount up to \$150,000, not to exceed 35% for mortgage loans greater than \$150,000 and up to \$200,000, and not to exceed 25% for mortgage loans greater than \$200,000), and (iii) the use of up to \$250,000 of Department funds to pay the costs of implementing Program 92.



Because the demand for volume cap for private activity bonds, including housing bonds, continues to increase, staff is again proposing a tiered MCC Credit Rate versus the more common 40% MCC Credit Rate. Depending on various factors, including changes in mortgage loan interest rates, staff may reduce the MCC Credit Rates to more efficiently use volume cap to assist low, very low, and moderate income homebuyers through the issuance of MCCs.

Staff recommends approval of Resolution 19-024.

## RESOLUTION NO. 19-024

RESOLUTION AUTHORIZING THE IMPLEMENTATION OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MORTGAGE CREDIT CERTIFICATE PROGRAM 92; APPROVING THE FORM AND SUBSTANCE OF THE PROGRAM MANUAL AND THE PROGRAM SUMMARY; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT MORTGAGE CREDIT CERTIFICATE PROGRAM 92; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended from time to time (the “Act”), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low and very low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the “Governing Board”) from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to make, acquire and finance, and to enter into advance commitments to make, acquire and finance, mortgage loans and participating interests therein, secured by mortgages on residential housing in the State of Texas (the “State”); (b) to issue its bonds, for the purpose, among others, of obtaining funds to acquire or finance such mortgage loans, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such single family mortgage loans or participating interests, and to mortgage, pledge or grant security interests in such mortgages or participating interests, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, Section 103 and Section 143 of the Internal Revenue Code of 1986, as amended (the “Code”), provide that the interest on obligations issued by or on behalf of a state or a political subdivision thereof the proceeds of which are to be used to finance owner-occupied residences shall be excludable from gross income of the owners thereof for federal income tax purposes if such issue meets certain requirements set forth in Section 143 of the Code; and

WHEREAS, Section 146(a) of the Code requires that certain “private activity bonds” (as defined in Section 141(a) of the Code) must come within the issuing authority’s private activity bond limit for the applicable calendar year in order to be treated as obligations the interest on which is excludable from the gross income of the holders thereof for federal income tax purposes; and

WHEREAS, the private activity bond “State ceiling” (as defined in Section 146(d) of the Code) applicable to the State is subject to allocation, in the manner authorized by Section 146(e) of the Code, pursuant to Chapter 1372, Texas Government Code, as amended (the “Allocation Act”); and

WHEREAS, pursuant to a separate resolution adopted as of the date hereof, the Governing Board has authorized the filing of one or more applications with the Texas Bond Review Board to obtain a reservation of a portion of the State ceiling private activity bond volume cap for qualified mortgage bonds in the amount of \$450,000,000 (the “Reservation”); and

WHEREAS, the Department desires to convert an amount not to exceed \$450,000,000 of the Reservation to mortgage credit certificates (“MCCs”), to be used for the Department’s Mortgage Credit Certificate Program to be designated as Program 92 (“MCC Program 92”); and

WHEREAS, the Governing Board desires to approve the Program Manual (the “Program Manual”) in substantially the form attached hereto, setting forth the terms and conditions upon which MCCs will be issued by the Department; and

WHEREAS, the Governing Board desires to approve the Program Summary (the “Program Summary”) in substantially the form attached hereto setting forth the terms of MCC Program 92; and

WHEREAS, the Governing Board desires to approve an initial range for the mortgage credit certificate rate; and

WHEREAS, the Governing Board desires to approve the use of an amount not to exceed \$250,000 of Department funds to pay the costs of implementing MCC Program 92; and

WHEREAS, the Governing Board desires to approve the forms of the Program Manual and the Program Summary, in order to find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to implement MCC Program 92 in accordance with such documents by authorizing MCC Program 92, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out MCC Program 92; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

## ARTICLE 1

### USE OF PRIVATE ACTIVITY BOND VOLUME CAP

Section 1.1. Authorization of Certain Actions. The Governing Board authorizes the Executive Director or Acting Director of the Department, the staff of the Department as designated by the Executive Director or Acting Director and Bond Counsel to take such actions on its behalf as may be necessary to carry out the actions authorized in this Resolution.

Section 1.2. MCC Authority. The Department shall take such steps as are necessary to convert \$450,000,000 of its authority to issue qualified mortgage bonds under the Reservation to authority to issue MCCs in order to implement MCC Program 92.

## ARTICLE 2

### APPROVAL OF MCC DOCUMENTS

Section 2.1. Approval of Program Manual and Program Summary. The form and substance of the Program Manual and Program Summary are hereby authorized and approved.

Section 2.2. Mortgage Credit Certificate Rate. The mortgage credit certificate rate shall be specified by the Department in the manner set forth in the Program Manual, provided that the initial mortgage credit certificate rate for mortgage loans up to \$150,000 shall not exceed 40%, the initial mortgage certificate credit rate for mortgage loans greater than \$150,000 and up to \$200,000 shall not exceed 35%,

and the initial mortgage credit certificate rate for mortgage loans greater than \$200,000 shall not exceed 25%.

Section 2.3. Execution and Delivery of Other Documents and Waiver of Fees. The Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest, affix the Department's seal to and deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests, public notices and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the Program Manual and the Program Summary. The staff of the Department is authorized to waive the fees described in the Program Manual from time to time for marketing purposes.

Section 2.4. Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the delivery of such documents by the Authorized Representatives.

Section 2.5. Exhibits Incorporated Herein. All of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A - Program Manual
- Exhibit B - Program Summary

Section 2.6. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments referred to in this Article 2: the Chair or the Vice Chair of the Governing Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 2.7. Department Contribution and Fees. The Department authorizes the contribution of Department funds in an amount not to exceed \$250,000 to pay certain costs of implementing MCC Program 92.

### ARTICLE 3

#### GENERAL PROVISIONS

Section 3.1. Purposes of Resolution. The Governing Board of the Department has expressly determined and hereby confirms that the implementation of MCC Program 92 contemplated by this Resolution accomplishes a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open

Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 17th day of January, 2019.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

**PROGRAM MANUAL**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MORTGAGE CREDIT CERTIFICATE PROGRAM**

**Program Administered by:**

**Texas Department of Housing and  
Community Affairs  
221 East 11th Street  
Austin, Texas 78701  
(512) 475-0277**

**eHousingPlus  
3050 Universal Boulevard, Suite 190  
Weston, Florida 33331  
(954) 217-0817**

# TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MORTGAGE CREDIT CERTIFICATE PROGRAM

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE PROGRAM

**INTRODUCTION**

Pursuant to Chapter 1372 of the Texas Government Code and the rules promulgated by the Texas Bond Review Board thereunder, Texas Department of Housing and Community Affairs (the “Department”) has received a private activity bond volume cap allocation in the aggregate amount of \$450,000,000 to conduct a single-family mortgage program in Texas (the “Eligible Loan Area”). Capitalized terms used in this Program Manual are defined under the caption “Definitions.”

General Overview

A mortgage credit certificate (an “MCC”) is an instrument designed to assist persons of low to moderate income to better afford individual ownership of housing. The procedures for issuing MCCs were established by the United States Congress as an alternative to the issuance of single-family mortgage revenue bonds. As distinguished from a bond program, in an MCC program no bonds are issued, no mortgage money is actually raised, many of the costs associated with a bond program are not incurred, and lenders are required to pay only nominal up-front fees.

MCCs are issued directly to qualifying Applicants who are then able each year to take a tax credit equal to a specified percentage of the interest paid on their mortgages not to exceed \$2,000.00. The Mortgage Credit Certificate Rate for the Program will be based on the mortgage loan amount and will be specified in the periodic distribution of Lender Commitment Lot Notices. Thus, an Applicant with a \$146,433.00 mortgage under the initial tiered structure would realize the following savings in the example listed below:

Mortgage Amount:	\$146,433.00
Interest Rate:	4.50%
Total Interest Paid First Year:	6,589.00
(Mortgage Credit Certificate Rate):	<u>        x 40%</u>
	<u>\$2,635.00</u>

(Based upon a 30-year mortgage with equal monthly installments of principal and interest.)

During the first year of the Program, this Applicant would be entitled to a tax credit of \$2,000.00 (because the amount of the tax credit in any year is limited to \$2,000.00). Based upon such an entitlement, he or she would be able to file in advance a revised W-4 withholding form taking into consideration this tax credit and have approximately \$166.00 per month in additional disposable income. Additionally, taxpayers who file itemized returns may take a deduction for their mortgage interest paid each year, less an amount equal to the tax credit taken. In the above example, the additional interest deduction would be \$6,589.00 less \$2,000.00, or \$4,589.00.

The benefit to the homeowner cannot exceed the amount of federal taxes paid each year after other credits and deductions have been taken into account. Any unused MCC tax credit can be carried forward up to three years to be applied against future income tax liability. For example, if a homeowner is eligible for a \$2,000.00 tax credit, but only has a tax liability of \$1,700.00, the homeowner may carry forward the \$300.00 amount to the succeeding three years and apply it in a year in which the homeowner’s tax liability exceeds the credit amount for that year. In addition, all or a portion of the MCC tax credit may be subject to recapture if the residence is sold within 9 years of purchase. This tax credit recapture is further explained in the Notice of Potential Recapture Tax on Sale of Home found at Tab 5 of this Program Manual.

A purchaser of a new home or existing home may apply for an MCC through a participating Lender at the time he or she applies for a mortgage from the Lender.

Since the Department will not make or hold these mortgages, the Department will not underwrite the loans. Rather, all loan approval, underwriting and execution of required state and federal certifications or Affidavits will be



performed by the Lenders participating in the Program. The Department or its designee will receive executed certificates and Affidavits on each application from a Lender in order to determine eligibility for the Program. Lenders will process mortgage loans of all types, using normal procedures, with additions to procedures at relevant points in order to satisfy Program requirements.

The Department encourages all who believe they qualify to apply for an MCC at the offices of a participating Lender who can explain the Program and its restrictions. Use of the Notice to Buyers included at Tab 1 in this Program Manual can assist Lenders and Applicants in determining whether or not an Applicant can qualify for the Program. The Lender should be well-versed in the state, federal and local restrictions outlined in this Program Manual so that Applicants are aware of these restrictions before the application is taken. The Lender must reject applicants who do not qualify under the restrictions of the Program.

Of each MCC allocation received, 20% will be set aside for the first year of the Program for use in connection with the issuance of MCCs to owners of homes located within federally-designated targeted areas (“Targeted Areas”).

The purpose of this Program Manual is to describe the Program, set forth the relevant state and federal restrictions, identify the respective roles of the Department, the Lender, the Applicant and the Seller, and to detail the processing procedures. The Program definitions, MCC processing documents and applicable federal regulations are included in this Program Manual for your reference.

The Department may revise this Program Manual from time to time by issuing amendments hereto.

## **DEFINITIONS**

As used in this Program Manual, the following words and terms have the meaning set forth below:

Affidavits. An affidavit filed in connection with the Program made under oath and subject to the penalties of perjury and the civil penalties provided herein.

Applicant. Any person or persons: (i) whose Income does not exceed the Income Limits; (ii) who intends to occupy the Residence to be financed with a loan as his or her Principal Residence within a reasonable period (not to exceed 60 days) following the making of such loan; (iii) who has not had a present Ownership interest in a Principal Residence at any time during the three-year period ending on the date of execution of the loan; provided, however, that the three-year requirement does not apply to an Applicant who (a) purchases a Residence located in a Targeted Area or (b) is a Qualified Veteran; (iv) who has not had an existing mortgage (including a deed of trust, conditional sales contract, pledge, agreement to hold title in escrow or any other form of owner-financing), whether or not paid off, on the Residence to be financed with such loan at any time prior to the execution of the loan, other than an existing mortgage securing a construction period loan, bridge loan or similar temporary financing initially incurred for the sole purpose of acquiring the Residence, initially incurred within 24 months of execution of the loan and having an original term not exceeding 24 months; and (v) who is a United States citizen, a lawful permanent resident alien or a non-permanent resident alien who is eligible to work in the United States, in each case with a valid social security number or individual tax identification number, and who meets the criteria set forth in this Program Manual.

Commitment Lot Notice. The notice from the Department to the Program Administrator in substantially the form of Exhibit D-1.

Compliance File. The documents required to be submitted by the Lender or closing agent within 30 days of closing date of the loan, as attached to the Compliance File Checklist (See Tab 3 of this Program Manual).

Department. Texas Department of Housing and Community Affairs and its successors and assigns.

Duplex. A two-family residence in which one unit will be occupied by the Applicant as his or her Principal Residence and the units were first occupied for residential purposes at least five years prior to the closing date of the loan associated with the MCC. The five-year requirement does not apply to a duplex if it is located in a Targeted Area

and the family income of the Applicant meets the income limits for Targeted Area Loans (120% or 140% of applicable median family income, as appropriate).

Eligible Loan Area. State of Texas.

Existing Housing. A single family dwelling unit that has been previously occupied prior to loan commitment.

Family. Any person or persons living together not contrary to law, e.g. traditional families, two unmarried persons sharing the same Residence or a single person.

FICO Credit Score. A method of assessing credit risk based on the statistical probability of repayment of debt developed by Fair, Isaac & Co. FICO Credit Scores assign relative risk rankings to applicants based on a statistical analysis of their credit histories. FICO Credit Scores range from 400 to 850.

Income. All income of the Applicant and anyone else who will occupy the Residence and will be secondarily liable on the mortgage loan. The Income Limits are set forth in the Notice to Buyers, the Program Summary and on the Department's website.

Lender. An institutional lender regulated by state or federal law, or any other entity which in its regular course of business makes loans which would qualify for MCC assistance, is authorized to do business in the Eligible Loan Area, and who has entered into a MCC Program Participation Agreement with the Department.

Lender Commitment Lot Notice. The notice from the Department or its designee to the Lender in substantially the form of Exhibit D-2.

MCC. A mortgage credit certificate issued pursuant to the terms and conditions of the Program, the annual federal income tax credit for which shall not exceed \$2,000.

Mortgage Credit Certificate Rate. For purposes of this Program, the Mortgage Credit Certificate Rate(s) shall be specified in the periodic distribution of Lender Commitment Lot Notices. The Department may change the Mortgage Credit Certificate Rate from time to time based on borrower demand and financial market conditions. Initially, the Mortgage Credit Rates shall be 40% for mortgage loans up to \$150,000, 35% for mortgage loans greater than \$150,000 and up to \$200,000, and (iii) 25% for mortgage loans greater than \$200,000.

New Housing. A single family dwelling unit that is proposed to be constructed, currently under construction, or existing but not previously occupied.

Ownership. Ownership by any means, whether outright or partial, including property subject to a mortgage or other security interest, including a fee simple ownership interest, a joint ownership interest by joint tenancy, tenancy in common, or tenancy by the entirety, an ownership interest in trust, a life estate interest, a purchase by a land contract or contract for deed. The term does not include (i) a remainder interest; (ii) a lease with or without an option to purchase; (iii) a mere expectancy to inherit an interest; (iv) the interest that a purchaser of a Residence acquires on the execution of a purchase contract; and (v) an interest in other than a Principal Residence. An Ownership interest in a mobile home or other factory-made housing which was permanently affixed to real property owned by the Applicant constitutes Ownership in a Principal Residence.

Principal Residence. A Residence that the Applicant reasonably expects to become the principal Residence of the Applicant within a reasonable time after execution of the loan to provide financing for the Residence and that will, depending on all facts and circumstances (including the good faith of the Applicant) be occupied by the Applicant for residential purposes.

Program. Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program, designated as Program 92.

Program Manual. Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program, Program Manual, as revised and amended by the Department from time to time.

Program Summary. Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program, Program Summary, as revised and amended by the Department from time to time.

Purchase Price. The term “Purchase Price” has the meaning given to the term “Acquisition Cost” under Internal Revenue Code Section 143 and the regulations thereunder, which currently is the cost to an Applicant of acquiring a Residence from the Seller as a completed residential unit, including: (i) all amounts paid, either in cash or in kind, by the Applicant (or a related party or for the benefit of the Applicant) to the Seller (or a related party or for the benefit of the Seller) as consideration for the Residence; (ii) if the Residence is incomplete, the reasonable cost of completing the Residence; and (iii) if the Residence is purchased subject to a ground rent, the capitalized value of the ground rent calculated using a discount rate authorized by the Internal Revenue Service. “Purchase Price” does not include: (i) usual and reasonable settlement and financing costs (including title and transfer fees, title insurance, survey fees, credit reference fees, legal fees, appraisal expenses, points paid by the Applicant (but not points paid by the Seller) and other similar costs), but only to the extent that such amounts do not exceed the usual and reasonable costs which would be paid by the Applicant in a case in which financing is not assisted by the issuance of an MCC or provided through the issuance of tax-exempt bonds (for example, if the Applicant agrees to pay more than a pro rata share of property taxes, such excess shall be treated as part of the Purchase Price); and (ii) the value of services performed by the Applicant or members of the Applicant’s family (including brothers and sisters (whether by whole or half blood), spouse, ancestors and lineal descendants only) in completing the Residence. The Purchase Price Limits are set forth in the Notice to Buyers, the Program Summary and on the Department’s website. The Purchase Price limits applicable to Duplexes are set forth on the Department’s website.

Qualified Veteran. An Applicant who is a “veteran” (as defined in 38 U.S.C. Section 101) who has not previously obtained a loan financed by single family mortgage revenue bonds utilizing the veteran exception set forth in Section 143(d)(2)(D) of the Internal Revenue Code of 1986, as amended.

Residence. The term “Residence” is more fully described in the Applicant Affidavit contained at Tab 2. A Residence includes a single-family house, a Duplex, condominium unit, or mobile home permanently affixed to real property. The term Residence also includes any manufactured home in one or more sections which in the traveling mode is 8 body feet or more in width and 40 body feet or more in length and when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling and connected to the required utilities, including plumbing, heating, air conditioning and electrical systems contained therein and meets the HUD minimum standards set forth in Title 24 parts 3280, 3282 and 42 U.S.C. 5401 et seq. A manufactured home must have been constructed after June 21, 1978 and be permanently affixed to the real property which will be owned by the Applicant and subject to the mortgage loan that is associated with the MCC. The term Residence does not include recreational vehicles, campers, manufactured homes not permanently affixed to real property and other similar vehicles. It does not include property such as appliances or a piece of furniture, which, under applicable local law, is not a fixture.

State. The State of Texas.

Targeted Area. The census tracts identified in Exhibit B may be amended from time to time within the Eligible Loan Area that are “qualified census tracts”, which include certain census tracts identified by the United States Treasury Department in Revenue Procedure 2014-14 as having a substantial number of lower-income persons.

## **LOAN PROCESSING PROCEDURES AND PROGRAM ADMINISTRATION**

Applicants that may be eligible for participation in the Program should apply for MCCs in conjunction with their normal mortgage loan applications. Applicants must make applications for conventional, FHA, VA, or USDA-RHS at the mortgage lending institution of their choice participating in the Program before applying for an MCC.

The MCC processing procedures are designed to coincide with the regular, on-going mortgage loan processing and underwriting procedures that are in place at most mortgage lending institutions. The Department recognizes that there are procedural variations among the participating Lenders; consequently, the procedures outlined herein are meant to be suggestive with respect to the sequence of events. However, all the elements of the processing sequence noted below must at some point be completed by the responsible party.

The fees of the Program are set forth at each step in the processing procedures which follow, and the fees charged by the Lender may in no event exceed the fees specified in this Program Manual. A Schedule of Fees is attached hereto as Exhibit A.

The following is the loan processing and Program administration flow chart for the MCC Program:

**A. Loan Origination and MCC Reservation**

1. The Applicant applies for a loan from a participating Lender.
2. The Lender gives the Applicant a Notice to Buyers that explains the Program and contains consumer information. (See Tab 1 of this Program Manual for this Guide.) The Notice to Buyers is intended to present certain facts to the Applicant concerning the restrictions, regulations, and prohibitions of the Program because of certain federal, state and Department regulations, as well as explain the penalties for misuse of the Program. It is imperative that the Applicant understands the terms and conditions of the Program. During the initial interview, it is the responsibility of the Lender to explain the terms and conditions of the Program to the Applicant, and to make sure that the Applicant receives a copy of the Notice to Buyers. The Notice to Buyers must be signed by the Applicants and returned to the Lender for inclusion in the Compliance File.
3. The Lender generally determines if the Applicant is a possible candidate for an MCC, based on preliminary indications of Income, Purchase Price, prior Ownership, and tax liability.
4. No MCC funds may be reserved prior to the date specified in the applicable Lender Commitment Lot Notice. All persons interested in making applications for an MCC at a participating Lender must be considered on a first-come, first-served basis, and must have an application for a mortgage loan on file with the Lender.
5. Upon fully discussing the Program with the Applicant and gathering all of the necessary documentation to verify the Applicant's eligibility, the Lender is ready to begin the reservation process. The Lender will reserve the MCC funds in the Department's or its designee's on-line reservation system. After reserving the funds the Lender will complete the underwriter's certification process and proceed with closing.
6. The Lender may provide the Applicant with a copy of IRS Form W-4 Employee's Withholding Allowance Certificate. The Applicant may complete the W-4, if necessary, to change his or her Federal withholding tax, adjusting it in an amount comparable to the expected MCC tax credit. (See Tab 7 of this Program Manual.)
7. A Lender may not remove a spouse from an application to qualify an Applicant if a co-occupying spouse is not a legal United States resident.
8. **MCC reservations may not be transferred from one Lender to another. In the event an Applicant elects to change Lenders, the MCC reservation will be canceled and a new application and reservation process must be commenced by the Applicant with the new Lender.**

## **B. Lender Loan Approval and Verification**

1. The Lender performs normal loan approval or underwriting procedures.
2. The Lender may consider the MCC when determining the amount of disposable income available for the monthly house payment in order to determine the Applicant's qualification for the loan. The Lender determines general acceptability in accordance with its own loan approval standards and applicable FNMA, FHLMC, FHA, VA, USDA-RHS and private mortgage insurance standards and underwriting guidelines.
3. In conjunction with the Lender's regular verification process, the Lender performs reasonable investigation as to whether the Program requirements have been met as required by regulations noted in the certificate of the Lender. Lenders may verify these facts at different times and in various ways, depending upon the Lender's particular procedures for processing loans.
4. The Lender verifies that the Income Limits, Purchase Price Limits, and other non-credit Program requirements are met.

## **C. Loan Closing and Submission of Final MCC Program Documents**

1. As part of the loan closing process, the Lender should have the Applicant sign the Applicant Affidavit. (See Tab 2 of this Program Manual.) This document contains certifications and Affidavits required of the Applicant by the federal MCC regulations and state requirements as follows:
  - (a) Certification that the Applicant's annualized gross monthly Income does not exceed the applicable Income Limits.
  - (b) Certification that the home will be used as a Principal Residence, and that the MCC holder will notify the Department when the home ceases to be the Principal Residence of the holder.
  - (c) Certification that Applicant has not had an ownership interest in a Principal Residence during the preceding three-year period (unless an exception applies).
  - (d) Certification that the Residence is located within the Eligible Loan Area.
  - (e) Certification that the loan is a new mortgage loan.
  - (f) Certification that the loan applied for does not constitute a prohibited mortgage.
  - (g) Certification that the Purchase Price does not exceed the Purchase Price Limits.
  - (h) Certification that the Applicant was not forced to apply through a particular Lender.
  - (i) Certification that no interest is being paid to a related person.
  - (j) To the extent applicable, certification that there are no allocations to particular developments as described in Treasury Regulation §1.25-3T(k).
  - (k) To the extent applicable, certification of the Applicant's status as a Qualified Veteran.
  - (l) Acknowledgment that any material misstatement or fraud is made under penalty of perjury and the civil penalties provided herein.

2. The Lender should also provide the Applicant with the Notice of Potential Recapture Tax on Sale of Home to Applicant (See Tab 5 of this Program Manual), which must be signed by the Applicant at closing.
3. Either the Lender or the closing agent submits to the Department or its designee a completed and executed Compliance File by regular mail, overnight delivery or electronic submission.
4. The Compliance File includes all of the executed certifications and Affidavits noted herein. Each document must be complete and signed where appropriate. All documents must be dated within six (6) months of the submission date to the Department. Original or certified copies of documents should be sent to the Department or its designee, except as otherwise indicated. The eligibility of an Applicant shall be determined by the Lender. The Lender must review the Compliance File Checklist and related documents to determine their completeness in accordance with the terms of this Program Manual. Reasonable efforts should be undertaken to verify the information given, either independently or concurrently with underwriting procedures.
5. The Compliance File will specifically include the following documents:
  - (a) The Applicant Affidavit, along with federal tax transcripts or signed tax returns (including all schedules) for the previous three years (such federal tax transcripts are not required for loans made in Targeted Areas or for an Applicant who is a Qualified Veteran). Federal tax transcripts can be requested from the IRS by the Applicant by using IRS Form 4506-T;
  - (b) The Affidavit of Seller, certifying the Purchase Price of the Residence and certain other matters contained therein (See Tab 2 of this Program Manual for this document) (signature is waived for a real estate owned property);
  - (c) A Certificate of the Lender, certifying that the Lender has performed a reasonable investigation to make the required Program determinations (See Tab 2 of this Program Manual for this document). Further, by its submission, the Lender certifies that all Program eligibility requirements have been met, and that the loan fees are reasonable relative to other loans not associated with MCCs;
  - (d) A photocopy of the closing disclosure executed by all parties;
  - (e) The Notice of Potential Recapture Tax on Sale of Home, executed by the Applicant (See Tab 5 of this Program Manual for this document);
  - (f) The MCC Issuance Fee in the amount as specified in the periodic distribution of Lender Commitment Lot Notices in the form of a check or money order made payable to the Department or its designee. The MCC Issuance Fee may be paid by the Applicant, the Seller, the Lender or any other person on the Applicant's behalf. In addition to the MCC Issuance Fee and the other fees provided herein, the Lender may collect and retain at loan closing an MCC Document Handling Fee of up to \$75.00. Such Fee may be paid by the Applicant, the Seller or any other person on the Applicant's behalf;
  - (g) The Applicant's certificate of completion of an approved pre-purchase homebuyer education course;
  - (h) A copy of the Qualified Veteran's discharge papers, if applicable;
  - (i) The Applicant's federal tax transcript or signed tax returns (obtained by IRS Form 4506-T) for the preceding calendar year (applicable only to loans closed after February 15th). All loans closed after February 15 of each year will require the prior year's federal tax transcript prior to issuance of the MCC;

- (j) A copy of the real estate purchase contract for the Residence, if required;
  - (k) A copy of the final executed loan application (1003) submitted to the Lender, if required;  
and
  - (l) A copy of the Warranty Deed, if required.
6. ALL DOCUMENTS LISTED ON THE COMPLIANCE FILE CHECKLIST MUST BE SUBMITTED TO THE DEPARTMENT OR ITS DESIGNEE WITHIN 30 DAYS FOLLOWING THE CLOSING DATE OF THE MORTGAGE LOAN.

**D. Issuance of MCC**

The Department or its designee confirms the completion of the Applicant's file, that the loan was closed as evidenced by the Compliance File, and that the Applicant has met the requirements for issuance of an MCC. The Department then forwards to the Applicant, with a copy to the Lender, an executed MCC dated as of the closing date of the loan. (See Exhibit C for the MCC form.) A copy of the MCC is retained by the Department.

**E. Suspended File; Resubmission of MCC Documents**

If a Compliance File is incomplete or incorrect, the file will be suspended and the Lender will be given up to thirty (30) days from the date of contact by the Department to submit complete and/or revised documentation. Any resubmission of a Compliance File that has been returned or denied by the Department must include all information which the Department has determined necessary for reconsideration.

**F. MCC Cancellations**

Any suspended Compliance File that is not cleared for MCC issuance within thirty (30) days will be cancelled by the Department under the Notice of Cancellation provided under Tab 8 of this Program Manual. The Lender should cancel MCC reservations in the on-line reservation system.

**G. Reissuance of MCC**

The Department shall, upon payment by the MCC holder of a Reissuance Fee, issue a reissued MCC for certain refinancings under Treas. Regs. §1.25-3(p) if the Department receives to its satisfaction evidence that:

- (i) The reissued MCC is issued to the holder of an existing MCC with respect to the same property to which the existing MCC relates.
- (ii) The reissued MCC entirely replaces the existing MCC (that is, the holder cannot retain the existing MCC with respect to any portion of the outstanding balance of the certified mortgage indebtedness specified on the existing MCC).
- (iii) The certified mortgage indebtedness specified on the reissued MCC does not exceed the remaining outstanding balance of the certified mortgage indebtedness specified on the existing MCC.
- (iv) The reissued MCC does not increase the Mortgage Credit Certificate Rate specified in the existing MCC.
- (v) The expiration date on the reissued MCC is not later than the expiration date on the existing MCC.

- (vi) The reissued MCC does not result in an increase in the tax credit that would otherwise have been allowable to the holder under the existing MCC for any taxable year. The holder of a reissued MCC determines the amount of tax credit that would otherwise have been allowable by multiplying the interest that was scheduled to have been paid on the refinanced loan by the Mortgage Credit Certificate Rate of the existing MCC. In the case of a series of refinancings, the tax credit that would otherwise have been allowable is determined from the amount of interest that was scheduled to have been paid on the original loan and the Mortgage Credit Certificate Rate of the original MCC.

## **H. Changes Prior to Closing**

The Lender must notify the Department or its designee of any changes that affect the conditions under which the MCC was reserved.

### **1. Changes in the Applicant's Financial Condition Prior to Closing**

The eligibility of an Applicant for an MCC is based upon the Applicant's Income and Family size. Changes in the Applicant's financial status or Family size may affect the eligibility for an MCC. Upward changes in Income, whether or not foreseen or predictable at the time of the reservation and changes in the working status of a spouse from unemployed to employed may also affect eligibility. If the Applicant marries prior to closing, the new spouse must satisfy the prior home Ownership requirements contained in the Applicant Affidavit, and the Applicant Affidavit must be completed by both spouses and submitted with the Compliance File. Any Income added to the Family Income may affect the eligibility of the Applicants.

### **2. Changes in Home Ownership Status, Purchase Price and Amount of Loan Prior to Closing**

If the Applicant acquires a present ownership interest in a Principal Residence prior to loan closing and/or if the total Purchase Price of the Residence purchased in connection with the MCC increases so as to exceed the Purchase Price Limitations set forth herein, the MCC reservation must be canceled.

### **3. Other Changes in Circumstances Prior to Closing**

The Lender must immediately notify the Department or its designee in writing of any change in the circumstances upon which the MCC reservation was made. If any other change of the circumstances upon which the MCC reservation was made results in the Applicants not meeting the requirements for a qualified MCC, the MCC reservation must be canceled.

## **I. Record Keeping and Federal Report Filing**

- 1. For each calendar quarter during which the Department issues MCCs beginning with the quarter in which the election to issue that MCCs is made, it must make reports on IRS Form 8330. The report must include:
  - (a) Name, address and ITIN (social security number or individual tax identification number) of the Department.
  - (b) Date of election.
  - (c) The sum of the products of the certified indebtedness amount (loan amount), and the Mortgage Credit Certificate Rate, for each MCC issued.
  - (d) Name, address and TIN of each MCC holder where an MCC was revoked.



2. Annually, the Department must report to the Internal Revenue Service:
  - (a) The number of MCCs by Income and Purchase Price as required by IRS reporting regulations.
  - (b) The volume of MCCs by Income and Purchase Price as required by IRS reporting regulations.
3. For each calendar year during which it originates loans to Applicants obtaining MCCs or issues a reissued MCC, the Lender must file an annual report using IRS Form 8329 with respect to such MCCs and reissued MCCs. Prior to the filing deadline for such report, the Department will assist in furnishing to the Lender the information in its records necessary for the Lender to complete IRS Form 8329. For each reissued MCC, the lender for the refinanced loan, if not a participating Lender, shall acknowledge and agree to file an IRS Form 8329 with respect to such reissued MCC by signing the Certificate of Lender for Refinanced Mortgage Loan (See Tab 6B of this Program Manual).
4. For 6 years, the Lender must retain:
  - (a) Name, address and TIN of each MCC holder.
  - (b) Name, address and TIN of the Department.
  - (c) Date of loan, certified indebtedness amount, and Mortgage Credit Certificate Rate.
5. In January following each year during which MCCs are issued, the Department will attempt to mail an IRS Form 8396 to each MCC holder of record as a reminder to properly declare the MCC tax credit for federal income tax purposes.

**J. Revocation of MCCs**

1. Automatic revocation occurs when the Residence related to the MCC ceases to be the MCC certificate holder's Principal Residence.
2. An MCC holder will have its MCC revoked if the holder does not meet the requirements for a qualified MCC.
3. Revocation will occur upon the discovery of any material misstatement, whether negligent or fraudulent, by any person related to the issuance of the MCC.

**K. Curing Defects**

In the event any defects are discovered in any certificate or Affidavit after an MCC has been issued, the Lender and the MCC holder shall be notified of such defect and given 60 days to cure it prior to revocation of the MCC.

**L. Transfer of MCCs on Mortgage Assumptions**

A loan assumption associated with an MCC will be treated as a new MCC application, and the procedure required by this Program Manual will be repeated. A single MCC Assumption Fee will be charged by the Department in connection with such transfers.

**M. Post-Audit**

The Department may perform a random case post-audit of the Lender records.

**N. MCC Eligibility Denial**

In the event a Lender determines that an Applicant is ineligible for an MCC, the Lender shall cancel the reservation in the on-line registration system.

**O. Recapture of MCC Tax Credit**

In the event an MCC holder sells his or her Principal Residence within 9 years of issuance of an MCC, a portion of the tax credit utilized by the holder may be subject to a recapture tax. See the Notice of Potential Recapture Tax on Sale of Home at Tab 5 of this Program for further information regarding tax credit recapture.

**P. Targeted Area Reservation**

For at least one year after the commencement of the Program, the Department will reserve twenty percent (20%) of the Department's MCC authority for home mortgage loans in Targeted Areas.

**Q. Qualified Veterans**

A Qualified Veteran is exempt from the three-year no prior home ownership requirement. The Qualified Veteran must (a) certify that (i) he or she has not previously obtained a mortgage loan financed by single family mortgage revenue bonds utilizing the exception set forth in Section 143(d)(2)(D) of the Internal Revenue Code of 1986, as amended, and (ii) is utilizing the veteran exception set forth in Section 143(d)(2)(D) of the Internal Revenue Code of 1986, as amended and (b) provide copies of discharge papers, if applicable.

**APPLICANT AND LOAN APPROVAL REQUIREMENTS**

**A. Overview**

For loans involving MCCs, the loan approval and underwriting standards may be modified to reflect a recognition of the MCC derived federal income tax credit for mortgage interest in determining income, housing expense, and indebtedness ratios. The secondary mortgage market and the mortgage insurance industry have established underwriting policies for loans involving MCCs. These are available separately as policy statements from the mortgage lending industry.

The Applicant, Purchase Price and mortgage underwriting requirements covered in this section are incorporated in the Program documents contained in this Program Manual. It will be necessary for all Applicants, participating Lenders and other parties to the transaction to complete and sign the appropriate Program documents and attest to their validity. The Lender will be required to submit certifications in which it will certify that it has reviewed Affidavits of the Applicant and the Seller and found them to be true and correct. If the Lender becomes aware of misstatements, whether negligently or intentionally made, it must notify the Department immediately. The Department reserves the right to take all appropriate actions including, if necessary, denial or revocation of the MCC. The Lender should also be aware, and inform the Applicant, that both federal and Texas law provide for fines and criminal penalties for misrepresentations made in connection with participation in the Program. In an attempt to assure that Program requirements are met, an Applicant Affidavit is required of each Applicant, and must be submitted to the Department.

**The mortgage loan must be a fixed rate loan and financed from sources other than tax-exempt mortgage bonds or tax-exempt veterans' mortgage bonds.** For mortgage loans using only an MCC, the mortgage may be a conventional, FHA, VA or USDA-RHS loan and will be at prevailing market rates.

## B. Applicant Eligibility Requirements

Similar to any normal mortgage loan, the Applicant must meet the credit and underwriting criteria established by the participating Lender providing the loan. Based on relevant federal and state regulations, Applicants must also meet the following requirements specific to MCCs:

1. First-time Homebuyer Requirement. The Applicant who will become an MCC holder cannot have had an Ownership interest in a Principal Residence at any time during the preceding three years ending on the date on which the loan is executed. This requirement qualifies the Applicant as a “first-time homebuyer” with respect to the federal regulations. The Lender must obtain an Applicant Affidavit to the effect that the Applicant had no Ownership interest in a Principal Residence at any time during the three-year period prior to the date on which the loan is executed. This fact must be verified by the Lender through request for, and examination of, the Applicant’s federal tax transcripts for the preceding three years to determine whether the Applicant has claimed a deduction for interest or taxes on property that was the Applicant’s Principal Residence. The first-time homebuyer requirement does not apply to a loan made to finance a Residence in a Targeted Area or a loan made to a Qualified Veteran [or in certain cases permitted under applicable provisions of the Code].

For purposes of the first-time homebuyer requirement, a Principal Residence includes a single-family house, Duplex, condominium unit or mobile home. Ownership interest means ownership by any means, whether outright or partial, including property subject to a mortgage or other security interest. Ownership interest also means a fee simple ownership interest, a joint ownership interest by joint tenancy, tenancy in common, or tenancy by the entirety, an ownership interest in trust, a life estate interest, and purchase by a land contract or contract for deed. To meet the first-time homebuyer requirement, the Applicant must complete and sign the Applicant Affidavit and attach federal tax transcripts for the last three years to the Applicant Affidavit, which federal tax transcripts state the type of return filed by the Applicant for each tax year, the Applicant’s filing status and adjusted gross income for the last three years. To summarize this procedure as it applies to different cases:

- (a) If the Applicant can produce federal tax transcripts stating the type of return filed (1040, 1040A or 1040EZ) for the last three years that show no deductions of interest or taxes for a Principal Residence, these forms must be submitted to the Lender and forwarded to the Department or its designee with the Applicant Affidavit.
- (b) The Department will not issue the MCC until receipt of federal tax transcripts (including all schedules), that show the type of return filed and that the Applicant took no deduction of interest or taxes for a Principal Residence for the years in question. The federal tax transcripts can be requested from the IRS by the Applicant by using IRS Form 4506-T.
- (c) In the unusual event the Applicant was not required by law to file federal income tax returns for any year during the preceding three years, it will be necessary for the Applicant to so state on the Applicant Affidavit forwarded to the Department with the other Program documents and to provide an IRS printout stating “No Record Found” for each applicable tax year.
- (d) When the loan is executed during the period between January 1 and February 15 and the Applicant has not yet filed his or her federal income tax return for the preceding year with the IRS, the Department may, with respect to such year, rely on an Applicant Affidavit stating that the Applicant is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his or her Principal Residence for the preceding calendar year.
- (e) If the loan is made in a Targeted Area or if the Applicant is a Qualified Veteran, the Applicant is not required to provide federal tax transcripts.

2. Principal Residence Requirement. The Applicant must use the Residence that involves the MCC as his or her Principal Residence. The Lender must obtain from the Applicant, via the Program documents, a statement of the Applicant's intent to use the Residence as his or her Principal Residence within a reasonable time (60 days) after the MCC is issued. This Affidavit further states that the MCC holder will notify the Lender and the Department if the Residence ceases to be his or her Principal Residence.
3. Revocation. An Applicant will have his or her MCC revoked if the Applicant does not meet the requirements for a qualified MCC. Revocation will occur upon the discovery of any material misstatement, whether negligent or fraudulent. Revocation will occur if the Residence to which the MCC relates ceases to be Applicant's Principal Residence.
4. Fraud. If the Applicant or MCC holder provides a certificate, Affidavit, or any other information to the Lender or the Department containing a material misstatement and such misstatement is due to fraud, then any MCC issued shall be automatically null and void without the need for any further action by the Department.
5. Penalties for Misstatement. If the Applicant makes a material misstatement in any Affidavit or certification made in connection with an application for the issuance of an MCC and such misstatement is due to negligence of the Applicant, the Applicant shall pay a civil penalty fee of \$1,000.00 for each MCC with respect to which a misstatement was made. If any Applicant makes a material misstatement in any Affidavit or certification made in connection with application for or issuance of an MCC and such misstatement is due to fraud, the Applicant shall pay a penalty fee of \$10,000.00 for each MCC with respect to which the fraudulent misstatement was made. The above-described civil penalties shall be imposed in addition to any criminal penalty provided by law.
6. Income Limits. The annual gross Income of an Applicant is limited to the applicable amount shown in the Notice to Buyers, the Program Summary and on the Department's website. These limits may be modified annually.
7. Purchase Price Limits. Initially, the Purchase Price limits shall be as set forth in the Notice to Buyers, the Program Summary and on the Department's website, but these amounts are subject to reduction by any applicable FHA limits, or such revised amounts as may be effective from time to time, as required by the federal regulations. The determination whether the residence meets the applicable Purchase Price limits shall be made as of the date of issuance of the MCC. Any revisions of the Purchase Price limits by the Department may rely on average area purchase price limitations published by the Treasury Department, any successor thereof, or as may be provided in Section 143 of the Internal Revenue Code, for the statistical area in which the residence is located.
8. Homebuyer Education. The Applicant must complete a pre-purchase homebuyer education course under the Program. The education requirement may be met by attending one-on-one counseling as provided through the Department's network of certified Texas Statewide Homebuyer Education Providers, HUD-approved counseling agencies, on-line counseling offered through the Department's Texas Homebuyer U, mortgage insurance companies and/or HUD, Fannie Mae or Freddie Mac approved lender programs. The certificate of completion must be included in the Compliance File in order to satisfy this requirement.
9. Non-Purchasing Spouse. A non-purchasing spouse must be considered in determining eligibility to participate in the Program. Although the spouse may not be an Applicant for the loan, and his or her income may be excluded for credit underwriting purposes, a spouse's income must be considered in the calculation of Income for purposes of the MCC. A non-purchasing spouse must also meet the first-time homebuyer requirement and the Principal Residence requirement. A non-purchasing spouse may disqualify the purchasing spouse even if the purchasing spouse fully meets the Program requirements. A non-purchasing spouse must provide federal tax transcripts and income information, even if the spouse has no income, as well as executing all applicable Affidavits. Non-

purchasing spouses must have a valid social security number or an Individual Tax Identification Number (ITIN).

### C. **Loan Requirements**

1. New Loan Requirements. An MCC cannot be issued in conjunction with the acquisition or replacement of an existing loan or mortgage; however, an MCC can be used in conjunction with the replacement of construction period loans or bridge loans of a temporary nature. Construction period or bridge loans must be for no longer than 24 months. The Lender must obtain from the Applicant, via the Program documents, a statement to the effect that the loan being made in connection with the MCC will not be used to acquire or replace an existing mortgage or land contract, subject to the exceptions outlined above.
2. Prohibited Mortgages. An MCC cannot be used in conjunction with a qualified mortgage bond or a qualified veterans' mortgage bond. The Lender must obtain from the Applicant, via the Program documents, a statement that no portion of the financing of the Residence in connection with the MCC is provided from a qualified mortgage or veterans' bond.
3. No Interest Paid to Related Persons. No interest on the certified indebtedness amount of the loan can be paid to a person who is a related person to the certificate holder, as the term "related person" is defined in Section 144(a)(3)(A) of the Internal Revenue Code and regulations promulgated by the Internal Revenue Service pursuant thereto. The Lender must obtain from the Applicant, via the Program documents, a statement that a related person does not have, and is not expected to have, an interest as a creditor in the loan.
4. Transferability. If the loan is assumed by a new purchaser, the MCC may be transferable under certain circumstances:
  - (a) The transferee must demonstrate he or she has assumed the liability for the remaining balance of the loan.
  - (b) The new MCC must meet all the conditions of the original certificate, and any changes in federal, state or Department policy that amends the requirements of the original MCC.
5. Term of Mortgage Loans. Each mortgage loan associated with an MCC shall have a term of either 15 years or 30 years.

EXHIBIT A

SCHEDULE OF PROGRAM FEES AND EXPENSES

**MCC Assumption Fee**                      \$125.00

This fee is submitted to the Department or its designee with the Applicant's new Application through a participating Lender.

**MCC Issuance Fee**                      any amount approved by an Authorized Representative of the Department provided that the fee cannot be any greater than 1% of the Certified Indebtedness associated with the MCC and provided further that the fee cannot be any less than \$500 per MCC issued.

This fee is submitted to the Department or its designee upon loan closing with all of the completed Program documents required for the issuance of an MCC. Upon receipt of the fee and the required documentation, the Department will issue an MCC to the borrower with a copy to the Lender.

**MCC Document Handling Fee**    up to \$75.00

This fee may be charged and retained by the Lender to compensate it for handling the additional documentation required of it by the Program. The Lender additionally is authorized to charge its reasonable and customary fees and charges for origination of the loan.

**Lender Participation Fee**              \$1,000.00

This one-time fee is to be paid by the Lender and submitted with the MCC Program Participation Agreement to the Department or its designee. The Lender's participation will be noted on the Department's website. The Lender Participation Fee will be waived for Lenders that have participated in one of the Department's previous MCC Programs.

**Late Fee**                                      \$75.00

This fee may be charged to the Lender for a Compliance File that is sent to the Department or its designee more than thirty (30) days after the date of closing.

**MCC Reissuance Fee**                    \$50.00

This fee may be charged and retained by the Department or its designee to compensate it for handling and processing the issuance of a reissued MCC pursuant to a mortgage refinancing.

EXHIBIT B

County	Qualified Census Tracts					
Atascosa .....	9603.00					
Bell .....	0207.01 9800.01	0207.02	0208.00	0216.02	0226.00	0229.00
Bexar .....	1103.00 1214.04 1306.00 1411.01 1602.00 1612.00 1705.00 1713.01 1905.03	1105.00 1302.00 1307.00 1411.02 1605.01 1620.04 1708.00 1715.01 1910.04	1106.00 1303.00 1309.00 1505.01 1605.02 1701.02 1709.00 1716.02 1914.08	1108.00 1304.01 1401.00 1505.02 1606.00 1702.00 1710.00 1802.01 1919.00	1109.00 1304.02 1406.00 1508.00 1609.02 1703.00 1711.00 1804.00	1110.00 1305.00 1410.00 1514.00 1610.00 1704.01 1712.00 1810.05
Bowie .....	0105.00	0106.00				
Brazos.....	0005.00	0006.04	0014.00	0017.02	0020.12	
Brown.....	9506.00	9507.00				
Cameron .....	0105.00 0119.03 0127.00 0133.05 0136.00 0139.03	0109.00 0121.02 0128.00 0133.06 0137.00 0140.01	0110.00 0125.05 0131.06 0133.07 0138.01 0140.02	0112.00 0125.07 0132.03 0133.08 0138.02 0141.00	0117.00 0126.07 0132.06 0133.09 0139.01 0142.00	0119.01 0126.09 0132.07 0134.01 0139.02 0143.00
Castro .....	9502.00					
Cherokee .....	9505.00	9507.00				
Collin.....	0317.20					
Coryell.....	0105.04					
Dallas.....	0004.01 0015.03 0038.00 0049.00 0060.02 0078.19 0086.04 0089.00 0099.00 0109.04 0122.08 0138.05 0146.02 0182.04 0192.12	0004.05 0020.00 0039.01 0054.00 0072.01 0078.20 0087.01 0091.04 0100.00 0114.01 0122.11 0141.03 0146.03 0185.05 0192.13	0008.00 0025.00 0039.02 0056.00 0072.02 0078.23 0087.03 0093.03 0101.01 0115.00 0130.11 0141.14 0154.04 0185.06 0203.00	0009.00 0027.01 0041.00 0057.00 0078.11 0078.26 0087.04 0093.04 0107.01 0116.01 0131.05 0143.08 0166.05 0188.02 0205.00	0012.04 0027.02 0043.00 0059.02 0078.15 0085.00 0087.05 0096.10 0107.03 0116.02 0136.25 0143.09 0166.07 0190.13	0015.02 0034.00 0047.00 0060.01 0078.18 0086.03 0088.02 0098.04 0109.03 0120.00 0137.13 0144.07 0177.03 0190.19

County	Qualified Census Tracts					
Dawson.....	9504.02					
Denton.....	0206.01	0209.00	0212.01	0217.39		
Dimmit.....	9504.00					
Ector.....	0015.00	0019.00				
El Paso.....	0001.08	0001.09	0001.10	0002.05	0003.01	0004.04
	0006.00	0008.00	0010.01	0010.02	0011.15	0012.01
	0014.00	0016.00	0017.00	0018.00	0019.00	0020.00
	0021.00	0022.01	0022.02	0023.00	0026.00	0028.00
	0029.00	0030.00	0031.00	0032.00	0034.02	0035.02
	0036.01	0036.02	0037.01	0037.02	0038.03	0038.04
	0039.01	0039.03	0041.03	0041.05	0041.07	0042.01
	0042.02	0101.02	0102.20	0102.21	0103.32	0103.33
	0103.34	0103.35	0103.44	0103.47	0104.05	0104.06
	0104.07	0104.08	0105.01	0105.04	0105.06	0106.00
Ellis.....	0604.00					
Falls.....	0004.00					
Fort Bend.....	6750.00					
Galveston.....	7237.00	7246.00	7252.00			
Gray.....	9507.00	9508.00				
Grayson.....	0020.00					
Gregg.....	0012.00	0013.00	0015.00			
Guadalupe.....	2102.00					
Hale.....	9501.00					
Harris.....	2104.00	2110.00	2111.00	2113.00	2116.00	2117.00
	2119.00	2123.00	2124.00	2205.00	2207.00	2208.00
	2210.00	2215.00	2222.00	2225.01	2226.00	2227.00
	2230.02	2301.00	2303.00	2304.00	2306.00	2308.00
	2310.00	2315.00	2318.00	2321.00	2327.02	2331.02
	2333.00	2336.00	2401.00	2405.01	2405.02	2406.00
	2408.01	2415.00	2534.00	3105.00	3110.00	3111.00
	3116.00	3117.00	3122.00	3123.00	3124.00	3128.00
	3136.00	3138.00	3143.00	3206.02	3212.00	3220.00
	3230.00	3231.00	3235.00	3239.00	3312.00	3314.00
	3316.02	3317.00	3320.00	3328.00	3331.00	3332.02
	4201.00	4205.00	4211.01	4211.02	4212.01	4212.02
	4213.00	4214.01	4214.02	4215.00	4216.00	4222.00
	4223.01	4224.01	4229.00	4231.00	4320.02	4327.01
	4328.01	4328.02	4330.01	4330.02	4330.03	4331.00
	4334.00	4335.01	4335.02	4336.00	4531.00	4532.00



County	Qualified Census Tracts					
	4533.00	4534.03	4544.00	5204.00	5205.00	5206.01
	5206.02	5210.00	5214.00	5301.00	5303.00	5304.00
	5307.00	5320.01	5330.00	5333.00	5340.01	5501.00
	5502.00	5503.01	9801.00			
Harrison.....	0204.01	0205.01				
Hays.....	0103.04					
Hidalgo.....	0201.01	0201.02	0204.03	0205.01	0206.00	0207.23
	0207.25	0210.00	0211.00	0213.02	0213.03	0214.01
	0215.00	0218.03	0218.04	0218.05	0218.06	0221.03
	0221.05	0221.06	0222.03	0222.04	0224.01	0225.01
	0225.02	0227.02	0228.00	0229.00	0231.02	0231.04
	0235.03	0235.07	0235.11	0235.13	0235.14	0237.00
	0241.07	0241.08	0241.09	0241.12	0241.13	0241.14
	0242.01	0242.04	0242.05	0246.00		
Hill .....	9609.00	9610.00				
Houston .....	9504.00					
Hudspeth .....	9503.00					
Hunt.....	9605.00	9608.00	9609.00			
Hutchinson .....	9507.00	9508.00				
Jasper.....	9503.00					
Jefferson .....	0001.03	0007.00	0009.00	0019.00	0026.00	0051.00
	0059.00	0061.00	0063.00	0117.00		
Johnson.....	1308.00					
Karnes .....	9704.00					
Kaufman .....	0505.00					
Lamar .....	0005.00	0008.00				
Lamb .....	9505.00					
Lubbock.....	0002.02	0003.01	0003.02	0006.03	0006.05	0009.00
	0010.00	0012.00	0013.00	0017.09	0020.02	0024.00
Maverick .....	9502.01	9502.04	9504.00			
McLennan .....	0002.00	0004.00	0005.98	0010.00	0011.00	0012.00
	0015.00	0023.02	0027.00	0033.00	0043.00	
Midland .....	0015.00	0017.00				

County	Qualified Census Tracts					
Montgomery .....	6931.01	6934.00				
Nacogdoches .....	9506.00	9507.00	9509.00			
Nueces .....	0006.00	0008.00	0009.00	0010.00	0011.00	0012.00
	0013.00	0015.00	0016.01	0018.01	0027.06	0033.03
	0033.05	0056.02	0064.00			
Palo Pinto .....	0009.00					
Polk .....	2102.03	2103.01				
Potter .....	0103.00	0106.00	0110.00	0120.00	0126.00	0128.00
	0130.00	0145.00	0148.00	0150.00	0153.00	0154.00
Robertson .....	9605.00					
San Augustine .....	9502.00					
San Patricio .....	0113.00					
Shelby.....	9504.00					
Smith .....	0002.01	0004.00	0005.00	0007.00		
Starr .....	9501.05	9501.06	9501.07	9502.02	9502.03	9502.04
	9504.02	9507.01				
Tarrant.....	1002.02	1005.01	1009.00	1012.02	1013.02	1014.02
	1017.00	1025.00	1035.00	1036.01	1037.01	1038.00
	1045.02	1045.03	1045.04	1046.01	1046.03	1047.02
	1048.02	1048.03	1048.04	1050.06	1052.05	1059.01
	1059.02	1061.02	1062.01	1065.16	1066.00	1103.01
	1111.03	1217.03	1219.03	1219.05	1219.06	1228.01
	1231.00	1234.00	1235.00	1236.00		
Taylor.....	0102.00	0103.00	0107.00	0117.00	0122.00	0131.00
Terry .....	9503.00					
Titus.....	9506.00	9507.00				
Tom Green .....	0007.00	0015.00	0018.00			
Travis.....	0006.01	0006.03	0008.02	0018.04	0018.06	0018.12
	0018.19	0018.20	0018.23	0018.63	0021.05	0021.08
	0021.10	0021.11	0022.08	0023.07	0023.08	0023.10
	0023.12	0023.15	0023.16	0023.17	0024.13	0024.19
Val Verde .....	9503.02	9506.01	9506.02			
Victoria.....	0003.01	0003.02				
Walker .....	7906.00	7907.00				

County	Qualified Census Tracts					
Webb .....	0001.05	0001.07	0001.08	0001.09	0002.00	0003.00
	0006.01	0007.00	0008.00	0009.03	0009.04	0011.05
	0012.01	0012.02	0013.00	0015.01	0018.07	0018.08
	0018.09	0018.14	0018.17	0018.18	0019.00	
Wichita .....	0101.00	0102.00	0104.00	0108.00	0111.00	0114.00
	0130.00					
Willacy .....	9503.00	9506.00	9507.00			
Zapata.....	9503.01					
Zavala.....	9501.00	9503.01	9503.02			

The determination of the Qualified Census Tracts in the State of Texas was made by the United States Department of Housing and Urban Development and the Treasury Department based on criteria in the 2010 Census and Section 143 of the Internal Revenue Code. The Texas Department of Housing and Community Affairs did not participate in the determination of the Qualified Census Tracts although the Lenders and/or the Department may rely thereon.

NOTE: Census tract reference maps are available on the U.S. Census Bureau website at <http://www.ffiec.gov/Geocode/default.aspx>.

EXHIBIT C  
(Form of Face of Certificate)

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MORTGAGE CREDIT CERTIFICATE PROGRAM**

This Mortgage Credit Certificate is issued by Texas Department of Housing and Community Affairs (the "Issuer"), 221 East 11th Street, Austin, Texas 78701-2410, Tax Identification No. 74-2610542, pursuant to the Issuer's election not to issue qualified mortgage bonds, dated [March] \_\_, 2019.

Name (s) : \_\_\_\_\_

Soc. Sec. Nos.: \_\_\_\_\_

Address: \_\_\_\_\_

THE MORTGAGE CREDIT RATE IS \_\_\_\_\_ PERCENT (\_\_\_\_%).

Pursuant to the closing certificate as of the date below, the CERTIFIED INDEBTEDNESS AMOUNT with respect to which this Certificate is issued is \$\_\_\_\_\_.

The EXPIRATION DATE of this Certificate, which is also the date such indebtedness matures, is \_\_\_\_\_.

The AVERAGE AREA PURCHASE PRICE applicable to the Residence is \$\_\_\_\_\_.

The PURCHASE PRICE of the Residence with respect to which this Certificate is issued is \$\_\_\_\_\_.

The Residence with respect to which this Certificate is issued is (check one):  located in a Targeted Area,  being purchased by a Qualified Veteran, or  none of the foregoing.

The Certificate holder meets the requirements of Internal Revenue Code § 25(c)(2)(A)(iii)(IV), relating to income, and I, the undersigned, certify under penalties of perjury that I have determined to the best of my ability that this Certificate meets the following requirements, as applicable: Treasury Regulations § 1.25-3T(d), relating to residence; § 1.25-3T(e), relating to ownership interests within the 3-year prior period; § 1.25-3T(f), relating to purchase price; § 1.25-3T(g), relating to new mortgages; § 1.25-3T(i), relating to prohibited mortgages; § 1.25-3T(j), relating to particular Lenders; § 1.25-3T(k), relating to allocations to particular developments; and § 1.25-3T(n), relating to interest paid to related persons and whether the Residence in connection with which this Certificate is issued is a Targeted Area Residence.

This Certificate may be transferred only after issuance of a new Certificate by the Issuer.

Loan Closing/MCC Issue Date: \_\_\_\_\_

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

Cert. No.: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
MCC  
Distribution  
Date: \_\_\_\_\_

(FORM OF CERTIFICATE)  
(REVERSE)  
TERMS AND CONDITIONS

**FEDERAL TAX CREDIT.** This Mortgage Credit Certificate (“MCC”) entitles the holder (as named on the face of this MCC) to an annual federal tax credit equal to the lesser of \_\_\_\_\_ percent of the annual interest paid on the mortgage loan described on the face of this MCC or \$2,000.00. In addition, this MCC will reduce the holder’s mortgage interest deduction by an amount equal to the tax credit for the same tax year. The credit cannot be larger than the holder’s annual federal income tax liability, after all other credits and deductions have been taken into account. MCC credits in excess of current year tax liability may, however, be carried forward for use in the subsequent three years. At the time of issuance of this MCC, the filing of IRS Form 8396 is required in order to take advantage of the tax credit each year.

**PRINCIPAL RESIDENCE.** This MCC is to be used in connection with the financing of the purchase of a Residence. The Residence must be or become the holder’s “Principal Residence” within a reasonable time (not to exceed 60 days) following the date of issuance of the MCC. The “Principal Residence” means a Residence that, depending on all the facts and circumstances (including the good faith intent of the occupant), is occupied by the holder primarily for residential purposes. “Principal Residence” does not include a home used as an investment property or a recreational home, or a home that is used primarily in a trade or business (as evidenced by the use of more than 15 percent of the total floor space in a trade or business). Further, the holder may not claim, with respect to the Residence, any deductions pursuant to Section 280A of the Internal Revenue Code of 1986, as amended, for expense incurred in connection with the business use of a home.

**PRIOR OWNERSHIP OF A RESIDENCE.** The holder of this MCC cannot have had a present ownership interest in a Principal Residence at any time during the three-year period prior to the date on which the loan is executed. For purposes of making such determination, a Principal Residence includes a single-family house, condominium unit, mobile home, share of a housing cooperative or occupancy of a unit in a multifamily building owned by the holder. The term “present ownership interest” includes a fee simple interest; a joint tenancy, a tenancy in common or a tenancy by the entirety; the interest of a tenant-shareholder in a cooperative; a life estate; a land contract under which possession and the burdens and benefits of ownership are transferred although legal title is not transferred until some later date; and an interest held in trust for one person by another person. A “present ownership interest” does not include a remainder interest, a lease with or without an option to purchase, mere expectancy to inherit an interest in a principal residence, the interest that a person acquires upon the execution of a real estate purchase contract, or any interest in other than a “Principal Residence” during the previous three years. This requirement is waived if the Residence is located in a Targeted Area or if the Residence is acquired by a Qualified Veteran.

**PARTICIPATING LENDER AND LOAN ELIGIBILITY.** Financing may be sought from any Lender. The decision to make a loan is completely within the discretion of the Lender to whom the application for a mortgage loan is submitted. The Issuer plays no role in the decision to make a loan or determining the amount of the loan.

**MORTGAGE REQUIREMENTS.** No MCC will be issued in connection with financing that is to be used to replace an existing mortgage on the Residence to which the holder is a party or upon which the holder is an obligor. No MCC will be issued unless, prior to the date thereof, the holder was not a party to a mortgage on the Residence (whether in the form of a deed of trust, contract for deed, conditional sales contract, pledge, agreement to hold title in escrow, or other form of owner financing), other than a construction loan, bridge loan, or other temporary initial financing having a term not exceeding 24 months. In addition, no MCC will be issued if any financing for the Residence is to be obtained from a qualified mortgage bond or qualified veterans’ mortgage bond or if any person who is related to the holder has an interest as a creditor in the financing.

**OCCUPANCY OF THE RESIDENCE.** If the Residence ceases to be occupied as the holder’s “Principal Residence,” the holder will no longer be eligible for the MCC and must immediately notify the Department and the Lender providing the financing of this fact and the date of this event.

**INCOME LIMITS.** At the time of execution of the loan in connection with which this MCC is issued, the holder’s current income cannot exceed, (i) for families of three or more persons, 115% (140% in certain Targeted Areas) of the area median income and (ii) for individuals and families of two persons, 100% (120% in certain Targeted Areas) of the area median income, subject to an upward adjustment of the income limits in certain “high housing cost areas.” The Income Limits may be subject to adjustment at any time.

**PURCHASE PRICE LIMITS.** The purchase price for the Residence being acquired in connection with which this MCC is issued cannot exceed 90% (110%, in the case of certain Targeted Area Residences) of the average area purchase price applicable to the Residence. These limits may be subject to adjustment at any time.

**TRANSFERABILITY.** This MCC is not assumable and is transferable only upon application to the Department. The proposed transferee must meet all Program requirements then in effect.

**COMPLIANCE WITH INTERNAL REVENUE CODE.** This MCC is intended to comply with the provisions of Section 25 of the Internal Revenue Code of 1986, as amended, as well as any other applicable federal or State laws.

**REFINANCING.** **The refinanced loan amount cannot exceed the outstanding balance of the original mortgage loan as of the date of the refinancing.**

EXHIBIT D-1

Commitment Lot Notice  
(FROM DEPARTMENT TO PROGRAM ADMINISTRATOR)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE PROGRAM NO. 92

To: eHousingPlus  
3050 Universal Boulevard, Suite 190  
Weston, FL 33331  
Attention: Paloma Miranda  
Email: Paloma.Miranda@hdsoftware.net

On the date hereof, the Issuer has established the following Commitment Lot:

<b>Commitment Lot Designation</b>	<b>Commitment Lot Size</b>	<b>MCC Rates</b>	<b>MCC Issuance Fee(s)</b>
_____	\$_____	40% for loans up to \$150,000 35% for loans greater than \$150,000 and up to \$200,000 25% for loans greater than \$200,000	_____ MCC Only _____TMP Loan/MCC Combination

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

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

EXHIBIT D-2

Lender Commitment Lot Notice  
(FROM PROGRAM ADMINISTRATOR TO MORTGAGE LENDER)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE PROGRAM NO. 92

First Date to Reserve MCC Funds \_\_\_\_\_

Commitment Lot Size: \$ \_\_\_\_\_

Mortgage Credit Certificate Rates: 40% for loans up to \$150,000  
35% for loans greater than \$150,000 and up to \$200,000  
25% for loans greater than \$200,000

MCC Issuance Fee(s) \_\_\_\_\_ MCC Only  
\_\_\_\_\_ TMP Loan/MCC Combination

All MCC funds are available on a first-come, first-served basis. MCC reservations expire ninety (90) days from the date of registration. Updates to extend time must be made in the reservation system by the participating lender.

**REMINDER: If doing a TMP Loan/MCC Combination, the more restrictive program guidelines will apply.**

If you have any questions regarding this notice, please contact:  
ehousing  
Compliance office  
3050 Universal Boulevard, Suite 190  
Weston, FL 33331 954-217-0817 Email: Paloma.Miranda@hdsoftware.net

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**Tax-Exempt Mortgage / Taxable Mortgage**

**My First Texas Home / My Choice Texas Home / Texas Mortgage Credit Certificate (MCC)**

REVISED: 12/19/2018

**NOTICE TO BUYERS**

Texas Department of Housing and Community Affairs (“TDHCA”) created its homeownership options to help make ownership of new or existing homes more affordable for individuals and families of low and moderate income in the State of Texas, especially first-time buyers. The Tax-Exempt and Taxable Mortgage Program(s) (My First Texas Home and My Choice Texas Home) provide the homebuyer with a 30-year fixed interest rate mortgage loan and assistance to be used towards down-payment and/or closing cost assistance. The Texas Mortgage Credit Certificate (MCC) Program provides the homebuyer with a mortgage credit certificate which increases a family’s disposable income by reducing its federal income tax obligations. This tax savings provides a family with more available income to qualify for a loan and meet mortgage payment requirements. In order to participate in either or both Programs, the homebuyer(s) must meet certain eligibility requirements, purchase a home and obtain a mortgage loan and/or MCC through a participating lender. The eligible loan area consists of the State of Texas. The Programs are administered by TDHCA.

If your home is being financed using a TDHCA mortgage loan, the residence must be occupied as your principal residence within a reasonable time not to exceed 60 days of loan closing and it may not be used as an investment property, vacation, or recreational home. You will be required to immediately notify the Servicer in writing if the residence financed using the TDHCA mortgage loan ceases to be your principal, permanent residence. You cannot rent your home without the Servicer’s prior written consent (which consent can only be given in very limited, extreme circumstances) or sell your home to a person ineligible for assistance from the Department, unless you pay your loan in full.

For mortgage credit certificates issue by TDHCA, if the residence ceases to be your principal residence, you will be required to immediately notify TDHCA so that appropriate action, including but not limited to revocation of the MCC, may be taken.

**ELIGIBLE BORROWERS**

**First-Time Homebuyer Requirement:** Borrowers seeking financing for the purchase of a residence or the issuance of an MCC must be first-time homebuyers, which means that the borrower has not owned a principal residence in the past three years. Certain exceptions exist for residences located in certain designated areas, and for applicants who are “qualified veterans.” Borrowers using the My Choice Texas Home option are not required to be a First Time Homebuyer.”

**INCOME LIMITS AND  
HOME PURCHASE PRICE LIMITATION**

For maximum income and purchase price limits, see attachment or visit the TDHCA website: [http://www.tdhca.state.tx.us/homeownership/fthb/buyer\\_intro.htm](http://www.tdhca.state.tx.us/homeownership/fthb/buyer_intro.htm)

**ELIGIBLE PROPERTY**

**General Information:** New single family houses, including certain manufactured homes, duplexes, townhomes and condominiums are eligible for either program, and must follow standard agency (loan product) guidelines. Triplexes and fourplexes and shares in housing cooperatives are not eligible for the Program(s). The cost of the residence must not exceed the maximum home purchase price limits specified for the Program(s).



**Duplex:** A duplex may be financed under either Program as long as one unit of the duplex is occupied by the borrower as his or her principal residence and the duplex was first occupied for residential purposes at least five years prior to the closing date for the mortgage loan that is associated with the applicable program. The five-year requirement does not apply to a duplex if it is located in a qualified census tract that has been designated as a “targeted area” and the family income of the borrower meets the income limits for targeted area loans (120% or 140% of applicable median family income, as appropriate). The acquisition cost limits applicable to duplexes are available on TDHCA’s website.

**Manufactured Homes:** A manufactured home must be eligible under FHA, VA, USDA or FNMA guidelines, and be in one or more sections which in the traveling mode is 8 body feet or more in width and 40 body feet or more in length and when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling and connected to the required utilities, including plumbing, heating, air conditioning and electrical systems contained therein and meets the HUD minimum standards set forth in Title 24 parts 3280, 3282 and 42 U.S.C. 5401 et seq. The manufactured home must have been constructed after June 21, 1978 and be permanently affixed to the real property which will be owned by the homebuyer and subject to the mortgage loan. Recreational vehicles, campers and other such vehicles are ineligible.

**Financing Terms:** The mortgage loan used in conjunction with the MCC Program must be financed from sources other than tax-exempt mortgage bonds or tax-exempt veterans’ mortgage bonds. The mortgage may be a conventional, FHA, VA or USDA-RHS loan and will be at prevailing market rates or rate applicable with loan program. The mortgage loan must not be made to the borrower by a “related person,” as defined in Section 144(a)(3)(A) of the Internal Revenue Code. If using the TMP – My First Texas Home Program, the financing terms will be established by TDHCA. Eligible property types and other terms of the Program may differ for mortgage loans financed through the Fannie Mae HFA Preferred product.

## **PROGRAM DESCRIPTION FOR TAXABLE AND TAX-EXEMPT MORTGAGE OPTIONS**

**General Information:** TDHCA’s **Tax-Exempt Mortgage option – My First Texas Home** is exclusive to first time homebuyers, and provides a 30-year fixed interest rate mortgage loan that may include assistance in an amount up to 5% of the mortgage loan, to be used towards down payment and/or closing cost. The homebuyer must meet IRS Tax-Exempt Mortgage Revenue Bond income eligibility requirements, which include the income of a Non-Purchasing Spouse and anyone else who will have ownership interest in the property (sign the Deed of Trust).

**TDHCA’s Taxable Mortgage option – My Choice Texas Home** provides homebuyer(s) with a 30-year fixed interest rate mortgage loan and down payment/closing cost assistance, in an amount up to 5% of the mortgage loan. There is **no** first time homebuyer requirement on the My Choice Texas Home option. For the purposes of income eligibility, the credit qualifying/1003 income used by the lender for loan qualifying is allowed.

**Benefit Amount and Length of Benefit:** The amount of benefit will vary based on the borrower’s individual financial circumstances and the length of time the borrower lives in the home.

**Higher Mortgage Loan Interest Rate with Down Payment/Closing Cost Assistance:** The interest rate on your mortgage loan is based upon acceptance of down payment and/or closing cost assistance. If you receive down payment assistance from TDHCA, the interest rate on your mortgage loan **may** be at a higher interest rate than could otherwise be obtained (or may be available to you) if no down payment and/or closing cost assistance were included. If the interest rate on your mortgage loan is higher than you otherwise could obtain, you should carefully evaluate whether it is in your best financial interest to pay the higher mortgage loan interest rate associated with acceptance of down payment and/or closing cost assistance.

**Repayment of Down Payment/Closing Cost Assistance:** If receiving down payment assistance from TDHCA in connection with your mortgage loan, you will be required to repay the down payment and/or closing cost assistance you received in connection with your mortgage loan at the end of the term of your loan or earlier if you sell, refinance, transfer or otherwise dispose of your home. The annual percentage rate (APR) of interest is 0% and the 2<sup>nd</sup> mortgage loan is non-amortizing (has no monthly payment component).

**Assumption of Loan:** In order for the mortgage loan to be assumed, you must sell your home to a person eligible for assistance from the Department, otherwise, you must pay your mortgage loan in full or the Department may demand immediate full repayment of the mortgage loan. This could result in foreclosure of your mortgage and repossession of the property. In addition, if you rent the property or committed fraud or intentionally misrepresented yourself when you applied for the mortgage loan, the Mortgage Lender may foreclose your mortgage and repossess the property. If the Mortgage Lender takes your home through a foreclosure of the mortgage because of these reasons, HUD, FHA, VA, Fannie Mae, Freddie Mac, the Servicer and/or the Department (as applicable) will not be able to help you.

In order for the mortgage loan to be assumed, you must sell your home at or below the federally-designated acquisition cost in effect when you sell your home.

If the money received from the foreclosure sale is not enough to pay the remaining amount of money you owe on the loan, the Servicer may obtain a deficiency judgment against you (a court ruling that you must pay whatever money is still owed on the loan after the foreclosure sale). Such judgment will be taken over by HUD, VA, or a private mortgage insurer (as applicable). If the Servicer files an insurance claim against HUD, VA, or the private mortgage insurer (as applicable) because of the foreclosure, HUD, VA, or the private mortgage insurer (as applicable) may then bring an action against you to collect the judgment.

**Recapture.** If you sell or otherwise dispose of the residence during the next 9 years, this benefit may, under certain circumstances, be subject to “recapture.” Such recapture is accomplished by an increase in your federal income tax for the year in which there is a disposition of the residence. This recapture only applies if there is a gain resulting from the sale or other disposition of the residence and total annual household income increases above specified levels. You may wish to consult a tax advisor or the Internal Revenue Service at the time of sale or other disposition of the residence to determine the amount, if any, of the recapture tax. Following loan closing, you will be provided additional information that will be needed to calculate the maximum recapture tax liability at the time you sell or dispose of the residence. The IRS Recapture Tax Provision does not apply to the My Choice Texas Home option(s).

**PROGRAM DESCRIPTION MORTGAGE CREDIT CERTIFICATE (MCC) PROGRAM**

**General Information:** An MCC is a tax credit that will reduce the federal income taxes of qualified buyers purchasing a qualified residence. As a result, the MCC has the effect of reducing your mortgage payments. Applications must be made to TDHCA prior to closing the loan. The MCC may not be used in connection with the refinancing of an existing loan, unless such loan is a construction period loan, bridge loan or similar temporary initial financing of 24 months or less.

**Benefit Amount:** The size of your annual tax credit will be a percentage established by TDHCA (the “Mortgage Credit Certificate Rate”) of the annual interest paid on your mortgage loan. However, the maximum amount of the tax credit shall not exceed \$2,000 per year. The credit cannot be larger than your annual federal income tax liability, after all other credits and deductions have been taken into account. MCC credits in excess of your current year tax liability may, however, be carried forward for use in the subsequent three years.

**Mortgage Credit Certificate Rate:** The MCC Credit Rate for TDHCA Mortgage Credit Certificates will be issued based on the following tiered structure:

Loan Amount	Credit Rate	Max. Annual Tax Credit
Up to \$150,000	40%	\$2,000
\$150,001 up to \$200,000	35%	\$2,000
\$200,001 and greater	25%	\$2,000

**Regardless of the loan amount or MCC credit rate, the maximum annual tax credit allowed per IRS is \$2,000.**

Tax Credit Versus Tax Deduction: A mortgage interest deduction differs from a mortgage tax credit in a number of ways. For example, all homebuyers, regardless of income, may take a mortgage interest deduction, whereas mortgage tax credits are available only to holders of MCCs. The dollar value of a mortgage interest deduction depends upon your tax bracket. If you are in the 15 percent tax bracket, you will save 15 cents in taxes for each dollar of mortgage interest paid. With the MCC, you will save \$1 for each \$1 of credit received. Using an MCC and itemizing your deductions on Schedule A of Form 1040 will require you to reduce your mortgage interest deduction by an amount equal to your mortgage tax credit claimed.

Length of Benefit: Each year, your mortgage tax credit will be calculated on the basis of the designated percentage of the total interest you paid on your mortgage loan that year. The MCC will be in effect for the life of your mortgage loan, so long as the residence remains your principal residence.

Assumption of Loan: The MCC can be transferred only upon issuance of a new certificate by TDHCA. The person assuming your loan will have to qualify just as a new borrower would be required to qualify under the MCC Program.

Recapture of Tax Credit: Your MCC will be subject to certain requirements imposed by federal law concerning the recapture of a portion of the mortgage tax credit benefits granted to you upon the sale of your residence within nine years from the date of purchase. In no event will the recapture tax exceed the lesser of (i) 6.25% of the highest principal balance of your mortgage or (ii) one half of your taxable gain on the sale of your residence. At loan closing, you will be provided additional information that will be needed to calculate the maximum recapture tax liability at the time you sell or dispose of the residence.

### APPLICATION INFORMATION

At the time of your formal mortgage loan application, you will have the ability to apply for a TDHCA mortgage loan and/or a MCC. After you have completed and signed the mortgage loan application, the lender will review your information and will reserve program funds in the Program’s on-line registration system. The MCC will be issued to the homebuyer upon loan closing and submission of the required Program documents required in Program guidelines, and applicable program fees. Loan or MCC reservations cannot be transferred from one lender to another. In the event you desire to change lenders, the loan reservation will be canceled and the application and reservation process must start over with the new lender. **The purpose of this document is to provide information on the TDHCA My First Texas Home / My Choice Texas Home and Texas Mortgage Credit Certificate programs. If applying for one or more of these programs, you should request from your lender a copy of the Loan Confirmation generated from the Program’s on-line portal to verify the applicable program option(s) reserved in connection with your mortgage loan.**

**CHECK IF APPLICANT IS A VETERAN**       **CHECK IF CO-APPLICANT IS A VETERAN**   
**Important Information for Former Military Services Members.** Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Reserves, or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at <https://veterans.portal.texas.gov/>.

### DISCLOSURE OF APPLICANT INFORMATION

The applicant(s) hereby consent and agree that all information furnished by the applicant(s) to the participating lender and TDHCA, including but not limited to, non-public personal and financial information in connection with the application for a mortgage loan under the My First Texas Home / My Choice Texas Home or an MCC, may be disclosed to any person or other third parties in connection with the processing of the application, verification of information concerning the TDHCA loan or MCC, the loan or the applicant(s), and for any other purpose in furtherance of or connected with the Program.

Date \_\_\_\_\_

---

**APPLICANT**

---

Printed Name of Applicant

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**CO-APPLICANT OR NON-PURCHASING SPOUSE (if applicable)**

---

Printed Name of Applicant OR Non-Purchasing Spouse (if applicable)

APPENDIX A

TDHCA My First Texas Home (TMP-79) / My Choice Texas Home / Texas Mortgage Credit Certificate Program (MCC)

**Combined Income and Purchase Price Limits Table**  
 (Including Income Limit Adjustments for High Housing Cost Areas)  
 Effective April 24, 2018

Area of State	Counties in Area	NON-TARGETED AREAS			* TARGETED AREAS		
		100% AMFI 1 or 2 Persons	115% AMFI 3 or more Persons	Non-Targeted Area Purchase Price Limit	120% AMFI 1 or 2 Persons	140% AMFI 3 or more Persons	Targeted Area Purchase Price Limit
<b>Balance of State</b>	<b>All other counties not mentioned below</b>	<b>\$68,800</b>	<b>\$79,120</b>	<b>\$271,164</b>	<b>\$82,560</b>	<b>\$96,320</b>	<b>\$331,423</b>
Andrews County	Andrews	\$75,900	\$87,285	\$271,164	<i>No Targeted Census Tracts in County</i>		
Austin County, HMFA	Austin	\$72,400	\$83,260	\$304,941	<i>No Targeted Census Tracts in County</i>		
Austin-Round Rock, MSA	Bastrop, Caldwell, Hays*, Travis* & Williamson	\$86,000	\$98,900	\$353,646	\$103,200	\$120,400	\$432,235
Blanco County	Blanco	\$72,400	\$83,260	\$271,164	<i>No Targeted Census Tracts in County</i>		
Borden County	Borden	\$74,500	\$85,675	\$271,164	<i>No Targeted Census Tracts in County</i>		
Brazoria County, HMFA	Brazoria	\$91,100	\$104,765	\$304,941	<i>No Targeted Census Tracts in County</i>		
Crane County	Crane	\$72,900	\$83,835	\$271,164	<i>No Targeted Census Tracts in County</i>		
Dallas, HMFA	Collin*, Dallas*, Denton*, Ellis*, Hunt*, Kaufman* & Rockwall	\$82,837	\$95,262	\$355,764	\$92,640	\$108,080	\$434,823
Fort Worth - Arlington, HMFA	Johnson*, Parker & Tarrant*	\$83,237	\$95,722	\$355,764	\$90,240	\$105,280	\$434,823
Gillespie County	Gillespie	\$71,000	\$81,650	\$271,164	<i>No Targeted Census Tracts in County</i>		
Glasscock County	Glasscock	\$87,100	\$100,165	\$271,164	<i>No Targeted Census Tracts in County</i>		
Hartley County	Hartley	\$73,000	\$83,950	\$271,164	<i>No Targeted Census Tracts in County</i>		
Hemphill County	Hemphill	\$70,000	\$80,500	\$271,164	<i>No Targeted Census Tracts in County</i>		
Hood County, HMFA	Hood	\$84,237	\$96,872	\$355,764	<i>No Targeted Census Tracts in County</i>		
Houston-The Woodlands-Sugar Land, HMFA	Chambers, Fort Bend*, Galveston, Harris*, Liberty, Montgomery* & Waller	\$74,900	\$86,135	\$304,941	\$89,880	\$104,860	\$372,706
Jackson County	Jackson	\$71,400	\$82,110	\$271,164	<i>No Targeted Census Tracts in County</i>		
Kendall County, HMFA	Kendall	\$93,400	\$107,410	\$331,411	<i>No Targeted Census Tracts in County</i>		
King County	King	\$74,600	\$85,790	\$271,164	<i>No Targeted Census Tracts in County</i>		
Lipscomb County	Lipscomb	\$79,300	\$91,195	\$271,164	<i>No Targeted Census Tracts in County</i>		
Loving County	Loving	\$78,500	\$90,275	\$271,164	<i>No Targeted Census Tracts in County</i>		
Martin County, HMFA	Martin	\$68,800	\$79,120	\$271,164	<i>No Targeted Census Tracts in County</i>		
Medina County, HMFA	Medina	\$77,509	\$89,136	\$331,411	<i>No Targeted Census Tracts in County</i>		
Midland, HMFA	Midland*	\$90,500	\$104,075	\$271,164	\$108,600	\$126,700	\$331,423
Odessa MSA	Ector*	\$72,600	\$83,490	\$271,164	\$87,120	\$101,640	\$331,423
Oldham County, HMFA	Oldham	\$69,900	\$80,385	\$271,164	<i>No Targeted Census Tracts in County</i>		
Reagan County	Reagan	\$71,400	\$82,110	\$271,164	<i>No Targeted Census Tracts in County</i>		
Roberts County	Roberts	\$88,000	\$101,200	\$271,164	<i>No Targeted Census Tracts in County</i>		
San Antonio-New Braunfels, MSA	Atascosa*, Bandera, Bexar*, Comal, Guadalupe* & Wilson	\$77,789	\$89,458	\$331,411	\$82,560	\$96,320	\$405,058
Schleicher County	Schleicher	\$70,800	\$81,420	\$271,164	<i>No Targeted Census Tracts in County</i>		
Somervell County, HMFA	Somervell	\$82,560	\$96,320	\$355,764	<i>No Targeted Census Tracts in County</i>		
Victoria MSA	Goliad, Victoria*	\$69,300	\$79,695	\$271,164	\$83,160	\$97,020	\$331,423
Wise County, HMFA	Wise	\$82,560	\$96,320	\$355,764	<i>No Targeted Census Tracts in County</i>		

\* Property must be located in a qualified targeted census tract to use the Targeted Area Limits.

“AMFI” - Area Median Family Income; “MSA” - Metropolitan Statistical Area; “HMFA” - HUD Metro FMR Area  
 Down Payment Assistance Available to ALL Income Categories - \*Targeted Areas are areas of severe economic distress.  
 For additional information please visit our website at [www.MyFirstTexasHome.com](http://www.MyFirstTexasHome.com)

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**APPLICANT AFFIDAVIT**

**My First Texas Home – Texas Mortgage Credit Certificate (TAX-EXEMPT)**

There are important legal consequences to this Affidavit. Please read carefully before signing.  
REVISED: 12/19/2018

**STATE OF TEXAS**  
**COUNTY OF \_\_\_\_\_**

**LOAN AMOUNT: \$ \_\_\_\_\_**  
**LENDER: \_\_\_\_\_**

The undersigned, as part of my (our) application for a loan under the Department’s tax-exempt mortgage and/or for a mortgage credit certificate (“MCC”) to be issued by the Department in connection with a loan from a participating lender of my (our) choice for a single-family residence that will become my (our) permanent, primary residence, being first duly sworn state the following information to be true and correct:

\_\_\_\_\_  
APPLICANT LAST NAME FIRST MIDDLE

\_\_\_\_\_  
CO-APPLICANT LAST NAME FIRST MIDDLE

\_\_\_\_\_  
ADDRESS BEING PURCHASED

\_\_\_\_\_  
CITY COUNTY STATE ZIP CODE  
TEXAS

**CHECK AS APPLICABLE:**

- New Construction       Existing Structure       Non-Targeted Area       Targeted Area
- Mortgage Only       Mortgage w/Assistance       MCC Only       Combo

**CHECK IF APPLICANT IS A VETERAN**       **CHECK IF CO-APPLICANT IS A VETERAN**

**Important Information for Former Military Services Members.** Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Reserves, or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at <https://veterans.portal.texas.gov/>.

**CHECK IF APPLICANT OR CO-APPLICANT IS USING THE EXCEPTION TO FIRST-TIME HOMEBUYER REQUIREMENT FOR QUALIFIED VETERANS:**  Applicant meets the requirements to qualify as a “veteran” as defined in 38 U.S.C. Section 101. Attached hereto are true and correct copies of my discharge or release papers, which demonstrate that such discharge or release was other than dishonorable. Applicant has not previously obtained a loan financed by single family mortgage revenue bonds or another MCC utilizing the exception to the first-time homebuyer requirement for Residences to Veterans under Section 143(d)(2)(D).

**Copies of Federal Tax Transcripts** for the past three (3) years for all persons who will be liable on the mortgage loan are submitted herewith or the reasons for exemption from filing are stated as follows: \_\_\_\_\_

**NOTE:** Non-purchasing spouse federal tax transcripts and income must be submitted and/or included.

**CHECK IF APPLICABLE:**  I certify that the mortgage loan closing is occurring between January 1 and February 15, and that I have not yet filed my federal income tax return for the prior year. I further certify that when I file my federal tax return for the prior year, I will neither be entitled to, nor claim, deductions for real estate taxes or interest on indebtedness with respect to my principal residence for that year.

**Total Persons in Household** \_\_\_\_\_

**Mid Credit Score** \_\_\_\_\_

**Family Income** includes the anticipated gross income of all persons expected to both live in the residence being financed and to be liable on the mortgage loan, and includes but is not limited to Annual Wages, Commissions, Bonuses, Self-Employment (Plus Depreciation), Dividends, Interest, Annuities, Pensions, Child Support, Alimony and Public Assistance:

Applicant Type	Applicant Name	Income Type	Income Amount
<b>Total Income</b>			

**NOTE:** Non-purchasing spouse federal tax transcripts and income must be submitted and/or included.

**Applicant certifies that the Persons receiving the MCC and/or benefitting from a loan under the tax-exempt mortgage option are not currently delinquent or in default with child support and/or government loans.**

**The TOTAL ACQUISITION COST**      \$ \_\_\_\_\_

The above acquisition cost includes the following itemized amounts:

- |   |          |
|---|----------|
| 1. Amount paid for the residence, in cash or in kind, by Applicant to the seller (including any amount which seller is required to pay as a real estate commission or loan discount points):  | \$ _____ |
| 2. Amount paid for the residence, in cash or in kind, by Applicant or any person related to the Applicant or by any person for the benefit of the Applicant, to seller or any person related to seller or for seller's benefit (other than the amount set forth above): | \$ _____ |
| 3. If the residence is incomplete or unfinished the estimated cost of completing it (a written estimate of completion cost is attached):  | \$ _____ |
| 4. If the residence is located on leased land, the capitalized value (using a discount rate equal to the interest rate borne by the mortgage loan) of the ground rent:  | \$ _____ |
| 5. Land purchased separately and owned by the Applicant(s) for less than two (2) years prior to the commencement of construction of the residence.  | \$ _____ |

Apart from any normal real estate agents' commissions, no money is being paid, no promissory note is being delivered, nor is anything else of value (including, without limitation, personal property) being exchanged or transferred to the seller of the residence or any other persons by me, or to my knowledge, by any other person in connection with the residence except as itemized with the amount of their purchase price that does not exceed their fair market value.

**TOTAL ACQUISITION COST** of the property includes all amounts paid previously or in the future, in cash or in kind by the Applicant(s) (or a related party or for the benefit of the Applicant(s)) to the seller (or a related party or for the benefit of the seller); "points" paid to the seller; if the residence is incomplete, the reasonable cost of completing the residence; the capitalized value of ground rent using the discount rate equal to the interest rate borne by the mortgage loan) (leasehold estate); additional amounts for land purchased separately and owned by the Applicant(s) less than two (2) years prior to the commencement of construction of the residence; and any other settlement and/or financing costs to the extent that such costs exceed the usual and reasonable costs that would be paid by the buyer where financing is not assisted through the issuance of an MCC or provided through the issuance of tax-exempt bonds. Acquisition cost does not include usual and reasonable settlement or financing costs; the value of services performed by the mortgagor or members of the mortgagor's family in completing the residence; fix-up expenses such as painting, minor repairs and floor refinishing; or the cost of land which has been owned by the Applicant for at least 2 years prior to the commencement of construction of the residence.

**TYPE OF LOAN:**

I (We) acknowledge that the interest rate of my (our) mortgage loan is at a higher interest rate than I (we) might otherwise obtain if I (we) did not receive down payment and/or closing cost assistance in conjunction with this mortgage loan. I (we) have determined the interest cost associated with this mortgage loan, in light of the down payment and closing cost assistance, is in my (our) best financial interest.

**THE APPLICANT FURTHER CERTIFIES THAT:**

(a) The residence is a single-family residence (For this purpose, a single-family residence includes a two-family residence so long as (1) one unit will be occupied by the applicant and (2) the units were first occupied at least 5 years before the loan is closed.) (A residence includes stock held by a tenant-stockholder in a cooperative housing corporation. It does not include property such as an appliance, a piece of furniture, a radio, etc., which, under Texas law, is not a fixture. The term also includes any manufactured home meeting certain size requirements and that is of a kind customarily used at a fixed location.); (b) the residence does not include (1) recreational vehicles, campers and other similar vehicles or (2) land that is greater than the normal and usual lot size within the area or that is in excess of what is needed to maintain the basic livability of the residence; further, I(we) do not expect to derive any income from the land associated with the residence; (c) I(we) intend to use the residence as my (our) principal residence within a reasonable time not to exceed 60 days of loan closing, and I(we) will immediately notify the Department in writing if the residence ceases to be my(our) principal, permanent residence; (d) the residence will not be used (1) as investment property, vacation, or recreational home or (2) in conjunction with business activities (as evidenced by the use of more than fifteen percent of the total floor space in a trade or business) except for the rental of one of the units in a two family residence; further, I(we) do not intend to claim, with respect to the residence, any deductions pursuant to Section 280A of the Code for expenses incurred with respect to the business use of a home; (e) unless the residence is located in a targeted area or the Applicant is a qualified veteran, all Applicants and any co-Applicants, either individually or together, have not had a present ownership interest in a principal residence during the 3-year period prior to the date of the loan closing (a present ownership interest includes, but is not limited to, a fee simple interest; a joint, tenancy, a tenancy in common or a tenancy in the entirety; the interest of a tenant-shareholder in a cooperative, a life estate, a land contract and an interest in trust for the mortgagor; a present ownership interest does not include a remainder interest, a lease with or without an option to purchase, an expectation of inheritance, the interest acquired under a purchase contract and an interest in a residence that is not a principal residence); (f) the acquisition cost listed above does not exceed 90 percent (for residences not located in a targeted area) or 110 percent (for residences located in a targeted area) of the average area purchase price; (g) the loan will not be used to replace my(our) existing mortgage, unless such loan is a construction period loan, bridge loan or similar temporary initial financing of 24 months or less; (h) no portion of the financing of the residence is or will be provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond; (i) the Department has not limited me(us) to seeking financing through any particular lender; (j) no "related person," as defined in Section 144(a)(3)(A) of the Code, has or is expected to have an interest as a creditor in the mortgage loan; (k) there are no persons who have or are expected to have a present ownership interest in the residence following closing on the loan who have not executed this Affidavit or one substantially similar to this Affidavit; and (l) I(we) do not have an application in process nor have I(we) received a commitment for a mortgage loan under any prior program of the Department (or the Texas Housing Agency).

(b) The residence will be occupied as my (our) principal residence within a reasonable time not to exceed 60 days of loan closing, will not be used as investment property, vacation, or recreational home; and I(we) will immediately notify the Servicer in writing if the residence ceases to be my(our) principal, permanent residence; (1) this is not a refinancing of an existing, previously occupied residence for which this mortgage loan is being requested and will not replace my(our) existing mortgage or land contract or a newly constructed residence has not and will not be occupied prior to loan commitment and the proceeds of the mortgage loan will not be used to replace my(our) existing mortgage, unless such loan is a construction, bridge or temporary initial financing of 24 months or less; (2) unless the residence is located in a targeted area or the mortgagor is a qualified veteran, all borrowers, spouses and any co-borrowers



have submitted the most recent 3 years federal tax transcripts or reasons exempted by law to do so and individually or together have not had an ownership interest in a principal residence within 3 years of loan closing (*principal residence includes single family detached, condominium, shares in housing cooperative, occupancy in an owned multi-family housing unit, factory made housing permanently affixed to real property; ownership includes full or partial ownership interest, fee simple, joint ownership interest by joint tenancy, tenancy in common or tenancy in the entirety, the interest of a tenant-stockholder in a cooperative, a land contract under which possession and the burdens and benefits of ownership are transferred, even if legal title is until some later date, ownership interest in trust or life estate interest*); (3) there are no persons who have or are expected to have a present ownership interest in the residence following closing on the loan who have not executed this Affidavit or one substantially similar to this Affidavit; and (4) I(we) must meet all federally and locally mandated requirements to qualify for the mortgage loan.

**I (we) understand this Affidavit will be relied upon for the purposes of determining my (our) eligibility and understand that any fraudulent statement will result in (i) the immediate revocation of my (our) MCC and (ii) a \$10,000 penalty under Section 6709 of the Code. I (we) further understand that any material misstatement in this Affidavit because of my (our) negligence will result in (i) the immediate revocation of my (our) MCC and (ii) a civil penalty of \$1,000. Under penalties of perjury, I (we) declare that I (we) have examined the statements and certifications contained herein, and, to the best of my(our) knowledge and belief, they are true, correct and complete. I(we) understand that perjury is a felony punishable by fine or imprisonment or both.**

\_\_\_\_\_  
APPLICANT

\_\_\_\_\_  
CO-APPLICANT OR NON-PURCHASING SPOUSE

\_\_\_\_\_  
Printed Name of Applicant

\_\_\_\_\_  
Printed Name of Co-Applicant or Non-Purchasing Spouse

Sworn to and subscribed before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PERSONALIZED SEAL

\_\_\_\_\_  
Notary Public Signature

[Signature Page to Applicant Affidavit]

**AFFIDAVIT OF SELLER**

(Waived for REO Property)

REVISED: 10/15/2018

I/We the undersigned, as an essential participant in an application for which a Mortgage Loan or a Mortgage Credit Certificate is being sought under one of the Texas Department of Housing and Community Affairs' homeownership programs, being first duly sworn hereby certify the following:

(a) I(we) are the Seller (or Builder) of the single-family residence (the "Residence") located at:

ADDRESS BEING SOLD			
<b>TEXAS</b>			
CITY	COUNTY	STAT	ZIP CODE

E

(b) I(We) certify that the total amount to be paid by the purchaser (or a related party to or for the benefit of the purchaser) to me(us), or to anyone related to me(us), or for my(our) benefit (such as payment to a real estate agent) in connection with the purchase of the Residence is \$ \_\_\_\_\_. Such amount includes the following itemized amounts: (i) amount paid for the Residence, in cash or in kind, by Applicant or any person related to the Applicant for the benefit of the Applicant to the Seller or any person related to the Seller for Seller's benefit in the amount of \$ \_\_\_\_\_, (ii) if the Residence is incomplete and the Seller will pay any amounts towards completion, the amount of \$ \_\_\_\_\_ and (iii) if the Residence is subject to a ground rent payable to the Seller, the capitalized value of the ground rent of \$ \_\_\_\_\_.

Such amount does not include (1) usual and reasonable settlement and financing costs that would be paid by the purchaser where financing is not provided through the issuance of an MCC or qualified mortgage bond issue, (2) the value of services performed by purchaser or members of the purchaser's family, (3) the cost of any land owned by the purchaser at least 2 years prior to commencement of construction on the residence, or (4) any amount paid for personal property that is not a fixture under Texas law.

(c) I(We) have not entered into any other contract or agreement with the Applicant(s), either expressed or implied, to perform additional construction on the Residence or to transfer any additional property at additional cost other than personal property contained in the Residence which are listed by item and amount and attached hereto and incorporated into this Affidavit.

**I/we understand this Affidavit will be relied upon for the purposes of determining the Applicant's eligibility and understand that any fraudulent statement will result in (i) the immediate revocation of the Applicant's MCC and (ii) a \$10,000 penalty under Section 6709 of the Code. Under penalties of perjury, I(we) declare that I(we) have examined the statements and certifications contained herein, and, to the best of my(our) knowledge and belief, they are true, correct and complete. I(we) understand that perjury is a felony punishable by fine or imprisonment or both.**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Seller or Signature of Builder Representative

\_\_\_\_\_  
Printed Name of Seller or Builder Representative

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Seller - If Seller Is Not an Individual, Type/print Name and Title and Name of Selling Entity. If Signatory Is Not the Owner, Type/print Name and Title. Attach Copy of Power of Attorney.

\_\_\_\_\_  
Printed Name of Seller

Sworn to and subscribed before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

PERSONALIZED SEAL

\_\_\_\_\_  
Notary Public Signature

**CERTIFICATE OF LENDER**

REVISED: 10/15/2018

\_\_\_\_\_, the Lender, certifies that as of the date of closing of the mortgage loan it has (1) reviewed the foregoing affidavits of the Applicant(s) and the Seller and found the financial details contained therein (based on Lender's review of documents provided by, and the representations of the Applicant and Seller) to be true and correct; (2) has charged the Applicant(s) lender fees that are customary and reasonable and no more than what is charged by the Lender to other non-Program buyers; and (3) after completion of all underwriting, verifications and investigations, has approved the mortgage loan. **The Lender further certifies if applicable:**

**MCC ONLY:**

- The financing attached to the Applicant's MCC does not use any of the prohibited financing, such as non-TDHCA mortgages funded with a qualified mortgage bond or a qualified veterans' mortgage bond.**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Telephone Number of Authorized Officer

\_\_\_\_\_  
Print Name & Title of Authorized Officer

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Taxable Mortgage Program (TMP) / Texas Mortgage Credit Certificate (MCC)**

**COMPLIANCE FILE CHECKLIST**

REVISED: 02/23/2017

SERVICER or MCC LOAN NUMBER:

MORTGAGOR NAME:

LENDER NAME:

LENDER LOAN NUMBER:

**PLEASE SUBMIT ONLY COMPLETE FILES IN AN ACCO-BOUND FILE FOLDER IN THE EXACT ORDER SHOWN BELOW. INCOMPLETE NON ACCO-BOUND FILES WILL BE RETURNED AT LENDER EXPENSE.**

\_\_\_\_\_ This CHECKLIST

Compliance/Admin fee - Corporate checks should be made payable to eHousingPlus. Note borrower(s) name and property address on the check. Wire payments are accepted by eHousingPlus.

\*\*\*You MUST enter the Check # or ACH confirmation: \_\_\_\_\_

<b>TMP-79 stand-alone fees</b> _____ \$225 Compliance/Admin Fee	<b>TMP-79 with Texas MCC fees</b> _____ \$225 Compliance/Admin Fee _____ \$500 MCC Issuance Fee	<b>Texas MCC Stand alone fees</b> _____ \$200 Compliance/Admin Fee _____ \$500 MCC Issuance Fee
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**ORIGINAL OR CERTIFIED TRUE ONLY OF THE FOLLOWING:**

- \_\_\_\_\_ ORIGINAL SIGNED Notices to Buyers
- \_\_\_\_\_ ORIGINAL SIGNED Affidavit - Mortgagor & Seller/Builder Affidavit & Lender Certificate
- \_\_\_\_\_ ORIGINAL SIGNED Disclosure of 2nd Mortgage Loan Terms (TMP79/Combo Loans Only)
- \_\_\_\_\_ ORIGINAL SIGNED or Certified Copy- Affidavit of Co-Signor/Guarantor (if applicable)

**COPIES OF THE FOLLOWING:**

- \_\_\_\_\_ COPIES OF SIGNED Income Tax Returns OR Transcripts OR any combo of returns/transcripts for the past 3 years (transcripts do NOT require a signature). Required for ALL borrower(s) and spouse, even if not on the loan. Not required for loans in Targeted Areas or Veterans Exception.
- \_\_\_\_\_ COPY of Notice of Potential Recapture Tax on Sale of Home - only for MCC loans (no signature required)
- \_\_\_\_\_ COPY of Homebuyer Education Certificate
- \_\_\_\_\_ COPY of Real Estate Purchase Contract (not required for stand-alone MCC loans)
- \_\_\_\_\_ COPY of FINAL SIGNED 1003
- \_\_\_\_\_ COPY of FINAL SIGNED CLOSING DISCLOSURE (TRID form)
- \_\_\_\_\_ COPY of Warranty Deed
- \_\_\_\_\_ COPY of discharge papers (DD214) only if Veteran is qualifying under the Veterans Exception

**THE COMPLETE ACCO-BOUND COMPLIANCE FILE FOLDER IS SUBMITTED TO:**

**eHousingPlus  
3050 Universal Blvd., Suite 190  
Weston, FL 33331**

PLEASE NOTE: TMP MORTGAGE FILE, INCLUDING CREDIT PACKAGE AND DPA DOCS AND ADDITIONAL PAPERWORK RELATED TO THE DPA ASSISTANCE ARE SENT TO IHFA

Rev.02/23/17

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AFFIDAVIT OF COSIGNOR/GUARANTOR

There are important legal consequences to this Affidavit. Read carefully before signing.

REVISED: 05/12/2014

THE STATE OF TEXAS §
COUNTY OF \_\_\_\_\_ §

I/we the undersigned, as an obligor on a note (the "Note") made in connection with a mortgage loan (the "Mortgage Loan") being submitted by the Applicant(s) under the Department's Taxable Mortgage Purchase Program ("TMP") and/or Mortgage Credit Certificate Program ("MCC Program"):

APPLICANT LAST NAME FIRST MIDDLE
CO-APPLICANT LAST NAME FIRST MIDDLE

in the amount of \$ \_\_\_\_\_

from \_\_\_\_\_ (the "Mortgage Lender") under TMP and/or the MCC Program, hereby certify that I/we are executing the note solely for purposes of providing additional security for the Mortgage Loan.

I/We further certify that I/we have no other financial or ownership interest in the property subject to the Mortgage Loan and that I/we have no intention to and will not occupy the property subject to the Mortgage Loan as a permanent/primary residence.

The statements set forth herein are made under penalty of perjury. I/we understand that perjury is a felony punishable by fine, imprisonment or both.

Dated \_\_\_\_\_

Signature of Cosignor/Guarantor

Printed Name of Cosignor/Guarantor

Dated \_\_\_\_\_

Signature of Cosignor/Guarantor

Printed Name of Cosignor/Guarantor

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

PERSONALIZED SEAL

Notary Public Signature

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**NOTICE OF POTENTIAL RECAPTURE TAX ON SALE OF HOME**

(To be delivered to Applicant at the Time of Settlement of Mortgage Loan)

REVISED: 07/06/2015

eHousingPlus  
3050 Universal Blvd. Ste 190  
Weston, FL 33331  
(954) 217-0817  
www.eHousingPlus.com

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**IMPORTANT CLOSING DOCUMENTS – DO NOT DISCARD –  
NECESSARY IF YOU SHOULD DECIDE TO SELL YOUR PROPERTY - KEEP IN SAFE PLACE  
NOTICE TO BORROWER(S) OF MAXIMUM RECAPTURE TAX AND COMPUTATION OF  
RECAPTURE TAX ON DISPOSITION OF THIS PROPERTY**

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Loan #

Dear Homeowner:

As previously disclosed to you, your mortgage may be subject to “recapture” if you sell or otherwise dispose of your house within nine years after purchase. The recapture takes the form of an increase to your federal income tax owed for the year of disposition, but only applies if you dispose of your house at a gain and your income is above a certain amount.

In accordance with the requirements of Section 143(m)(7) of the Internal Revenue Code of 1986, as amended (the “Code”), this Notice serves to inform you that the “federally-subsidized amount” with respect to your mortgage loan is \$\_\_\_\_\_, which is 6.25% of the projected highest principal amount of your mortgage loan. Further, the adjusted qualifying income for each category of family size for each year of the 9-year period beginning on the date of closing on your mortgage loan is set forth below.

If you dispose of your house within months*:	Holding Period Percentage	Maximum Adjusted Qualifying Income (MAQI), for	
		1-2 person HH	3+ person HH
1 – 12	20%		
13 – 24	40%		
25 – 36	60%		
37 – 48	80%		
49 – 60	100%		
61 – 72	80%		
73 – 84	60%		
85 – 96	40%		
97 – 108	20%		
109 or more	No Recapture Tax		

\*from closing date of your loan

1. GENERAL - When you sell your house, you may have to pay the Recapture Tax as calculated herein. Recapture Tax may also apply if you dispose of the property in some other way, such as giving the property to a relative. Whenever “sale” is used in this notice, it also applies to other ways of disposing your house.
2. EXCEPTIONS - In the following scenarios, no Recapture tax would be due:
  - a) You dispose of your house more than nine (9) years after you close your mortgage loan;
  - b) Your house is disposed of as a result of your death;
  - c) You transfer your house, either to your spouse or former spouse due to divorce, and you have no gain or loss reflected in your income (under Section 1041 of the Internal Revenue Code);
  - d) You dispose of your house at a loss.

Loan #

Recapture Notice Pg. 2

- 3. **MAXIMUM RECAPTURE TAX** - The maximum Recapture Tax that you may be required to pay as an addition to your Federal Income Tax is equal to the "federally-subsidized amount" of \$\_\_\_\_\_ set forth above.
- 4. **ACTUAL RECAPTURE TAX** - The actual Recapture Tax, if any, can only be determined when you sell your house, and will be the LESSER of:
  - a) 50% of the gain on the sale, regardless of whether it is included in your income for Federal Income Tax purposes, or
  - b) Your Recapture Tax amount, which is calculated by multiplying the following three (3) amounts:
    - \* Maximum Recapture Tax Amount (Explained in Paragraph 3),
    - \* Holding Period Percentage (Detailed in Page 1 Table - Column 1), and
    - \* Income Percentage (Described in Item 5 below)
- 5. **INCOME PERCENTAGE** - Calculate as follows...
  - a) Subtract the Maximum Adjusted Qualifying Income (MAQI) (see table on page 1) for the taxable year in which you sell your house, from your Modified Adjusted Income (MAI) for the same taxable year. MAI is the Adjusted Gross Income shown on your IRS tax return with the following two adjustments:
    - 1. PLUS any interest received or accrued in the taxable year from tax-exempt bonds that may have been excluded from your gross income, under Section 103 of the IRS Code; and
    - 2. MINUS the amount of gain on the sale or disposition of the property that was included in your gross income for that taxable year.

$$\text{MAI} - \text{MAQI} = \text{DIFFERENCE}$$

b) DIFFERENCE AMOUNT	INCOME PERCENTAGE
0 or Less	-0-
\$5,000 or More	100%
More than 0 but less than \$5,000	Difference/\$5,000 (Example: \$1,000/\$5,000 = 20%)

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- 6. **LIMITATIONS AND SPECIAL RULES ON RECAPTURE TAX** - Additional provisions and rules apply in specific circumstances, such as the destruction of the property, disposition by gift, sale upon early prepayment and others.

The determination of whether you are subject to any Recapture Tax can only be made at the time of sale of your property. You may wish to consult a tax advisor and/or Internal Revenue Service office for more details in your particular case. General Information on Recapture Tax can be found in Section 143(m) of the Code, or by logging on to [www.irs.gov](http://www.irs.gov). You may also request Form 8828 and the respective instructions for said form for a better understanding on how Recapture Tax can impact you.

Sincerely,  
eHousingPlus

**FOR YOUR REFERENCE:**

Your Loan Servicer:  
 Originating Lender:  
 Loan #  
 Loan Amount:  
 Term in months: Closing Date:  
 Issuer:  
 Program:  
 Property Address: County:

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**REFINANCING OF MCC LOAN APPLICATION  
(REQUEST FOR NEW MCC)**

Borrower(s): \_\_\_\_\_

Borrower Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

Residence Address: \_\_\_\_\_

TDHCA MCC Number: \_\_\_\_\_

Balance Owing an Original Loan: \$ \_\_\_\_\_

New Loan Amount: \$ \_\_\_\_\_

Original Loan Amount: \$ \_\_\_\_\_

Refinanced Loan Maturity: \_\_\_\_\_

Closing Date of Refinancing: \_\_\_\_\_

Lender: \_\_\_\_\_

Lender Loan Reference: \_\_\_\_\_

Attachments: Original Mortgage Credit Certificate (keep a copy for your files).

Copy of closing statement

MCC Reissuance Fee payable to TDHCA – \$50.00

Lender Certificate for Refinanced Mortgage Loan (Tab 6B) –  
*completed by lender refinancing the mortgage loan*

The undersigned borrower (whether one or more), being the owner(s) of the above residence of (the “Residence”), and the holder of a Mortgage Credit Certificate (the “MCC”) issued in connection with the Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program, does hereby depose and say, under penalty of perjury and the civil penalties outlined herein, that each of the following statements are, correct and complete in all respects:

1. Property. The refinanced loan pertains to the same property to which the original MCC related, which is the Residence described above.

2. Replacement of Entire MCC. The new MCC replaces the original MCC in its entirety. No portion of the original MCC is being retained with respect to any portion of the outstanding balance of the original loan amount specified on the original MCC.

3. Loan Amount. The refinanced loan amount does not exceed the outstanding balance of the original mortgage loan as of the date of the refinancing.



4. MCC Credit Rate. The new MCC will be at the same credit rate as the original MCC.

5. No Increase in Tax Credit Amounts. The undersigned acknowledges that in the event the maturity of the refinanced loan is a date later than the maturity of the original loan, the new MCC will expire as of the original maturity date so that there shall be no increase in the tax credit amounts under the new MCC for any tax year over the amounts which would have been available under the original MCC.

6. Date of Refinancing. The date of the refinancing stated above is the true and correct date the refinancing documents were executed.

7. Reaffirmation of the Original Obligations. The undersigned further reaffirms all of the representations, obligations and agreements covered under the documents signed in connection with obtaining the original MCC and acknowledges that all such obligations and agreements shall continue in full force and effect in connection with the new MCC.

8. Revocation of Mortgage Credit Certificate. The undersigned understands that if any of the statements set forth herein are not true, correct and complete in all respects, or that if federal law or regulations disqualify further participation in the MCC Program, the MCC Program, the MCC may be immediately revoked.

9. Penalty. The statements set forth herein are made under penalty of perjury and the following civil penalties. Any material misstatement in any affidavit or certification made in connection with application for or issuance of an MCC due to my negligence shall result in a civil penalty fee payable to the Department of \$1,000.00, and any such material misstatement due to my fraud shall result in a civil penalty fee payable to the Department of \$10,000.00. I understand that perjury is a felony offense punishable by fine or imprisonment, or both.

Signature(s) of Borrower:

\_\_\_\_\_  
\_\_\_\_\_

SUBSCRIBED and SWORN to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

ATTACH THE ORIGINAL MCC CERTIFICATE, LENDER CERTIFICATE FOR REFINANCED MORTGAGE LOAN (TAB 6B), AND A COPY OF YOUR CLOSING STATEMENT TO THIS FORM AND MAIL TO:

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941  
Attention: Dina Gonzalez

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**LENDER CERTIFICATE FOR REFINANCED MORTGAGE LOAN  
(NON-PARTICIPATING LENDER)**

As the mortgage lender originating the refinanced mortgage loan referenced in the "Refinancing of MCC Loan Application," I acknowledge that I am required to file an IRS Form 8329 with the Internal Revenue Service for the reissued Mortgage Credit Certificate (MCC) associated with such refinanced mortgage loan and hereby agree to file Form 8329 with the Internal Revenue Service to update IRS information concerning the reissuance of the related MCC. The Department will forward the 8329 following reissuance of the MCC.

**For our company, Form 8329 should be forwarded to:**

**Company Name** \_\_\_\_\_

**Contact Person** \_\_\_\_\_

**Email** \_\_\_\_\_ **Phone** \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer Signature)

**Printed Name of Authorized Officer** \_\_\_\_\_

**Email** \_\_\_\_\_ **Phone** \_\_\_\_\_

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**SUPPLEMENTAL INSTRUCTIONS FOR COMPLETING IRS FORM W-4**

The MCC tax credit, is very similar to the credit which may be taken for child or dependent care expenses which ranges from 20% to 30% depending upon income. Although a separate line on the W-4 form is not provided for the MCC credit, you may use line F for this purpose.

If you anticipate at least \$1,500.00 of MCC mortgage interest during the year, you may enter "1" on line F. If you anticipate paying more than \$3,000.00 in mortgage interest during the year, you may enter "2" on line F. If you additionally have child or dependent care expenses that would entitle you to a tax credit, the number should be adjusted accordingly.

The following example shows how you might calculate the amount of mortgage interest you will pay during the year:

Mortgage balance at beginning of year:	\$146,433.00
Interest rate on mortgage loan:	4.50%
Estimated annual interest paid:	\$6,589.00

The actual amount of interest paid will be somewhat smaller because with each monthly payment your mortgage balance normally decreased during the year.

If you have more than one wage earner in your family (e.g., both spouses are employed), be careful not to claim too many allowances by putting the maximum number on both workers' W-4 forms. Dual income families normally need to reduce the number of allowances taken to avoid having to pay penalties when their annual tax return is filed.

If you wish to calculate the additional amount of mortgage interest you might be able to take as an itemized deduction, follow the instructions on the back of the W-4 Form. On line 1, be sure to subtract an amount equal to the credit amount of your certificate from the total amount of mortgage interest which you have calculated for deduction purposes. (Federal law requires subtracting an amount equal to the MCC tax credit claimed from the amount of the home mortgage interest to be deducted.)

This IRS Form W-4 is to be filed with the payroll clerk where you work. You do not send the W-4 form to the Internal Revenue Service or to TDHCA. If you have any questions concerning completion of the form, your payroll clerk should be able to assist you. For additional information regarding how to calculate withholdings, please visit the following link: <https://www.irs.gov/individuals/irs-withholding-calculator>.

Failure to revise your IRS Form W-4 to reflect the MCC tax credit will have no effect on your ability to claim the deduction with your annual tax return. When you file your annual IRS form 1040, you will need to claim the MCC tax credit in the space provided. You will also need to complete IRS 8396 and file it with your tax return.

**These instructions are for your information only. Texas Department of Housing and Community Affairs and its officers and agents do not intend to render any income tax advice in connection with this MCC program. All MCC holders or applicants should consult with the Internal Revenue Service or their personal income tax advisers concerning the appropriate level of withholding allowance given their personal tax situations.**

# Form W-4 (2018)

**Future developments.** For the latest information about any future developments related to Form W-4, such as legislation enacted after it was published, go to [www.irs.gov/FormW4](http://www.irs.gov/FormW4).

**Purpose.** Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

**Exemption from withholding.** You may claim exemption from withholding for 2018 if **both** of the following apply.

- For 2017 you had a right to a refund of all federal income tax withheld because you had **no** tax liability, **and**

- For 2018 you expect a refund of **all** federal income tax withheld because you expect to have **no** tax liability.

If you're exempt, complete **only** lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2018 expires February 15, 2019. See Pub. 505, Tax Withholding and Estimated Tax, to learn more about whether you qualify for exemption from withholding.

## General Instructions

If you aren't exempt, follow the rest of these instructions to determine the number of withholding allowances you should claim for withholding for 2018 and any additional amount of tax to have withheld. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

You can also use the calculator at [www.irs.gov/W4App](http://www.irs.gov/W4App) to determine your tax withholding more accurately. Consider

using this calculator if you have a more complicated tax situation, such as if you have a working spouse, more than one job, or a large amount of nonwage income outside of your job. After your Form W-4 takes effect, you can also use this calculator to see how the amount of tax you're having withheld compares to your projected total tax for 2018. If you use the calculator, you don't need to complete any of the worksheets for Form W-4.

Note that if you have too much tax withheld, you will receive a refund when you file your tax return. If you have too little tax withheld, you will owe tax when you file your tax return, and you might owe a penalty.

**Filers with multiple jobs or working spouses.** If you have more than one job at a time, or if you're married and your spouse is also working, read all of the instructions including the instructions for the Two-Earners/Multiple Jobs Worksheet before beginning.

**Nonwage income.** If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you might owe additional tax. Or, you can use the Deductions, Adjustments, and Other Income Worksheet on page 3 or the calculator at [www.irs.gov/W4App](http://www.irs.gov/W4App) to make sure you have enough tax withheld from your paycheck. If you have pension or annuity income, see Pub. 505 or use the calculator at [www.irs.gov/W4App](http://www.irs.gov/W4App) to find out if you should adjust your withholding on Form W-4 or W-4P.

**Nonresident alien.** If you're a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

## Specific Instructions

### Personal Allowances Worksheet

Complete this worksheet on page 3 first to determine the number of withholding allowances to claim.

**Line C. Head of household please note:** Generally, you can claim head of household filing status on your tax return only if you're unmarried and pay more than 50% of the costs of keeping up a home for yourself and a qualifying individual. See Pub. 501 for more information about filing status.

**Line E. Child tax credit.** When you file your tax return, you might be eligible to claim a credit for each of your qualifying children. To qualify, the child must be under age 17 as of December 31 and must be your dependent who lives with you for more than half the year. To learn more about this credit, see Pub. 972, Child Tax Credit. To reduce the tax withheld from your pay by taking this credit into account, follow the instructions on line E of the worksheet. On the worksheet you will be asked about your total income. For this purpose, total income includes all of your wages and other income, including income earned by a spouse, during the year.

**Line F. Credit for other dependents.** When you file your tax return, you might be eligible to claim a credit for each of your dependents that don't qualify for the child tax credit, such as any dependent children age 17 and older. To learn more about this credit, see Pub. 505. To reduce the tax withheld from your pay by taking this credit into account, follow the instructions on line F of the worksheet. On the worksheet, you will be asked about your total income. For this purpose, total income includes all of

----- Separate here and give Form W-4 to your employer. Keep the worksheet(s) for your records. -----

<b>Form W-4</b> Department of the Treasury Internal Revenue Service		<b>Employee's Withholding Allowance Certificate</b>		OMB No. 1545-0074 <span style="font-size: 2em; font-weight: bold;">2018</span>	
▶ Whether you're entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.					
1 Your first name and middle initial		Last name		2 Your social security number	
Home address (number and street or rural route)				3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withheld at higher Single rate. Note: If married filing separately, check "Married, but withheld at higher Single rate."	
City or town, state, and ZIP code				4 If your last name differs from that shown on your social security card, check here. You must call 800-772-1213 for a replacement card. ▶ <input type="checkbox"/>	
5 Total number of allowances you're claiming (from the applicable worksheet on the following pages) . . . . .				5	
6 Additional amount, if any, you want withheld from each paycheck . . . . .				6 \$	
7 I claim exemption from withholding for 2018, and I certify that I meet <b>both</b> of the following conditions for exemption.					
• Last year I had a right to a refund of <b>all</b> federal income tax withheld because I had <b>no</b> tax liability, <b>and</b> • This year I expect a refund of <b>all</b> federal income tax withheld because I expect to have <b>no</b> tax liability.					
If you meet both conditions, write "Exempt" here . . . . . ▶ 7					
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.					
Employee's signature (This form is not valid unless you sign it.) ▶					
8 Employer's name and address (Employer: Complete boxes 8 and 10 if sending to IRS and complete boxes 8, 9, and 10 if sending to State Directory of New Hires.)				Date ▶	
9 First date of employment				10 Employer identification number (EIN)	

For Privacy Act and Paperwork Reduction Act Notice, see page 4.

Cat. No. 10220Q

Form **W-4** (2018)

your wages and other income, including income earned by a spouse, during the year.

**Line G. Other credits.** You might be able to reduce the tax withheld from your paycheck if you expect to claim other tax credits, such as the earned income tax credit and tax credits for education and child care expenses. If you do so, your paycheck will be larger but the amount of any refund that you receive when you file your tax return will be smaller. Follow the instructions for Worksheet 1-6 in Pub. 505 if you want to reduce your withholding to take these credits into account.

### Deductions, Adjustments, and Additional Income Worksheet

Complete this worksheet to determine if you're able to reduce the tax withheld from your paycheck to account for your itemized deductions and other adjustments to income such as IRA contributions. If you do so, your refund at the end of the year will be smaller, but your paycheck will be larger. You're not required to complete this worksheet or reduce your withholding if you don't wish to do so.

You can also use this worksheet to figure out how much to increase the tax withheld from your paycheck if you have a large amount of nonwage income, such as interest or dividends.

Another option is to take these items into account and make your withholding more accurate by using the calculator at [www.irs.gov/W4App](http://www.irs.gov/W4App). If you use the calculator, you don't need to complete any of the worksheets for Form W-4.

### Two-Earners/Multiple Jobs Worksheet

Complete this worksheet if you have more

than one job at a time or are married filing jointly and have a working spouse. If you don't complete this worksheet, you might have too little tax withheld. If so, you will owe tax when you file your tax return and might be subject to a penalty.

Figure the total number of allowances you're entitled to claim and any additional amount of tax to withhold on all jobs using worksheets from only one Form W-4. Claim all allowances on the W-4 that you or your spouse file for the highest paying job in your family and claim zero allowances on Forms W-4 filed for all other jobs. For example, if you earn \$60,000 per year and your spouse earns \$20,000, you should complete the worksheets to determine what to enter on lines 5 and 6 of your Form W-4, and your spouse should enter zero ("-0-") on lines 5 and 6 of his or her Form W-4. See Pub. 505 for details.

Another option is to use the calculator at [www.irs.gov/W4App](http://www.irs.gov/W4App) to make your withholding more accurate.

**Tip:** If you have a working spouse and your incomes are similar, you can check the "Married, but withhold at higher Single rate" box instead of using this worksheet. If you choose this option, then each spouse should fill out the Personal Allowances Worksheet and check the "Married, but withhold at higher Single rate" box on Form W-4, but only one spouse should claim any allowances for credits or fill out the Deductions, Adjustments, and Additional Income Worksheet.

### Instructions for Employer

**Employees, do not complete box 8, 9, or 10. Your employer will complete these boxes if necessary.**

**New hire reporting.** Employers are

required by law to report new employees to a designated State Directory of New Hires. Employers may use Form W-4, boxes 8, 9, and 10 to comply with the new hire reporting requirement for a newly hired employee. A newly hired employee is an employee who hasn't previously been employed by the employer, or who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days. Employers should contact the appropriate State Directory of New Hires to find out how to submit a copy of the completed Form W-4. For information and links to each designated State Directory of New Hires (including for U.S. territories), go to [www.acf.hhs.gov/programs/css/employers](http://www.acf.hhs.gov/programs/css/employers).

If an employer is sending a copy of Form W-4 to a designated State Directory of New Hires to comply with the new hire reporting requirement for a newly hired employee, complete boxes 8, 9, and 10 as follows.

**Box 8.** Enter the employer's name and address. If the employer is sending a copy of this form to a State Directory of New Hires, enter the address where child support agencies should send income withholding orders.

**Box 9.** If the employer is sending a copy of this form to a State Directory of New Hires, enter the employee's first date of employment, which is the date services for payment were first performed by the employee. If the employer rehired the employee after the employee had been separated from the employer's service for at least 60 days, enter the rehire date.

**Box 10.** Enter the employer's employer identification number (EIN).



**Personal Allowances Worksheet (Keep for your records.)**

<b>A</b>	Enter "1" for yourself . . . . .	<b>A</b>	_____
<b>B</b>	Enter "1" if you will file as married filing jointly . . . . .	<b>B</b>	_____
<b>C</b>	Enter "1" if you will file as head of household . . . . .	<b>C</b>	_____
<b>D</b>	Enter "1" if: { <ul style="list-style-type: none"> <li>• You're single, or married filing separately, and have only one job; or</li> <li>• You're married filing jointly, have only one job, and your spouse doesn't work; or</li> <li>• Your wages from a second job or your spouse's wages (or the total of both) are \$1,500 or less.</li> </ul>	<b>D</b>	_____
<b>E</b>	<p><b>Child tax credit.</b> See Pub. 972, Child Tax Credit, for more information.</p> <ul style="list-style-type: none"> <li>• If your total income will be less than \$69,801 (\$101,401 if married filing jointly), enter "4" for each eligible child.</li> <li>• If your total income will be from \$69,801 to \$175,550 (\$101,401 to \$339,000 if married filing jointly), enter "2" for each eligible child.</li> <li>• If your total income will be from \$175,551 to \$200,000 (\$339,001 to \$400,000 if married filing jointly), enter "1" for each eligible child.</li> <li>• If your total income will be higher than \$200,000 (\$400,000 if married filing jointly), enter "-0-" . . . . .</li> </ul>	<b>E</b>	_____
<b>F</b>	<p><b>Credit for other dependents.</b></p> <ul style="list-style-type: none"> <li>• If your total income will be less than \$69,801 (\$101,401 if married filing jointly), enter "1" for each eligible dependent.</li> <li>• If your total income will be from \$69,801 to \$175,550 (\$101,401 to \$339,000 if married filing jointly), enter "1" for every two dependents (for example, "-0-" for one dependent, "1" if you have two or three dependents, and "2" if you have four dependents).</li> <li>• If your total income will be higher than \$175,550 (\$339,000 if married filing jointly), enter "-0-" . . . . .</li> </ul>	<b>F</b>	_____
<b>G</b>	<b>Other credits.</b> If you have other credits, see Worksheet 1-6 of Pub. 505 and enter the amount from that worksheet here . . . . .	<b>G</b>	_____
<b>H</b>	Add lines A through G and enter the total here . . . . .	<b>H</b>	_____

For accuracy, **complete all worksheets that apply.**

- If you plan to **itemize** or **claim adjustments to income** and want to reduce your withholding, or if you have a large amount of nonwage income and want to increase your withholding, see the **Deductions, Adjustments, and Additional Income Worksheet** below.
- If you **have more than one job at a time** or are **married filing jointly and you and your spouse both work**, and the combined earnings from all jobs exceed \$52,000 (\$24,000 if married filing jointly), see the **Two-Earners/Multiple Jobs Worksheet** on page 4 to avoid having too little tax withheld.
- If **neither** of the above situations applies, **stop here** and enter the number from line H on line 5 of Form W-4 above.

**Deductions, Adjustments, and Additional Income Worksheet**

**Note:** Use this worksheet *only* if you plan to itemize deductions, claim certain adjustments to income, or have a large amount of nonwage income.

<b>1</b>	Enter an estimate of your 2018 itemized deductions. These include qualifying home mortgage interest, charitable contributions, state and local taxes (up to \$10,000), and medical expenses in excess of 7.5% of your income. See Pub. 505 for details . . . . .	<b>1</b>	\$ _____
<b>2</b>	Enter: { <ul style="list-style-type: none"> <li>\$24,000 if you're married filing jointly or qualifying widow(er)</li> <li>\$18,000 if you're head of household</li> <li>\$12,000 if you're single or married filing separately</li> </ul>	<b>2</b>	\$ _____
<b>3</b>	<b>Subtract</b> line 2 from line 1. If zero or less, enter "-0-" . . . . .	<b>3</b>	\$ _____
<b>4</b>	Enter an estimate of your 2018 adjustments to income and any additional standard deduction for age or blindness (see Pub. 505 for information about these items) . . . . .	<b>4</b>	\$ _____
<b>5</b>	<b>Add</b> lines 3 and 4 and enter the total . . . . .	<b>5</b>	\$ _____
<b>6</b>	Enter an estimate of your 2018 nonwage income (such as dividends or interest) . . . . .	<b>6</b>	\$ _____
<b>7</b>	<b>Subtract</b> line 6 from line 5. If zero, enter "-0-". If less than zero, enter the amount in parentheses . . . . .	<b>7</b>	\$ _____
<b>8</b>	<b>Divide</b> the amount on line 7 by \$4,150 and enter the result here. If a negative amount, enter in parentheses. Drop any fraction . . . . .	<b>8</b>	_____
<b>9</b>	Enter the number from the <b>Personal Allowances Worksheet</b> , line H above . . . . .	<b>9</b>	_____
<b>10</b>	<b>Add</b> lines 8 and 9 and enter the total here. If zero or less, enter "-0-". If you plan to use the <b>Two-Earners/Multiple Jobs Worksheet</b> , also enter this total on line 1, page 4. Otherwise, <b>stop here</b> and enter this total on Form W-4, line 5, page 1 . . . . .	<b>10</b>	_____

**Two-Earners/Multiple Jobs Worksheet**

**Note:** Use this worksheet *only* if the instructions under line H from the **Personal Allowances Worksheet** direct you here.

- 1 Enter the number from the **Personal Allowances Worksheet**, line H, page 3 (or, if you used the **Deductions, Adjustments, and Additional Income Worksheet** on page 3, the number from line 10 of that worksheet) 1 \_\_\_\_\_
- 2 Find the number in **Table 1** below that applies to the **LOWEST** paying job and enter it here. **However**, if you're married filing jointly and wages from the highest paying job are \$75,000 or less and the combined wages for you and your spouse are \$107,000 or less, don't enter more than "3" 2 \_\_\_\_\_
- 3 If line 1 is **more than or equal to** line 2, subtract line 2 from line 1. Enter the result here (if zero, enter "-0-") and on Form W-4, line 5, page 1. **Do not** use the rest of this worksheet. 3 \_\_\_\_\_

**Note:** If line 1 is **less than** line 2, enter "-0-" on Form W-4, line 5, page 1. Complete lines 4 through 9 below to figure the additional withholding amount necessary to avoid a year-end tax bill.

- 4 Enter the number from line 2 of this worksheet 4 \_\_\_\_\_
- 5 Enter the number from line 1 of this worksheet 5 \_\_\_\_\_
- 6 **Subtract** line 5 from line 4 6 \_\_\_\_\_
- 7 Find the amount in **Table 2** below that applies to the **HIGHEST** paying job and enter it here 7 \$ \_\_\_\_\_
- 8 **Multiply** line 7 by line 6 and enter the result here. This is the additional annual withholding needed 8 \$ \_\_\_\_\_
- 9 **Divide** line 8 by the number of pay periods remaining in 2018. For example, divide by 18 if you're paid every 2 weeks and you complete this form on a date in late April when there are 18 pay periods remaining in 2018. Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck 9 \$ \_\_\_\_\_

Table 1				Table 2			
Married Filing Jointly		All Others		Married Filing Jointly		All Others	
If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above	If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above	If wages from <b>HIGHEST</b> paying job are—	Enter on line 7 above	If wages from <b>HIGHEST</b> paying job are—	Enter on line 7 above
\$0 - \$5,000	0	\$0 - \$7,000	0	\$0 - \$24,375	\$420	\$0 - \$7,000	\$420
5,001 - 9,500	1	7,001 - 12,500	1	24,376 - 82,725	500	7,001 - 36,175	500
9,501 - 19,000	2	12,501 - 24,500	2	82,726 - 170,325	910	36,176 - 79,975	910
19,001 - 26,500	3	24,501 - 31,500	3	170,326 - 320,325	1,000	79,976 - 154,975	1,000
26,501 - 37,000	4	31,501 - 39,000	4	320,326 - 405,325	1,330	154,976 - 197,475	1,330
37,001 - 43,500	5	39,001 - 55,000	5	405,326 - 605,325	1,450	197,476 - 497,475	1,450
43,501 - 55,000	6	55,001 - 70,000	6	605,326 and over	1,540	497,476 and over	1,540
55,001 - 60,000	7	70,001 - 85,000	7				
60,001 - 70,000	8	85,001 - 90,000	8				
70,001 - 75,000	9	90,001 - 100,000	9				
75,001 - 85,000	10	100,001 - 105,000	10				
85,001 - 95,000	11	105,001 - 115,000	11				
95,001 - 130,000	12	115,001 - 120,000	12				
130,001 - 150,000	13	120,001 - 130,000	13				
150,001 - 160,000	14	130,001 - 145,000	14				
160,001 - 170,000	15	145,001 - 155,000	15				
170,001 - 180,000	16	155,001 - 185,000	16				
180,001 - 190,000	17	185,001 and over	17				
190,001 - 200,000	18						
200,001 and over	19						

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Internal Revenue Code sections 3402(f)(2) and 6109 and their regulations require you to provide this information; your employer uses it to determine your federal income tax withholding. Failure to provide a properly completed form will result in your being treated as a single person who claims no withholding allowances; providing fraudulent information may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and

U.S. commonwealths and possessions for use in administering their tax laws; and to the Department of Health and Human Services for use in the National Directory of New Hires. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You aren't required to provide the information requested on a form that's subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be

retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**NOTICE OF CANCELLATION**

Lender: \_\_\_\_\_

Applicant: \_\_\_\_\_ TDH#: \_\_\_\_\_

Subject Property Address: \_\_\_\_\_  
\_\_\_\_\_

TDHCA has received an MCC Compliance file on \_\_\_\_\_

Number of e-mails to Lender regarding outstanding deficiency \_\_\_\_\_

Date Notice sent to Lender \_\_\_\_\_

MCC Underwriter Certification?  Yes  No

In compliance with the Mortgage Credit Certificate Program, after several requests to address the outstanding deficiencies for the above MCC loan, this notice of cancellation is effective as of the date below. If these deficiencies are not remedied by the date below, TDHCA will not reinstate this loan and the issuance fee will be refunded back to your company.

**Reason(s) for Cancellation:**

- \_\_\_\_\_ Borrower is married – which means the NPS should have signed the Notice to Buyer; Applicant Affidavit
- \_\_\_\_\_ Affidavit of Seller – Not included with file
- \_\_\_\_\_ 3 years tax transcripts and/or signed tax returns were not included with the file 1003 reflects borrower married. (Hence NPS signature on Applicant Affidavit and Notice to Buyers)
- \_\_\_\_\_ 1003 and HUD-1 / Closing Disclosure were not included
- \_\_\_\_\_ Homebuyer Education Certificate of Completion
- \_\_\_\_\_ NPS needs to be added to eHousing system
- \_\_\_\_\_ Other

**Effective Date of Cancellation:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE (MCC) PROGRAM**

**PROGRAM SUMMARY**

*MCC Authority*

- \$112,500,000 of MCC Authority will be available until December 31, 2021. The first date that MCCs can be issued under the Program is expected to be March 19, 2019. The funds will be available under the Program to participating Lenders on a controlled, first-come, first-served basis in accordance with the procedures hereinafter described. The Department will notify Lenders of various terms related to the Program and the MCCs through the periodic distribution of Lender Commitment Lot Notices by eHousingPlus, which has been designated as the Program Administrator. The Lender Commitment Lot Notice will notify Mortgage Lenders that funds are available, specify the amount of funds available (the “Commitment Lot”), specify the mortgage credit certificate rate(s) in effect for that Commitment Lot, and specify the fees applicable to the Commitment Lot.

*Qualified Homebuyer*

- Must be a First-Time Homebuyer (Applicant cannot have owned a home as a Principal Residence within the previous three years, except (i) in certain targeted areas, (ii) if the applicant is a qualified veteran who has not previously received financing pursuant to this exception, or (iii) in certain cases permitted under applicable provisions of the Internal Revenue Code).
- Must intend to occupy the Residence as the principal and permanent place of Residence within a reasonable time not to exceed 60 days after the Closing Date of the Mortgage Loan.
- Must meet the income guidelines of the Program.
- Must complete an approved pre-purchase homebuyer education course under the Program.

*Eligible Loan Area*

- State of Texas

*Eligible Property Types*

- New or existing single family residences, including certain duplexes
- New or existing condominiums or townhomes
- Certain manufactured housing permanently affixed to the ground

*Program Fees and Expenses*

- Program fees will be specified in the periodic distribution of Lender Commitment Lot Notices

*Maximum Income and Maximum Home Purchase Price Limits*

- SEE EXHIBIT A

*Mortgage Loan Types*

- Prevailing market rate mortgages; may be a conventional, FHA, VA or USDA-RHS fixed rate loan; variable rate loans are not permitted (cannot be part of a tax-exempt bond program or a veterans' tax-exempt bond program).
- Term of the loan will be either 15 years or 30 years.

*Refinancings*

- An MCC may be reissued under certain circumstances to the holder of an MCC issued under this program if the underlying mortgage is refinanced.
- The refinanced loan amount cannot exceed the outstanding balance of the original mortgage loan as of the date of the refinancing.

EXHIBIT A

TDHCA My First Texas Home (TMP-79) / Texas Mortgage Credit Certificate Program (MCC)

Combined Income and Purchase Price Limits Table

(Including Income Limit Adjustments for High Housing Cost Areas)

Effective April 24, 2018

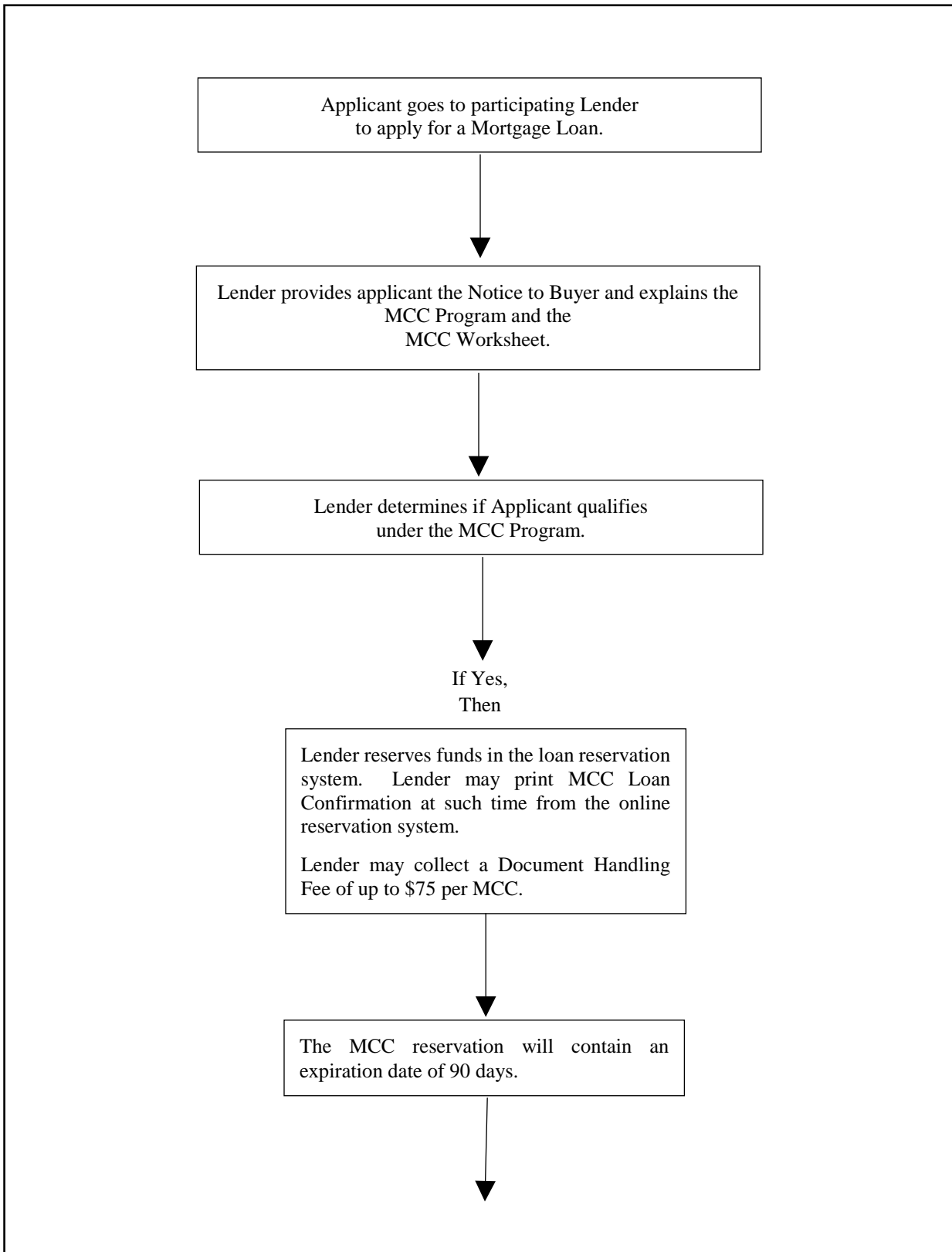
Area of State	Counties in Area	NON-TARGETED AREAS			* TARGETED AREAS		
		100% AMFI 1 or 2 Persons	115% AMFI 3 or more Persons	Non-Targeted Area Purchase Price Limit	120% AMFI 1 or 2 Persons	140% AMFI 3 or more Persons	Targeted Area Purchase Price Limit
<b>Balance of State</b>	<b>All other counties not mentioned below</b>	<b>\$68,800</b>	<b>\$79,120</b>	<b>\$271,164</b>	<b>\$82,560</b>	<b>\$96,320</b>	<b>\$331,423</b>
Andrews County	Andrews	\$75,900	\$87,285	\$271,164	No Targeted Census Tracts in County		
Austin County, HMFA	Austin	\$72,400	\$83,260	\$304,941	No Targeted Census Tracts in County		
Austin-Round Rock, MSA	Bastrop, Caldwell, Hays*, Travis* & Williamson	\$86,000	\$98,900	\$353,646	\$103,200	\$120,400	\$432,235
Blanco County	Blanco	\$72,400	\$83,260	\$271,164	No Targeted Census Tracts in County		
Borden County	Borden	\$74,500	\$85,675	\$271,164	No Targeted Census Tracts in County		
Brazoria County, HMFA	Brazoria	\$91,100	\$104,765	\$304,941	No Targeted Census Tracts in County		
Crane County	Crane	\$72,900	\$83,835	\$271,164	No Targeted Census Tracts in County		
Dallas, HMFA	Collin*, Dallas*, Denton*, Ellis*, Hunt*, Kaufman* & Rockwall	\$82,837	\$95,262	\$355,764	\$92,640	\$108,080	\$434,823
Fort Worth - Arlington, HMFA	Johnson*, Parker & Tarrant*	\$83,237	\$95,722	\$355,764	\$90,240	\$105,280	\$434,823
Gillespie County	Gillespie	\$71,000	\$81,650	\$271,164	No Targeted Census Tracts in County		
Glasscock County	Glasscock	\$87,100	\$100,165	\$271,164	No Targeted Census Tracts in County		
Hartley County	Hartley	\$73,000	\$83,950	\$271,164	No Targeted Census Tracts in County		
Hemphill County	Hemphill	\$70,000	\$80,500	\$271,164	No Targeted Census Tracts in County		
Hood County, HMFA	Hood	\$84,237	\$96,872	\$355,764	No Targeted Census Tracts in County		
Houston-The Woodlands-Sugar Land, HMFA	Chambers, Fort Bend*, Galveston, Harris*, Liberty, Montgomery* & Waller	\$74,900	\$86,135	\$304,941	\$89,880	\$104,860	\$372,706
Jackson County	Jackson	\$71,400	\$82,110	\$271,164	No Targeted Census Tracts in County		
Kendall County, HMFA	Kendall	\$93,400	\$107,410	\$331,411	No Targeted Census Tracts in County		
King County	King	\$74,600	\$85,790	\$271,164	No Targeted Census Tracts in County		
Lipscomb County	Lipscomb	\$79,300	\$91,195	\$271,164	No Targeted Census Tracts in County		
Loving County	Loving	\$78,500	\$90,275	\$271,164	No Targeted Census Tracts in County		
Martin County, HMFA	Martin	\$68,800	\$79,120	\$271,164	No Targeted Census Tracts in County		
Medina County, HMFA	Medina	\$77,509	\$89,136	\$331,411	No Targeted Census Tracts in County		
Midland, HMFA	Midland*	\$90,500	\$104,075	\$271,164	\$108,600	\$126,700	\$331,423
Odessa MSA	Ector*	\$72,600	\$83,490	\$271,164	\$87,120	\$101,640	\$331,423
Oldham County, HMFA	Oldham	\$69,900	\$80,385	\$271,164	No Targeted Census Tracts in County		
Reagan County	Reagan	\$71,400	\$82,110	\$271,164	No Targeted Census Tracts in County		
Roberts County	Roberts	\$88,000	\$101,200	\$271,164	No Targeted Census Tracts in County		
San Antonio-New Braunfels, MSA	Atascosa*, Bandera, Bexar*, Comal, Guadalupe* & Wilson	\$77,789	\$89,458	\$331,411	\$82,560	\$96,320	\$405,058
Schleicher County	Schleicher	\$70,800	\$81,420	\$271,164	No Targeted Census Tracts in County		
Somervell County, HMFA	Somervell	\$82,560	\$96,320	\$355,764	No Targeted Census Tracts in County		
Victoria MSA	Goliad, Victoria*	\$69,300	\$79,695	\$271,164	\$83,160	\$97,020	\$331,423
Wise County, HMFA	Wise	\$82,560	\$96,320	\$355,764	No Targeted Census Tracts in County		

\* Property must be located in a qualified targeted census tract to use the Targeted Area Limits.

“AMFI” - Area Median Family Income; “MSA” - Metropolitan Statistical Area; “HMFA” - HUD Metro FMR Area  
 Down Payment Assistance Available to ALL Income Categories - \*Targeted Areas are areas of severe economic distress.  
 For additional information please visit our website at [www.MyFirstTexasHome.com](http://www.MyFirstTexasHome.com)

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MORTGAGE CREDIT CERTIFICATE (MCC) PROGRAM**

**MCC ISSUANCE PROCEDURES**



Lender proceeds with normal underwriting procedures. Once the loan is approved and the underwriter confirms the applicant is eligible for the MCC Program, the underwriter completes the online underwriter certification.

Lender closes the Mortgage Loan and provides the applicant with a copy of the MCC Loan Confirmation and submits the Compliance File to the Department or its designee within 30 days following the closing date of the Mortgage Loan. Compliance File:

- (1) Compliance File Checklist;
- (2) Applicant Affidavit, Affidavit of Seller and Certificate of Lender;
- (3) HUD-1 settlement statement;
- (4) Notice of Potential Recapture Tax on Sale of Home;
- (5) MCC Issuance Fee, generated and auto-populated by online reservation system (check or money order or electronic wire);
- (6) Certificate of completion of an approved pre-purchase homebuyer education course;
- (7) Copy of the qualified veteran's discharge papers, if applicable;
- (8) Copy of federal Tax Transcript (obtained by IRS Form 4506-T) for preceding calendar year, if required;
- (9) Copy of real estate purchase contract, if required;
- (10) Copy of final executed loan application (1003), if required; and
- (11) Copy of warranty deed, if required.

Department or its designee reviews the Compliance File for compliance with the MCC Program and issues the MCC. The MCC is mailed to the Mortgagor by regular mail with a copy emailed to the Lender.

If the documentation is incomplete or incorrect, the Compliance File must be resubmitted — Please refer to the Program Manual.

Lender must also file the IRS Form 8329 annually for all loans originated during the calendar year where the Mortgagor obtained an MCC and for reissued MCCs. The Department will provide information to the Lender to complete IRS Form 8329. The Department will provide IRS Form 8329 to a non-participating lender who originates a refinanced mortgage loan for which a reissued MCC is issued.

3d

**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**JANUARY 17, 2019**

Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds Series 2019 Resolution No. 19-021 and a Determination Notice of Housing Tax Credits for McMullen Square Apartments in San Antonio

**RECOMMENDED ACTION**

**WHEREAS**, the Board adopted the most recent inducement resolution for McMullen Square Apartments at the Board meeting on December 6, 2018;

**WHEREAS**, a 4% Housing Tax Credit application for the McMullen Square Apartments, sponsored by Triton Community Development, was submitted to the Department on August 24, 2018;

**WHEREAS**, a Certification of Reservation was issued, in the amount of \$10,100,000, on January 10, 2019, with a bond delivery deadline of June 9, 2019;

**WHEREAS**, pursuant to 10 TAC §11.101(a)(2) of the Qualified Allocation Plan related to Undesirable Site Features, Development Sites in which any of the buildings or designated recreational areas are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures may be considered ineligible unless an exemption is requested;

**WHEREAS**, there are existing high voltage transmission towers that were installed in 2014 and are within 100 feet of McMullen Square Apartments, a development that was originally constructed in 1969;

**WHEREAS**, pursuant to the rule, developments with ongoing and existing federal assistance may be granted an exemption by the Board;

**WHEREAS**, McMullen Square has an existing Housing Assistance Payment (HAP) contract that is expected to continue, and therefore, staff recommends that such exemption be granted;

**WHEREAS**, the applicant has requested a waiver of 10 TAC §11.2(b)(6) of the Qualified Allocation Plan, relating to the required delivery date for the No Objection Resolution for Tax-Exempt Bond Developments;

**WHEREAS**, pursuant to 10 TAC §11.2(b)(6), the resolution is required to be submitted no later than 14 days before the Board meeting at which the applicant is requesting consideration of the Determination Notice;

**WHEREAS**, the City of San Antonio will not be considering the resolution until its city council meeting on January 10, 2019;

**WHEREAS**, staff believes that granting the waiver would further the purposes articulated in Tex. Gov't Code §2306.001 in contributing to the preservation of government-assisted affordable housing, as McMullen Square is currently assisted with a Section 8 HAP Contract;

**WHEREAS**, staff recommends the waiver be granted and staff will provide an update at the Board meeting as to whether the city council resolution was adopted and if not so approved by City Council, this item will be removed from Board consideration; and

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 3 and subject to the conditions as noted herein after review and discussion by the Executive Award and Review Advisory Committee (EARAC); and

**WHEREAS**, EARAC recommends the issuance of Multifamily Housing Revenue Bonds (Series 2019) for McMullen Square Apartments and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, that the exemption is granted based on the ongoing and existing federal assistance and the site is considered eligible pursuant to 10 TAC §11.101(a)(2) of the Qualified Allocation Plan;

**FURTHER RESOLVED**, a waiver of 10 TAC §11.2(b)(6) of the Qualified Allocation Plan, is hereby granted, provided a copy of the adopted resolution has been received by staff by 5 p.m. on the day prior to the date of the Board meeting;

**FURTHER RESOLVED**, that the issuance of unrated Tax-Exempt Multifamily Housing Revenue Bonds Series 2019 (McMullen Square Apartments) for \$10,000,000, Resolution No. 19-021 is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$425,285 in 4% Housing Tax Credits for McMullen Square, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, and conditioned upon the following, is hereby approved in the form presented to this meeting; and



**FURTHER RESOLVED**, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

1. Correction of uncorrected "Failure to resolve final construction deficiencies" Event of Noncompliance at Edinburg Village Apartments (ID 5177-16605/16605B) by **April 5, 2019**.
2. Triton Community Development will ensure that the Finance Manager (Don Herrman, CPA) and the Compliance Manager (Carmen Johnston), complete the trainings listed and provide TDHCA with a certification of attendance and/or completion no later than **May 31, 2019**.
  - a. Housing Tax Credit Training sponsored by the Texas Apartment Association; and
  - b. Income Determination Training conducted by TDHCA
3. The Acting Director, for good cause, may grant one extension of these conditions for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.

#### **BACKGROUND**

*General Information:* The Bonds will be issued in accordance with Tex. Gov't. Code Chapter 2306, as amended, the Department's Enabling Statute, which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. The Statute provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

McMullen Square Apartments is located at 537 N. General McMullen Drive in San Antonio, Bexar County, and proposes the acquisition and rehabilitation of 100 units. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Gross Income (AMGI) that must be served. The application reflected an intent to elect the income averaging set-aside, and under the Low-Income Housing Tax Credit Land Use Restriction Agreement (LURA) 44 of the units will be rent and income restricted at 50% of AMGI, 46 will be restricted at 60% of AMGI, and 10 will be restricted at 80% of AMGI. However, the Bond LURA will have 40 of the units rent and income restricted at 60% AMGI. The development will serve the general population, and conforms to current zoning. The Development received an award of housing tax credits in 2001, and currently has a LURA in place that requires 75% of the units to be restricted (38 units at 50% of AMGI and 37 units at 60% of AMGI), and the remaining 25% of the units are at market rate, with no restrictions. The proposed rent and income restrictions do not conflict with the existing restrictions.

*Site Analysis:* Pursuant to 10 TAC §11.101(a)(2) of the Qualified Allocation Plan related to Undesirable Site Features, Development Sites in which any of the buildings or designated recreational areas are to be located within 100 feet of the nearest line or structural element of any overhead high voltage

transmission line, support structures for high voltage transmission lines, or other similar structures may be considered ineligible unless an exemption is requested. McMullen Square, a development that was originally constructed in 1969, is within 100 feet of high voltage transmission towers that were installed in 2014. The rule allows for developments with ongoing and existing federal assistance to be granted an exemption by the Board. McMullen Square has an existing Housing Assistance Payment (HAP) contract that is expected to continue, and therefore, staff recommends that such exemption be granted.

*Waiver Request:* The applicant requested a waiver of 10 TAC §11.2(b)(6) of the Qualified Allocation Plan regarding the threshold requirement for Tax-Exempt Bond Developments to submit a Resolution of No Objection from the governing body of the municipality 14 calendar days before the Board meeting at which consideration of the Determination Notice will occur. Moreover, pursuant to Tex. Gov't Code §2306.67071(c) the Board may not approve an application for housing tax credits for a development financed through the private activity bond program unless the applicant has submitted a certified copy of such resolution. The applicant has represented that the city will not meet until January 10, 2019, to consider the resolution. If the certified copy of the resolution is not received by January 16, 2019, by 5 p.m, staff will recommend removal of this item from the Board agenda.

10 TAC §11.207(1) regarding Waiver of Rules requires that the waiver request establish how the need for the waiver was both not reasonably foreseeable and was not preventable by the Applicant. The Applicant cannot control the timing of the process required to get a resolution from the City. Staff has had conversations with the City regarding the restrictions on the property and the applicant has put forth its best efforts to be responsive to their questions regarding the same, and the new income averaging set-aside election. Staff notes that historically a waiver of the deadline to submit the No Objection resolution has only been utilized in rare situations where the transaction is ready to close, but for the required resolution. With the Department serving as bond issuer, and based on the closing timeline, staff believes the transaction would be unduly delayed if it had to adhere to the 14-day submission deadline associated with the resolution.

The waiver meets the requirement in 10 TAC §11.207(2) in that it serves the purpose described in §2306.001 by contributing to the preservation of government-assisted affordable housing, as McMullen Square is currently assisted with a Section 8 Housing Assistance Payment Contract.

*Organizational Structure and Previous Participation:* The Borrower is TCD MCM, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 3 and the previous participation was deemed acceptable by EARAC after further review and discussion and subject to the conditions as noted herein.

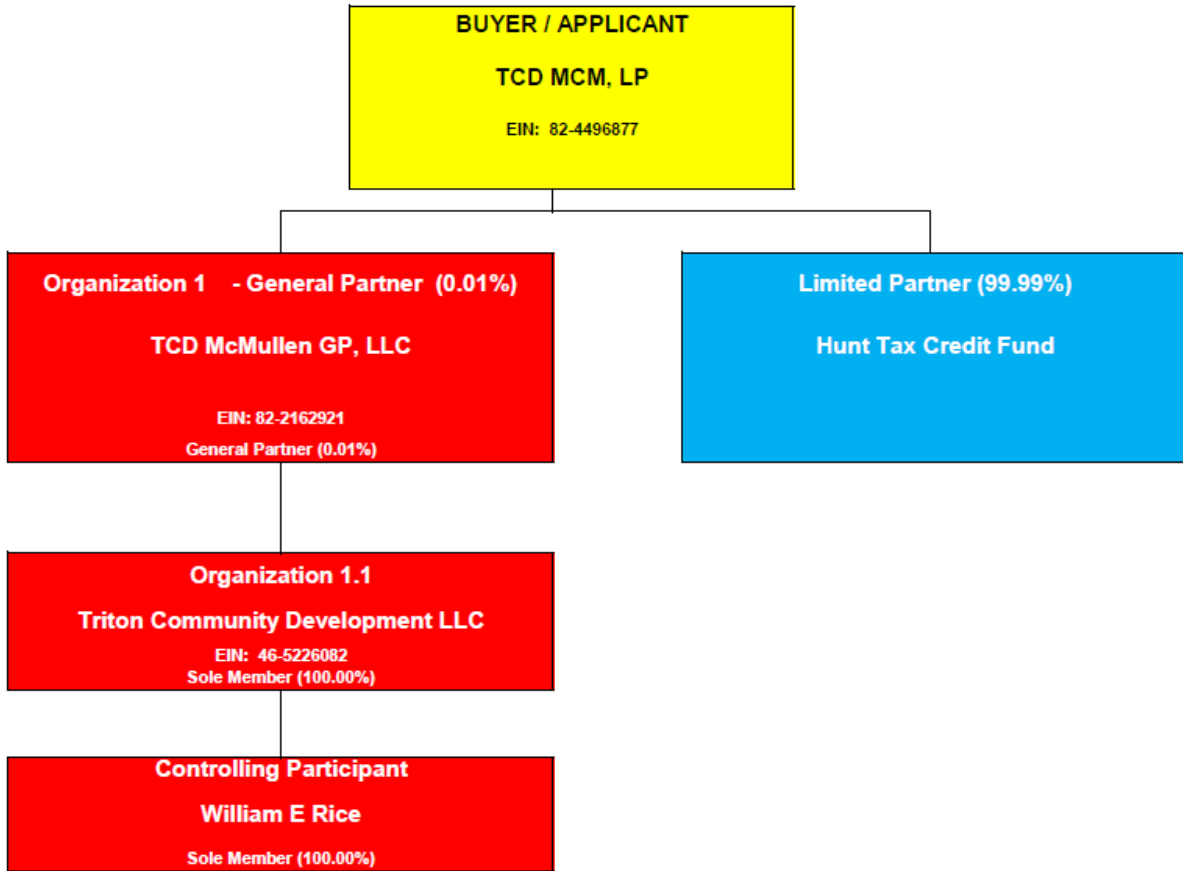
*Public Hearing/Public Comment:* A public hearing for the proposed development was conducted by staff on December 20, 2018, and there was no one in attendance. A copy of the hearing transcript is included herein along with the public comment received. There have been no letters of support or opposition submitted to the Department.

### **Summary of Financial Structure**

The Department will issue unrated tax-exempt bonds in the amount of \$10,000,000 that will be underwritten by Fallbrook Loan Fund, and ultimately purchased by Cedar Rapids Bank and Trust. The bonds will be fixed rate for 18 months (during construction), at a rate of approximately 4.41%. There will be a forward starting swap in place at closing that will commence once the property has reached stabilization, or approximately July 1, 2020. The termination date of the swap will be July 1, 2035. The borrower will pay a fixed interest rate to the swap counterparty and the counterparty will pay a variable rate in return. While the Department is not a party to the swap agreement, the swap payments will flow through the indenture to the trustee. The interest rate on the bonds is anticipated to be the current index plus 2.00%, carry a 15-year term and 40 year amortization. The final maturity date is January 1, 2036.

A copy of the Exhibits recommend to be approved by the Board as referenced in Resolution No. 19-021 can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.

**Exhibit A**



# 19601 McMullen Square Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION  
January 10, 2019

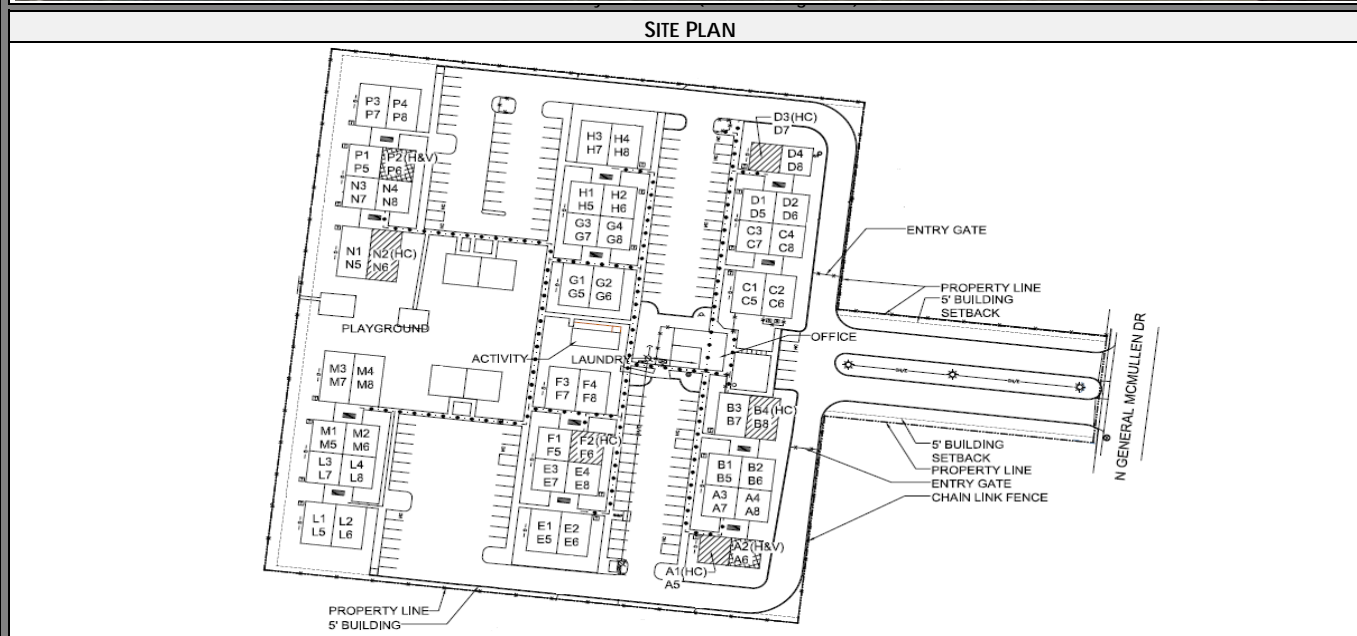
PROPERTY IDENTIFICATION		RECOMMENDATION				
Application #	19601	TDHCA Program	Request	Recommended		
Development	McMullen Square Apartments			LIHTC (4% Credit)	\$426,577	\$425,285
City / County	San Antonio / Bexar					
Region/Area	9 / Urban					
Population	General					
Set-Aside	General					
Activity	Acquisition/Rehab (Built in 1970)	Private Activity Bonds	\$10,000,000	4.73%	40	15

KEY PRINCIPAL / SPONSOR		
William Rice / Triton Community Development LLC		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	40%	-	0%
1	8	8%	50%	44	44%
2	52	52%	60%	46	46%
3	32	32%	80%	10	10%
4	8	8%	MR	-	0%
<b>TOTAL</b>	<b>100</b>	<b>100%</b>	<b>TOTAL</b>	<b>100</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.17	Expense Ratio	52.9%
Breakeven Occ.	88.4%	Breakeven Rent	\$898
Average Rent	\$964	B/E Rent Margin	\$66
Property Taxes	\$1,149/unit	Exemption/PILOT	0%
Total Expense	\$5,903/unit	Controllable	\$3,386/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			0.2%
Highest Unit Capture Rate	1%	3 BR/80%	4
Dominant Unit Cap. Rate	1%	2 BR/80%	4
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	87	87% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	812 SF	Density	18.1/acre
Acquisition	\$50K/unit	\$5,000K	
Building Cost	\$38.67/SF	\$3,141K	
Hard Cost	\$39K/unit	\$3,935K	
Total Cost	\$132K/unit	\$13,188K	
Developer Fee	\$1,432K	(41% Deferred)	Paid Year: 7
Contractor Fee	\$471K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$4K	12%	Finishes/Fixtures \$1K 3%
Building Shell	\$23K	65%	Amenities \$2K 5%
HVAC	\$3K	10%	Total Exterior \$29K 82%
Appliances	\$2K	4%	Total Interior \$6K 18%



DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Fallbrook Loan Fund	15/40	4.73%	\$7,950,000	1.17						Hunt Capital	\$3,890,992	
										Hunt Capital (solar Tax Credits)	\$238,794	
										Triton Community Development LLC	\$583,369	
					NOI during Construction	0/0	0.00%	\$525,000	1.17	<b>TOTAL EQUITY SOURCES</b>	\$4,713,156	
										<b>TOTAL DEBT SOURCES</b>	\$8,475,000	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$7,950,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$525,000</b>		<b>TOTAL CAPITALIZATION</b>		<b>\$13,188,156</b>

**CONDITIONS**

1 Receipt and acceptance by Cost Certification:

- a: Renewed HAP Contract with rent increases large enough to support feasibility.
- b: Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
- c: Certification of comprehensive testing of on-site plumbing for lead in drinking water, and that any appropriate abatement measures were implemented.

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

BOND RESERVATION / ISSUER	
Issuer	TDHCA
Expiration Date	6/9/2019
Bond Amount	\$10,100,000
BRB Priority	Priority 3
Close Date	1/31/2019
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	96.0%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
o	Section 8 HAP Contract
o	Solar energy will reduce Operating Expenses.
o	Limited market risk.
o	Developer experienced with TDHCA
WEAKNESSES/RISKS	
o	Feasibility dependent on HAP rent increases.
o	Minor increase in interest rates before rate lock could result in Debt Adjustment.



## RESOLUTION NO. 19-021

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (MCMULLEN SQUARE), SERIES 2019; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (McMullen Square), Series 2019 (the "Bonds") pursuant to and in accordance with the terms of an Indenture of Trust (the "Indenture") between the Department and Wilmington Trust, National Association, as trustee (the "Trustee"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to TCD MCM, LP, a Texas limited partnership (the "Borrower") in order to finance the cost of the acquisition, rehabilitation and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and

required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by a resolution adopted on January 18, 2018, as such resolution was amended by a resolution adopted on December 6, 2018, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and expects to receive a reservation of private activity bond allocation from the State of Texas; and

WHEREAS, it is anticipated that the Department, the Borrower and JPMorgan Chase, a national banking association, as bondholder representative will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the cost of the acquisition, rehabilitation and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Loan Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a Construction and Permanent Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Mortgage") from the Borrower for the benefit of the Department and assigned to the Trustee; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Bexar County, Texas; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement") to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Bonds, the Development, and the use and investment of Proceeds of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") with the Borrower and Cedar Rapids Bank and Trust Company or another purchaser selected by JPMorgan Chase Bank, N.A. (the "Purchaser"), setting forth certain terms and conditions upon which the Purchaser will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Purchaser; and



WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, and the Bond Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Mortgage and the Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Mortgage and the Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

## ARTICLE 1

### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. The Series 2019 Bonds shall bear interest at the Applicable Rate, as defined in the Indenture and subject to adjustment as described in the Indenture; provided that (i) in no event shall the interest rate (including any default rate) exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Bonds shall be \$10,000,000; (iii) the final maturity of the Bonds shall be January 31, 2036; and (iv) the price at which the Bonds are sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined in Section 1.12 below) each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Loan Agreement. That the form and substance of the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Bexar County, Texas.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement, and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.7 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Purchaser is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower and the Purchaser.

Section 1.8 Acceptance of the Note and the Mortgage. That the form and substance of the Note and the Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Note to the order of the Trustee without recourse.

Section 1.9 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.10 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.11 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A - Description of Development
- Exhibit B - Indenture
- Exhibit C - Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Tax Exemption Agreement
- Exhibit F - Bond Purchase Agreement
- Exhibit G - Note
- Exhibit H - Mortgage

Section 1.12 Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by the Department’s Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director or Acting Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director or Acting Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

### ARTICLE 3

#### CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a

public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

## ARTICLE 4

### GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

*[Execution page follows]*

PASSED AND APPROVED this 17th day of January, 2019.

[SEAL]

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

**EXHIBIT A**

**Description of Development**

Borrower: TCD MCM, LP, a Texas limited partnership


Development: The Development is a 100-unit affordable, multifamily housing development known as McMullen Square Apartments, located at 537 N. General McMullen Drive, San Antonio, Texas 78228. It consists of eight (8) residential apartment buildings with approximately 84,144 net rentable square feet. The unit mix will consist of:

8	one-bedroom/one-bath units
52	two-bedroom/one-bath units
32	three-bedroom/two-bath units
8	four-bedroom/two-bath units
<hr/>	
100	Total Units

Unit sizes will range from approximately 618 square feet to approximately 1,122 square feet.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 PUBLIC HEARING FOR  
 McMullen Square Apartments  
 DATE: December 20, 2018

	PRINTED NAME	SIGNATURE	STREET ADDRESS	SUPPORT DEVELOPMENT	OPPOSE DEVELOPMENT
1	Duane Henry		3010 Ensigne, San Clemente CA 92673		
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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING ON  
McMULLEN SQUARE APARTMENTS

City of San Antonio Memorial Branch Library  
3222 Culebra Road  
San Antonio, Texas

Thursday,  
December 20, 2018  
6:21 p.m.

BEFORE:

SHANNON ROTH, Hearing Officer

ON THE RECORD REPORTING  
(512) 450-0342

P R O C E E D I N G S

1  
2 MS. ROTH: Good evening. My name is Shannon  
3 Roth, and I'd like to proceed with the public hearing.  
4 Let the record show that it is 6:21 p.m., Thursday,  
5 December 20. We are at the City of San Antonio Memorial  
6 Branch Library, located at 3222 Culebra Road, San Antonio,  
7 Texas.

8 I'm here to conduct the public hearing on  
9 behalf of the Texas Department of Housing and Community  
10 Affairs with respect to an issue of tax-exempt multifamily  
11 revenue bonds for a residential rental community. This  
12 hearing is required by the Internal Revenue Code. The  
13 sole purpose of this hearing is to provide a reasonable  
14 opportunity for interested individuals to express their  
15 views regarding the development and the proposed bond  
16 issue.

17 No decisions regarding the development will be  
18 made at this hearing. The Department's board is scheduled  
19 to meet and consider this transaction on January 17, 2019.

20 In addition to providing your comments at this hearing,  
21 the public is also invited to provide comment directly to  
22 the board at any of their meetings.

23 Department staff also accept written comments  
24 from the public up to 5:00 p.m. on January 8, 2018 [sic].

25 The bonds for McMullen Square Apartments will

1 be issued as tax-exempt multifamily revenue bonds in the  
2 aggregate principal amount not to exceed \$10,100,000 and  
3 taxable bonds, if necessary, in an amount to be determined  
4 and issued in one or more series by the Texas Department  
5 of Housing and Community Affairs, the issuer.

6 The proceeds of the bonds will be loaned to TCD  
7 MCM LP, or a related person or affiliate entity thereof,  
8 to finance the acquisition and rehabilitation of a  
9 multifamily housing development described as follows: a  
10 100-unit multifamily residential rental development, to be  
11 constructed on approximately 5.54 acres of land, located  
12 at 537 North General McMullen Drive, Bexar County, Texas.

13 The proposed multifamily rental housing  
14 community will be initially owned and operated by the  
15 borrower or a related person or affiliate thereof.

16 Let the record show there are no attendees;  
17 therefore the meeting is now adjourned, and the time is  
18 6:22 p.m.

19 (Whereupon, at 6:22 p.m., the public hearing  
20 was adjourned.)

C E R T I F I C A T E

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IN RE: McMullen Square Apartments

LOCATION: San Antonio, Texas

DATE: December 20, 2018

I do hereby certify that the foregoing pages, numbers 1 through 4, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Joseph M. Schafer before the Texas Department of Housing and Community Affairs.

DATE: December 28, 2018

  
(Transcriber)

On the Record Reporting &  
Transcription, Inc.  
7703 N. Lamar Blvd., Ste 515  
Austin, Texas 78752

4a

BOARD ACTION REQUEST  
COMPLIANCE DIVISION  
JANUARY 17, 2019

Presentation, discussion, and possible action on initiation of proceedings to remove the eligible entity status of Galveston County Community Action Council, Inc. and terminate the 2019 Community Services Block Grant contract and future funding

RECOMMENDED ACTION

WHEREAS, Galveston County Community Action Council, Inc. (GCCAC), is the designated eligible entity that administers the Community Services Block Grant (CSBG) Program for Brazoria, Fort Bend, Galveston, and Wharton counties;

WHEREAS, on June 29, 2017, the Board approved an award of \$934,196 in Program Year 2019 CSBG funds to GCCAC;

WHEREAS, for reasons explained below, on November 12, 2018, the Texas Department of Housing and Community Affairs (the Department) provided GCCAC until December 5, 2018, to develop and implement a Quality Improvement Plan (QIP) and notified GCCAC that if they were not able to implement the QIP by that time, the Department would proceed with termination proceedings;

WHEREAS, Department staff conducted an onsite visit in mid-December 2018 to evaluate GCCAC's implementation of the QIP and determined that GCCAC had failed to fully implement the QIP demonstrating a recurring inability to resolve programmatic and compliance issues given reasonable time limits; and

WHEREAS, despite training and technical assistance, and an approved QIP, GCCAC has not come into compliance and there is a pressing need for these funds to be correctly administered;

NOW, therefore, it is hereby

RESOLVED, that the Acting Director and his staff be and each of them are hereby authorized, empowered, and directed for and on behalf of the Department, to take all actions necessary to initiate termination proceedings to remove the eligible entity status of GCCAC under the CSBG Act.

BACKGROUND

GCCAC is the eligible entity providing CSBG services to Brazoria, Fort Bend, Galveston and Wharton counties. The Department monitored GCCAC in May 2018 and identified a long list of deficiencies and concerns; those concerns included many repeat findings from monitoring visits

prior to that time that still had not been resolved within the corrective action period. An overview of the deficiencies and concerns includes: inadequacies in their procurement policies and procedures, which creates a high likelihood for ongoing disallowed costs, vacancies in their Tripartite Board structure, missing income support documentation, monthly performance report inaccuracies, erroneous cost allocation, reported expenditures not utilized during the contract period, by-laws' requirements and training for Board Members not met, salaries of personnel not properly allocated and supported, inaccurate income eligibility calculations, inaccurate timekeeping records, check processing concerns, incomplete client files, concerns over client tracking system access within GCCAC, and failure to document federal debarment verification. The monitoring reviews have thus far resulted in \$37,094.53 in disallowed costs that require repayment to the Department, which have not been repaid.

Additionally, the recent single audit required by 10 TAC §1.403, and 2 CFR Part 200, Subpart F, and the Uniform Grant Management Standards, identified Material Weaknesses relating to bank reconciliations which are a matter of serious concern to the Department. Furthermore, the audit identified significant issues surrounding CSBG files, in which more than 40% of files reviewed were noted as not having adequate supporting documentation for income eligibility and in CSBG-Disaster Relief files in which more than 33% of the files reviewed did not have adequate documentation of income eligibility. While not related to CSBG, the auditor also noted significant issues surrounding Low Income Home Energy Assistance Program (LIHEAP) eligibility in which more than 25% of the LIHEAP files reviewed did not have adequate supporting documentation for income eligibility. The auditor also cited the lack of sufficient documentation to support reports made to Grantors (such as the Department).

Prior to the May 2018 monitoring report, and on a frequent and on-demand basis from that time, Department training staff has spent significant time working with GCCAC in attempts to help them address their findings. In an effort to bring in additional resources, the Department contracted with the Community Action Partnership (CAP) who provided consultants to conduct an organizational assessment of GCCAC in August 2018. The CAP consultants assessed GCCAC's financial management system and procurement processes, assessed the ability of GCCAC's tripartite board to function within its scope, performed a system wide assessment of GCCAC's income and household eligibility determination and verification processes, reported back to the GCCAC board on any related weaknesses identified in the assessment with detailed corrective action and measurable objectives, and provided information to assist GCCAC in identifying the root cause of previously identified organizational weaknesses from prior audits and monitoring. The Department also had CAP provide training and technical assistance and guidance to GCCAC to utilize in the development of processes and tools to address identified concerns and prevent reoccurrence. The report which the CAP consultants released clearly reflected significant areas of concern that GCCAC must address to become a compliant subrecipient. They also noted that in large part the issues they identified were matters that had been previously brought to the attention of the GCCAC board and management in previous Department monitoring and third party audits.

Based on previous monitorings by Department staff, significant concerns noted in the recent audit cited above, the CAP assessment, and consideration of the amount and extent of training and technical assistance already provided to GCCAC, the Department, in accordance with 10



TAC §2.203, determined that the development and implementation of a QIP was an appropriate requirement and issued a final determination letter on October 5, 2018.

In accordance with the CSBG Act, GCCAC was given 60 calendar days following the notification of the final determination letter to develop and implement the QIP. A follow-up letter to GCCAC dated November 12, 2018, notified them that their QIP was insufficient and reiterated this requirement by stating "If GCCAC is not able to develop a plan to come into compliance and implement the plan by December 5, 2018, the Department will proceed with termination proceedings. The Department will conduct an onsite visit to verify the successful implementation of the QIP." A subsequent QIP response from GCCAC was found to be sufficient; that QIP served as the basis of comparison during the monitoring visit described below to ascertain whether the QIP had been fully implemented.

In December, shortly after the end of the 60-day QIP implementation period, Department staff performed an onsite monitoring visit to GCCAC to verify the implementation of the QIP. Although some improvement was noted by staff, several of the changes recommended by CAP have not been satisfactorily implemented thereby triggering the commencement of formal legal proceedings to terminate eligible entity status. Further training and technical assistance is not needed. GCCACA has the opportunity and ability to come into compliance until the end of termination proceedings. It should be noted that the recommendations made by the Partnership, and the requirements for the QIP, were reflective of findings identified by the Department prior to the May 2018 visit; the length of time GCCAC has had to fix these issues pre-dates the QIP.

To remove GCCAC's eligible entity status, the Department must follow the process outlined by the U.S. Department of Health and Human Services (HHS) in Information Memorandum 116 (IM 116). In addition, the Department must follow the requirements of Tex. Gov't Code Chapter 2105 and 10 TAC, Chapter 2, Subchapter B, §2.203. If the Board concurs that termination proceedings should commence, the next step will be for the Department to report to HHS on the training and technical assistance provided to GCCAC and relay to them that further training and technical assistance are not appropriate, and for staff to set a hearing at the State Office of Administrative Hearings, and notify all members of the GCCAC Board of such hearing. GCCAC will need to read and comply with SOAH's requirements in the way they handle and respond to the matter.

After that hearing, SOAH will issue a proposal for decision to the TDHCA Governing Board recommending whether there is cause, as defined by the CSBG Act, 42 U.S.C. §9908(c), to terminate or reduce funding to the Subrecipient. The TDHCA Governing Board will be provided the proposal for decision. If the TDHCA Governing Board determines that there is cause to terminate or reduce funding, the Department will notify the Subrecipient that it has the right under 42 U.S.C. §9915 to seek review of the decision by the HHS.

Staff recommends approval to follow the IM 116 process to remove GCCAC's eligible entity status, and to authorize staff to pursue a hearing with the State Office of Administrative Hearings.

4b

BOARD ACTION REQUEST  
COMPLIANCE DIVISION  
JANUARY 17, 2019

Presentation, discussion, and possible action regarding termination of Program Year 2019 Low Income Home Energy Assistance Program Comprehensive Energy Assistance Program award to Galveston County Community Action Council, Inc.; award of 24.99% of the Program Year 2019 Comprehensive Energy Assistance Program awards for each of the specific service areas covered by Galveston County Community Action Council, Inc., to alternate providers; the commencement of the 30-day notification period required by Tex. Gov't Code §2105.203 and §2105.301; and the authorization of staff to identify a provider, through release and subsequent award of a Request for Application or through a direct designation, to temporarily and permanently administer the Comprehensive Energy Assistance Program in Brazoria, Fort Bend, Galveston, and Wharton counties (the areas served by Galveston County Community Action Council, Inc.)

RECOMMENDED ACTION

WHEREAS, Galveston County Community Action Council, Inc. (GCCAC) is the designated utility assistance provider that administers the Low Income Home Energy Assistance Program (LIHEAP) Comprehensive Energy Assistance Program (CEAP) for Brazoria, Fort Bend, Galveston, and Wharton counties;

WHEREAS, on July 26, 2018, the Board conditioned an award of \$3,281,375 in Program Year (PY) 2019 CEAP funds to GCCAC, and indicated that a failure to comply with the condition may constitute grounds for the initiation of proceedings to debar GCCAC and/or be ineligible for future awards as permitted by applicable state and federal laws, rules, and regulations;

WHEREAS, Texas Department of Housing and Community Affairs (the Department) staff conducted an onsite visit in mid-December to verify whether the condition had been satisfied and determined that GCCAC has failed to fully comply with the condition, demonstrating a recurring inability to resolve programmatic and compliance issues given reasonable time limits;

WHEREAS, the prompt distribution of CEAP funds is critical as these funds provide utility payment assistance to vulnerable households and Tex. Gov't Code §2105.201 authorizes the Department to redistribute up to 24.99% of the 2019 formula-designated CEAP amount for this area to an alternate provider, the Department has the authority to directly select a temporary alternate provider, and the Department has identified a temporary alternate provider – BakerRipley - to perform such service until such time as a permanent provider can be identified;

WHEREAS, though BakerRipley was approved without condition for their own CEAP contract in July 2018, EARAC will consider all current information regarding

this award and will relay its recommendations to the Board, including any recommendations for conditions, at the January 17, 2019, meeting; WHEREAS, in order to terminate the 2019 award and identify one or more permanent alternate providers to provide timely CEAP services in the counties covered by the area, Tex. Gov't Code Chapter 2105 requires that GCCAC be given 30 days' notice and the opportunity for an administrative hearing relating to the termination of the 2019 CEAP contract; and

WHEREAS, the Department is also requesting authorization to issue a Request for Applications (RFA) to identify one or more permanent providers to provide CEAP services;

NOW, therefore, it is hereby

RESOLVED, that in order to minimize gaps in CEAP delivery of services to eligible low-income households in the service area, and to strive to fully expend funds, 24.99% of the PY 2019 CEAP contract for the service area covered by GCCAC (an approximate amount of \$820,015.61), is hereby reduced from the GCCAC 2019 allocation amount, and is recommended to be awarded immediately as an interim award for up to 11 months (but at least until a permanent provider is named) to BakerRipley for Brazoria, Fort Bend, Galveston, and Wharton counties;

FURTHER RESOLVED, that the Board instructs Department staff to promptly provide GCCAC a 30 days' notice relating to the termination of the remainder of the award;

FURTHER RESOLVED, that the Department is authorized to release an RFA to identify permanent entities to administer the remainder of the PY 2019 CEAP contract, and which when identified will be presented to the Board, after the 30-day notice period has passed, and possibly to be designated as the CEAP network provider for the benefit of eligible low-income households in the service area; and

FURTHER RESOLVED, that the Acting Director and his staff be and each of them are hereby authorized, empowered, and directed for and on behalf of the Department, to take such actions and execute such documents that they or any of them may deem necessary to effectuate the use of funds in this manner.

#### BACKGROUND

GCCAC is the designated utility assistance provider for Brazoria, Fort Bend, Galveston and Wharton counties. The Department monitored GCCAC in May 2018, and identified a long list of deficiencies and concerns; those concerns included many repeat findings from monitoring visits prior to that time that still had not been resolved within the corrective action period. An overview of the deficiencies and concerns includes: inadequacies in their procurement policies and procedures which creates a high likelihood for ongoing disallowed costs, incorrect expenditure reporting, erroneous cost allocation, salaries of personnel not properly allocated and supported, inaccurate income eligibility calculations, inaccurate timekeeping records, check processing concerns, incomplete client files, concerns over client tracking system access within GCCAC, and

failure to document federal debarment verification. The monitoring reviews have thus far resulted in \$37,094.53 in disallowed costs that require repayment to the Department, which have not been repaid.

Additionally, the recent single audit required by 10 TAC §1.403 and 2 CFR Part 200, Subpart F, and the Uniform Grant Management Standards, identified Material Weaknesses relating to bank reconciliations which are a matter of serious concern to the Department. Furthermore, the audit identified significant issues surrounding LIHEAP eligibility in which more than 25% of the LIHEAP files reviewed did not have adequate supporting documentation for income eligibility. While not related to CEAP activities, the auditor also noted significant issues surrounding Community Services Block Grant (CSBG) eligibility in which more than 40% of the files reviewed did not have adequate supporting documentation for income eligibility. The auditor also cited the lack of sufficient documentation to support reports made to Grantors (such as the Department).

Because of this history of noncompliance and the Department's ongoing concerns, EARAC recommended and the Board approved that GCCAC's CEAP award in July 2018 conditioned on the following:

This award is conditioned upon having an onsite review of GCCAC's financial management system and processes and procurement processes to be performed by the Community Action Partnership ("Partnership"). The assessment must be performed prior to November 1, 2018; and GCCAC must satisfactorily address any of the issues noted by the Partnership within 90 days of receipt of the report.

If GCCAC does not satisfactorily implement the changes, if any, noted by the Partnership prior to the deadlines noted, it will serve as good cause to terminate the contract.

As required by the condition, the Partnership did perform such an assessment and provided a report of their findings and recommendations to the Department and to GCCAC. Department staff performed an onsite monitoring visit to GCCAC in December 2018, shortly after the end of the 90 day period referenced in the condition. Although some improvement was noted by staff, several of the changes recommended by the Partnership have not been satisfactorily implemented. It should be noted that the recommendations made by the Partnership were reflective of findings identified by the Department prior to the May 2018 visit; the length of time GCCAC has had to fix these issues pre-dates the Partnership report.

Considering the length of time that GCCAC has had to correct these findings and deficiencies, their inability to fully correct them, and the amount of training and technical assistance provided by the Department, staff feels that no further assistance can be provided. Further delays in terminating GCCAC's 2019 CEAP contract create an unacceptable financial risk to the Department as the likelihood of disallowed costs will be high, and GCCAC's inability to pay those disallowed costs also likely. Further, the Department is concerned that service area households in need of utility assistance will be negatively impacted. In an effort to reduce that risk and ameliorate concern over provision of utility assistance to the low income households in the service area of GCCAC, staff believes that steps should be taken to allow for the temporary and permanent award of 2019 CEAP funds to one or more alternate providers. Up to 24.99% of the PY 2019 CEAP

award can be provided to alternate providers.<sup>1</sup> BakerRipley has indicated its willingness to accept these funds to provide services temporarily in the specific area. As a further precaution, GCCAC has an extension on their PY 2018 CEAP contract through the end of March 2019 with approximately \$860,939.45 remaining as of November 30, 2018.

In order to identify one or more providers to accept the remainder of the 2019 CEAP allocation (the amount in excess of the 24.99%) and become the permanent provider of CEAP for this area, staff must proceed consistent with the process required by Tex. Gov't Code §2105.301, which requires that the Department provide GCCAC a written notification of termination and nonrenewal of the LIHEAP CEAP contract. Staff is requesting the authorization to proceed with such a notification and to proceed with the release of an RFA prior to the expiration of the 30-day period to expedite staff's ability to identify and ultimately select a potential alternate provider for the CEAP program for Brazoria, Fort Bend, Galveston, and Wharton counties. While staff would release the RFA during the 30-day period, no recommendation would be made to the Board for such a permanent alternate provider until the 30-day period has been completed. If the Board approves this Board Action Request, staff will present a subsequent agenda item to permanently award the funds to another provider.

In summary, staff recommends a 24.99% reduction of GCCAC's 2019 CEAP award while providing those CEAP funds temporarily to BakerRipley, providing GCCAC a written notification of termination and nonrenewal of the CEAP contract, and authorization to proceed with the release of an RFA for a permanent CEAP provider for GCCAC's service area.

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<sup>1</sup> Nothing in this BAR is intended to impact any rights or remedies GCCAC or the Department may have in any current contract.

5a

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**JANUARY 17, 2019**

Presentation, discussion, and possible action on a request for changes to Direct Loan terms for AHA! at Briarcliff (17511)

**RECOMMENDED ACTION**

**WHEREAS**, AHA! at Briarcliff received an award of \$1,492,200 in Direct Loan funds from the Supportive Housing/ Soft Repayment set-aside under the 2017-1 Multifamily Direct Loan Notice of Funding Availability, sourced with TCAP Repayment Funds (TCAP RF) and National Housing Trust Fund (NHTF), on February 22, 2018;

**WHEREAS**, the award was bifurcated into two loans for repayment purposes with \$1,337,200 structured as a deferred forgivable loan to be composed of \$1,126,671 in TCAP RF and \$210,529 in NHTF, and \$155,000 structured as a hard repayable loan to be composed of TCAP RF, in order to achieve a debt coverage ratio of less than the maximum 1.35, since the population being served by this development is a General population;

**WHEREAS**, a loan to the project from Texas State Affordable Housing Corporation (TSAHC) has increased by \$272,500, while total development costs have increased approximately \$100,000 and owner equity has decreased approximately \$190,000;

**WHEREAS**, as a result of the increased debt service on the TSAHC loan and increased operating expenses, the awardee has requested that the Department modify the terms of the Direct Loan award to reflect that all \$1,492,200 as deferred forgivable loans;

**WHEREAS**, TSAHC is now requesting that the Department's loans be in parity first lien position with their loan as a result of TSAHC's increased loan amount and the potential for all of the Department's loans becoming deferred forgivable;

**WHEREAS**, a deferred forgivable loan structure has been and continues to be allowable under the Supportive Housing/ Soft Repayment set-aside in accordance with the Multifamily Direct Loan Rule (10 TAC Chapter 13);

**WHEREAS**, 10 TAC Chapter 13 requires the Department to have a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount;



**WHEREAS**, the Department has executed parity lien agreements with the United States Department of Agriculture's Rural Development (USDA-RD) division for developments that the Department and USDA-RD have financed jointly;

**WHEREAS**, TSAHC, while not being a governmental entity, is a nonprofit created by the State of Texas that has a similar mission to the Department in terms of providing affordable housing for all Texans; and

**WHEREAS**, staff recommends approving the requested changes to the Department's loan terms, including the parity position with TSAHC, in order to ensure the long term viability of the project;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Board hereby approves the awardee's request to modify the Department's loan terms, resulting in \$1,492,200 in Direct Loan funds (\$1,281,671 in TCAP RF and \$210,529 in NHTF, as previously approved) being structured as deferred forgivable loans with 30 year terms in parity first lien position with TSAHC's loan; and

**FURTHER RESOLVED**, that the Board's approval is conditioned upon satisfaction of all conditions of underwriting, and completion of any other reviews required to assure compliance with the applicable rules and requirements.

### **BACKGROUND**

AHA! at Briarcliff received an award of \$1,492,200 in Direct Loan funds (\$1,281,671 in TCAP RF and \$210,529 in NHTF) on February 22, 2018. Since that time, the awardee (Accessible Housing Austin) has hired a new executive director and received updated construction costs from their contractor and revised operating expenses upward, which required them to increase the TSAHC loan amount from \$695,000 to \$967,500. As a result of the increased debt service requirements on the TSAHC loan, the Applicant submitted a request to the Department to modify the terms of the Direct Loans to allow for the entirety of the Direct Loans to be deferred forgivable, and allow for the Direct Loans to be in parity first lien position with TSAHC's loan. Originally, TSAHC was willing to have its \$695,000 loan be subordinate to TDHCA's \$155,000 hard repayable loan. However, now that all \$1,492,200 will be deferred forgivable, TSAHC would like to have first lien position, albeit in parity with the Department's loan.

Allowing all \$1,492,200 in Direct Loan funds to be deferred forgivable will help ensure the long term viability of the project since all 11 Direct Loan units are restricted to NHTF 30% rent and income limits, and the remaining 16 units are restricted to 50% AMFI by the City of Austin's HOME funds. Negotiating a parity lien agreement with TSAHC, whereby both the Department's loans and TSAHC's loan would be in first lien position, will allow TSAHC's financing to move forward, and furthers both organizations

missions of providing affordable housing for all Texans. The Department's Land Use Restriction Agreements will remain superior to any TSAHC use agreement.



**Addendum to Underwriting Report**

TDHCA Application #: **17511** Program(s): **MDL**

**AHA! At Briarcliff**

Address/Location: 1915 Briarcliff Blvd

City: Austin County: Travis Zip: 78723

APPLICATION HISTORY	
Report Date	PURPOSE
01/10/19	Direct Loan Closing
02/15/18	Original Underwriting

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
Multifamily Direct Loan (Repayable)	\$155,000	0.00%	30	15					
Multifamily Direct Loan (Deferred Forgivable)	\$1,337,200	0.00%	0	15	\$1,492,200	0.00%	0	30	1-P**

\* Lien position after conversion to permanent. The Department's lien position during construction may vary.

\*\*1-P indicates first lien with parity agreement

**CONDITIONS STATUS**

- 1 General Conditions
  - a: Texas State Affordable Housing Corporation (TSAHC) loan not to exceed \$967,500.
  - b: Direct Loan to have Parity First Lien position with the TSAHC loan.
- 2 Receipt and acceptance before Direct Loan Closing
  - a: Substantially final construction contract with Schedule of Values.  
**Status:** Satisfied
  - b: Updated term sheets with substantially final terms from all lenders  
**Status:** Satisfied
  - c: Substantially final draft of limited partnership agreement.  
**Status:** Condition removed.
  - d: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.  
**Status:** Satisfied
  - e: Regarding the project tax exemption and pursuant to §10.402(d)(7), a letter from Applicant's Attorney, "...identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review.

**Status:** Pending

f: Resolution from Applicant's governing board confirming their irrevocable commitment to the provision of funds in an amount no less than \$18,000 per year for on-going operations.

**Status:** Pending

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

## ANALYSIS

AHA! at Briarcliff was a 2017 Multifamily Direct Loan for \$1,492,200; bifurcated as \$155,000 repayable and \$1,037,200 deferred forgivable. Increased construction costs and additional fees from the City of Austin have increased the overall development cost. The Applicant is requesting that the full \$1,492,200 Direct Loan be deferred forgivable. The Applicant has also compensated for the increase in cost by keeping the Contingency low at 1.5%, increasing the loan amount from TSHAC by \$300K and contributing \$18K to the operation of the project.

### Operating Pro Forma

Eleven units will be restricted under the MDL program. All eleven will be income and rent restricted at 30% AMI in order to qualify for the Soft Repayment set-aside.

Additionally, all units will be restricted at 50%/Low HOME by the \$2.2M grant from the Austin Housing Finance Corporation (AHFC) and the Federal Home Loan Bank (FHLB) requires the units be limited to 50% AMI.

The Applicant anticipates receiving up to six Section 811 payment assistance vouchers. The Soft Repayment set-aside prohibits the use of tenant based rental assistance on the MDL units, so the 811 vouchers must all be used only on the AHFC units (50% AMI). Rental assistance under Section 811 can go as high as 60% AMI, and the Applicant submitted a rent schedule showing 60% rent on one unit to account for additional rent from at least one voucher. However, Section 811 guidelines limit the assistance payment to match the highest prevailing restricted rent on the property. As a result, the Section 811 vouchers will not exceed the 50% / Low HOME rent required by the AHFC & the FHLB. Underwriter adjusted the Applicant's one 60% AMI unit to 50% AMI unit to be in accordance with restrictions.

The Applicant's Pro Forma included an annual contribution of \$18K for the operation of the units. Historically, AHA! has received an average of \$30K per quarter from the State of Texas Charitable Bingo and anticipates this to be a continued source of funding. The AHA! Board voted in October to dedicate up to \$30K annually to the operation of the units. Underwriter has included the \$18K Owner contribution in Pro Forma. A Resolution from the AHA! Board is required to evidence the Board's intent to provide operating funds in an amount necessary for feasibility.

### Development Cost

A fixed price contract has been executed with Rizzo Construction for the construction of the project. Since the initial underwriting, building costs increased by 4% and total development costs increased by 2% for total cost increase of \$109K. The majority of the increase in costs (\$95K) is from a new fee from Austin Energy to relocate the existing underground utilities and provide 3-phase 208V service.

Applicant has reduced the developer fee from \$232K to \$171K (4% of total cost).

### Sources of Funds

In the previous underwriting, the MDL loan was bifurcated between a repayable and deferred forgivable amount in order to bring the DCR to within acceptable range. Applicant has requested that the full amount of the \$1,492,200 MDL loan be considered Deferred Forgivable.

The TSAHC loan increased by \$300K to \$995K, plus the interest rate increased by 60 bps to 5.75%. Even with the MDL fully deferred, the debt coverage ratio (DCR) is 1.12, which is below the threshold. The TSAHC loan amount must be reduced \$27,500 to maintain the minimum 1.15 debt coverage. The reduced loan proceeds are offset by deferred developer fee.

If the MDL remains as originally structured, with \$155K repayable, debt coverage would drop to 1.07 with the higher TSAHC loan amount. The TSAHC loan would have to be reduced by \$100K in this case to achieve a compliant DCR structure. The offsetting deferred developer fee could be repaid within 10 years of operation.

The Applicant originally requested that the TSAHC loan have a first lien position, but has since modified the request to have the TDHCA MDL share first lien position with TSAHC. The recommended MDL exceeds the TSAHC loan by \$525K. The Direct Loan rule requires that "Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount".

However, taking into consideration that the MDL will be forgivable while the TSAHC loan is fully amortizing, Staff recommends that the Board approve a parity first lien agreement between TDHCA and TSAHC.

Underwriter: Laura Rogers

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart



Andrew Sinnott  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

December 3, 2018

Re: Application #17511 the AHA! at Briarcliff Development, Loan Terms and Lien Positions

Dear Mr. Sinnott,

Accessible Housing Austin! (AHA!) is submitting this request to TDHCA to request a reconsideration of the loan terms for project #17511 - AHA at Briarcliff,

First, regarding the loan amount from TDHCA, the award letter indicated that of the \$1,492,000 loan to Accessible Housing Austin, \$155,000 would be a re-payable loan while the remainder would be a deferred forgivable loan. This decision was based on the underwriting report and our submitted construction cost of \$4,651,516 and total project cost of \$5,351,178. The TDHCA analysis indicated that the debt to credit ratio would be over the 1.35 limit and concluded that the development would be able to carry the \$155,000 as repayable debt. This was in February 2018.

Since the time of the award, we have recalculated our project costs (construction cost increases, Austin Energy fee increases), available revenue, annual costs, and loan terms. This has resulted in the project budget that we submitted on 11/26/18 indicating that the development could support an increased loan amount and interest rate from TSAHC resulting in an DCR of 1.17. This model would not include a repayable loan from TDHCA as that would drive the DCR below the allowable limit of 1.15.

**We respectfully request that TDHCA consider making the entire \$1,492,000 loan amount a deferred forgivable loan and not require the \$155,000 as a repayable loan.**

Secondly, the Texas State Affordable Housing Corporation (TSAHC) Board of Directors approved their loan conditional on being in a first priority lien position. They may accept a primary lien in parity with the offered TDHCA loan. Per the rules set by TDHCA in Section 10.207, TDHCA may accept a lesser lien position if the waiver request was not a preventable circumstance. In this case, every lender we have spoken with who has offered us adequate financing for this project has insisted on taking first lien position.

**Affordable Housing Austin! respectfully requests the TDHCA take a parity first lien position allowing the repayable loan from TSAHC to be in the first lien position as well.**

Thank you for your consideration,

Sincerely,

Jolene Keene  
Executive Director – Accessible Housing Austin!

# Texas State Affordable Housing Corporation

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## Texas Housing Impact Fund - Loan Commitment

January 8, 2019

Jolene Keene, Executive Director  
Accessible Housing Austin  
1100 South Interstate Highway 35  
Austin TX 78704  
Phone: 512-640-7781  
Fax: n/a

Re: AHA! at Briarcliff, Loan Amount of \$995,000

Dear Ms. Keene,

The Texas State Affordable Housing Corporation (the "Corporation" or "Lender") is pleased to provide you with this commitment letter (the "Commitment"). This Commitment is based on the application and financial information that was provided to the Corporation by Accessible Housing Austin. This Commitment is for consideration of a loan, not to exceed NINE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$995,000) (the "TSAHC Loan"), to Accessible Housing Austin, for the Acquisition and Construction of a 27 unit multifamily rental housing development (the "Project") located at 1915 Briarcliff, Austin, Travis County, Texas. The Corporation agrees to consider the funding of the TSAHC Loan pursuant to this Commitment and subject to the following terms and conditions:

1. **Borrower.** Accessible Housing Austin, a nonprofit corporation organized under the laws of the State of Texas, sometimes referred to herein as "Sponsor", "Borrower" or "Organization".
2. **Loan Amount.** The TSAHC Loan that is the subject of this Commitment shall be in an aggregate amount not to exceed \$995,000.
3. **Term.** The term of the Loan shall be 15-years, from the conversion to permanent date ("Conversion Date"), which shall be 24 months from the closing date of the loan or upon completion of construction, whichever date is sooner.
4. **Interest.** The TSAHC Loan shall bear interest at a rate (the "Interest Rate") equal to 5.75%, based upon the outstanding balance of principal and accrued interest, if any, and shall begin to accrue on the 1<sup>st</sup> day following Conversion Date. The payment of interest shall be amortized over a 30-year period as provided for in the amortization schedule. From the Closing Date until the Conversion Date, the TSAHC Loan will accrue interest at a rate of 2.50% annually, based on a 360 day period. Borrower shall make payments of interest during the construction phase on a monthly basis.
5. **Security.** The TSAHC Loan shall be secured by a note and deed of trust (the "TSAHC Note") filed in the real property records of Travis County, Texas. The TSAHC Note shall be the first priority lien against all real property and improvements of the Project. With the exception of Borrower's deferred forgivable loan from the Texas Department of Housing and Community Affairs (the "TDHCA Loan") in an amount not to exceed \$1,492,200, all other notes, mortgages loans or other encumbrances against the Project shall be subordinate to the TSAHC Note. The TDHCA Loan and TSAHC Note shall be recorded and share the the primary lien position in parity with

## Texas State Affordable Housing Corporation

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### Loan Commitment

one another. The Borrower shall provide complete and executed copies of subordination agreements from any and all subordinate lenders to the Corporation prior to the closing of the TSAHC Loan.

6. Draw of Funds. Draws shall be made not more frequently than one every two weeks based on draw requests signed by an authorized signatory in the form provided to Borrower by Lender. Each draw request for construction costs shall be funded within ten (10) days after receipt by Lender of the draw request and all supporting documentation required by Lender, as provided for in the form provided to Borrower by Lender. Draw requests for construction costs shall show the percentage of completion of construction and shall set forth in trade breakdown form and in such reasonable detail as may be reasonably required by Lender the amounts expended and/or costs incurred for work done and materials incorporated in the Improvements and be accompanied by the General Contractor's sworn statement. Each draw request shall be supported by such information and documentation (such as paid receipts, invoices, statements of accounts, lien releases, etc.) as Lender may reasonably require to assure that amounts requested are to be used to reimburse Borrower for costs previously paid by Borrower or to pay costs incurred by Borrower that are to be paid from proceeds of the Loan, as set forth in the budget.
7. Payments. Borrower will make monthly payments of accrued interest on the 15th of each month following the date of first draw and continuing until the Conversion Date of the Loan. Accrued interest will be calculated by Lender based on outstanding principal amount at the end of each month. Payments of principal and interest shall be made on the 5th of each month, commencing on the first of the month following the Conversion Date and continuing to and through 15 years from that date, in the amount shown on the amortization schedule attached to the Promissory Note evidencing the TSAHC Loan. Interest payments have been calculated on a 30-year amortization period. Payments made in excess of the principal and interest due shall be credited to the principal balance due at the end of the TSAHC Loan term.
8. Optional Prepayments. Borrower may not prepay the outstanding principal balance of this TSAHC Loan, in whole at any time unless such prepayment includes all accrued and unpaid interest hereon, any other sums due hereunder or under the TSAHC Note and the Prepayment Fee (as hereinafter defined). In the event of a prepayment by Borrower, however same occurs, and in the further event that the interest rate per annum the Corporation is paying on its participation note to the Federal Home Loan Bank of Dallas is greater than the yield as of the prepayment date derived from the U.S. Agency Fair Market Curve for the same remaining maturity, the prepayment fee (the "Prepayment Fee") to be paid shall be a fee equal to the present value of the remaining principal and interest payments discounted at the current market yield of the U.S. Agency Fair Market Curve for the same remaining maturity minus the principal balance owing on the TSAHC Note.
9. Fees. The Corporation will collect fees, penalties or other monetary accretions in the following manner:
  - 9.1. Origination Fee. The Borrower agrees that the Borrower shall pay to the Corporation an origination fee in the amount of \$9,950 (the "Origination Fee"). The Borrower shall pay



## Texas State Affordable Housing Corporation

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### Loan Commitment

the Origination Fee concurrently with the Borrower's execution of the TSAHC Loan Documents.

10. Loan Documents. The TSAHC Loan shall be evidenced and secured by the TSAHC Loan Documents, which shall be prepared by the Corporation's counsel and be in form and substance satisfactory to the Corporation and its counsel.
11. Conditions to Closing. On or before the closing date of the TSAHC Loan, the Borrower shall fulfill and deliver all documents, guarantees and other conditions required by the Corporation, the TSAHC Loan Documents (including the provision of title insurance with respect to the TSAHC Note), original executed subordination agreements (such documents shall require a full "standstill" agreement for all subordinate lenders) from all other lien holders, specifically the TDHCA Loan, in a form, manner and substance satisfactory to the Corporation.
12. Additional Conditions. This Commitment and the TSAHC Loan shall be conditioned upon the fulfillment for the following conditions prior to closing:
  - 12.1. Borrower shall submit a copy of the Borrower's Certificate of Good Standing from the Texas Comptroller of Public Accounts, Bylaws and Certificate of Incorporation filed with the Texas Secretary of State; and
  - 12.2. Borrower shall inform the Corporation within five (5) business days of any amendments, changes or updates to the project scope of work, financing or other details regarding the Project;
13. Termination. This Commitment may be terminated at the Corporation's option by written notice to the Borrower at the address set forth above upon the occurrence of any of the following events:
  - 13.1. The Borrower makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition of bankruptcy or is adjudicated a bankrupt or insolvent, or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation;
  - 13.2. If any material statement or representation made by or on behalf of the Borrower or any guarantor to the Corporation shall prove to be untrue, or if the Borrower or any guarantor shall have withheld any material information incident thereto; and
  - 13.3. If there shall be a material adverse change, as determined by the Corporation, in the financial condition or business operations of Borrower, any guarantor or the Project.
14. Acceptance, Expiration. This Commitment shall become effective on or before **November 15, 2018**. Borrower must satisfy all of the conditions described herein and the closing date of the TSAHC Loan will occur on or before **June 1, 2019**. If the closing date of the TSAHC Loan does not occur on or before such date, this Commitment shall automatically terminate.

**Texas State Affordable Housing Corporation**

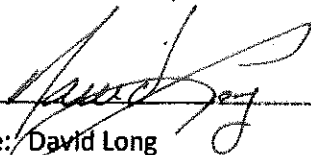
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**Loan Commitment**

We are pleased to be of service in connection with the financing for the Project and look forward to working with you on this transaction.

**AGREED AND ACCEPTED:**


**Texas State Affordable Housing Corporation, a  
Texas Nonprofit Corporation**

By:   
Name: David Long

Title: President

Date: 1-10-19

**Accessible Housing Austin, a nonprofit  
corporation**

By:   
Name: Jolene Keene

Title: Executive Director

Date: 1-10-19