



October 18, 2024

Mr. Cody Campbell
Director of Multifamily Programs
Texas Department of Housing and Community Affairs
211 E 11th Street
Austin, Texas 78701

Via Email: Cody.Campbell@tdhca.texas.gov

Re: TDHCA HTC Application #23905 FKA 22809/21032 – Royal Gardens Lufkin, Lufkin, TX

Mr. Campbell:

Royal Gardens Lufkin, LLC (the “Owner”) received an allocation of Housing Tax Credits from the Texas Department of Housing and Community Affairs (“TDHCA”) for the construction of Royal Gardens Lufkin (the “Development”) in 2021. Through receipt of supplemental credits in 2023, the Owner has received a 2023 allocation of tax credits which currently requires the Development to meet the 10% test by December 20, 2024 and place the Development in service by December 31, 2025. Unfortunately, the Owner faces the possibility of not being able to meet these deadlines as required by §42(h)(1)(E)(i) & §42(h)(1)(E)(ii) of the Internal Revenue Code. The need for requesting an extension to meet the required 10% test and placed in service deadlines is the result of events that we believe should fall under the provisions of §11.6(5) of the 2024 Qualified Allocation Plan (“QAP”) relating to Force Majeure.

Background Information

The Development is located in Lufkin, Texas, in Angelina County. The City of Lufkin, and quite frankly the entire State of Texas, has experienced significant cost increases, supply chain issues, and labor shortages that as a whole have impacted and delayed the start of construction of the Development, which has had an adverse effect on the initial construction schedule and anticipated placed-in-service timelines. These issues are the direct result of not one, but several events that together have put extreme upward pricing pressure, interest rate increases, supply chain failures, and timing constraints on the construction industry across the entire State of Texas. The events affecting our development are: the COVID-19 Pandemic, changes in regulation, supply chain failures, labor shortages, and several natural disasters.

Owner has been working through gap issues to close this permit ready development as quickly as possible. Owner submitted an application for HOME funds under the 2024-2 NOFA on April 30, 2024, in an attempt of securing financing that currently appears likely to be awarded, if all programmatic and underwriting reviews prove successful. If awarded, the development will be able to close this transaction directly with TDHCA as the only permanent lender. However, given the expected lead time on underwriting and closing the anticipated award of HOME funds, this puts the 10% Test and placed in service deadlines in severe jeopardy of being achieved. The award process of Multifamily Direct Loan (MFDL) funds is still underway, but from previous experience with MFDL funds it takes three to six months for TDHCA to close these funds once awarded. This projected timeline extends past our 10% test deadline and would not allow sufficient time to complete construction.



COVID 19

Though we are several years removed from the pandemic, its effects still remain present in today's economic environment. Labor shortages and supply chain issues remain prevalent¹, and have only been amplified by global weather events spurred by El Nino² and sharp increases in natural disasters.

Changes in Regulation

The Federal Reserve is tasked with providing oversight to banks and financial institutions. It is also tasked with setting the federal funds rate as part of its monetary policy to regulate inflation. In a change in monetary policy, the Federal Reserve was forced to hike interest rates a total of 11 times between March 2022 and July 2023. This took the federal funds rate from near zero to its current rate of 5.4%, its highest level since 2002.³ This sharp increase in interest rates in such a short period of time significantly reduced the leveraging capabilities of developers, creating significant gap issues in financing.

Natural Disasters

The Development is located in Angelina County, Texas. Since 2021, Angelina County has been hit with multiple extreme weather events, which have disrupted supply chains and caused significant increases to insurance costs. Here's a brief list of some of the events that have affected the Development and will have a lasting effect on supply chains for the area:

- February 19, 2021, FEMA issued declaration DR-4586-TX - Angelina County is included as eligible for individual assistance under this federal declaration for Winter Storm Uri.
- August 11, 2023, Greg Abbott, Governor of the State of Texas issued a disaster declaration for wildfires that began on July 24, 2023. Angelina County is included in this declaration.⁴
- April 30, 2024, Greg Abbott, Governor of the State of Texas issued a disaster declaration for severe storms and flooding that began on April 26, 2024. Angelina County is included in this declaration.⁵
- July 6, 2024, Dan Patrick as Acting Governor of the State of Texas issued a disaster declaration for Hurricane Bertyl, which includes Angelina County. This has also been recognized as a FEMA declaration DR-4798-TX on July 9, 2024.⁶

Impact and Request

The result of these force majeure events is the Development has seen a 35% increase in the GC contract (\$3.17M) and a 26% in the overall development budget (\$3.5M after accounting for significant value engineering). The Development has also experienced significant downward pressure on the credit pricing for this rural market, which has dropped from \$0.88 in 2021 to \$0.81 in 2024 with the current commitment from Raymond James, the Tax Credit Investor on this transaction. The gap that was created by cost and interest rate increases along with the loss of equity proceeds required the Owner to apply for additional funding via MFDL funds under the 2024-2 NOFA. Given the likelihood of receiving the MFDL funds (see Exhibit A), the Development is currently feasible once again. However, due to projected lead time of the review and award of the MFDL funds and the inability to close on construction financing because of the significant gap that remains without these funds, we have now run into a time constraint

¹ <https://www.pbmares.com/top-construction-issues-of-2024/>

² <https://www.aon.com/en/insights/articles/el-nino-and-the-storm-brewing-in-supply-chains>

³ <https://www.thestreet.com/fed/fed-rate-hikes-2022-2023-timeline-discussion>

⁴ <https://gov.texas.gov/news/post/governor-abbott-issues-wildfire-disaster-declaration-in-august-2023>

⁵ <https://gov.texas.gov/news/post/governor-abbott-issues-severe-weather-disaster-declaration-for-east-texas-in-april-2024>

⁶ <https://www.fema.gov/disaster/4798>



that puts meeting the 10% Test and Placement in Service timelines in jeopardy. We request that the Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits to the Owner in the current year in accordance with §11.6(5) of the 2024 QAP relating to Force Majeure. We believe the Owner and Development meet all the requirements in Section 11.6(5), in that:

1. The events that caused the delay occurred before issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Development Owner.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. The Owner has provided evidence and a timeline of the events that was the direct result of the delays, see referenced footnotes 1, 2, 3, 4, 5, & 6 and Exhibit B.
4. Though there was little that could be done to mitigate the effects of COVID-19 and the resulting inflationary issues resulting from supply chain failures, severe weather events, and interest rate hikes, once a viable option was made available by TDHCA to assist with the cost increases and loss of leveraging, the Owner applied for two relief options (State Housing Tax Credits and MFDL funds under the 2024-2 NOFA), the Owner immediately contacted the proposed financial partners of the Development and began working out a viable financing option that we believe will assist in making the Development feasible once again. The result of those discussions is that an application was submitted for funds under the State Housing Tax Credits and the 2024-2 NOFA. The Owner was notified that it could not receive both State Housing Tax Credits and HOME funds, and therefore released the State Housing Tax Credit application from competitive review. There is a high probability the Development will receive the HOME funds requested, as it has already gone through multiple rounds of reviews and we are hopeful it will be recommended for award at the December 2024 TDHCA Board meeting. Should the Development receive an award from the 2024-2 NOFA funds, that would make this a viable transaction once again. The Development is permit ready and the land has already been purchased by the Owner. Additionally, the Development was and remains properly insured, and TDHCA was notified of the Force Majeure events.
5. The Force Majeure threatens to prevent the Owner from meeting the 10% Test and Place in Service requirements of the original allocation.
6. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
7. If granted an award of HOME funds under the 2024-2 NOFA, the Development continues to be financially feasible, as these MFDL funds would offset the cost increases and loss in leveraging experienced by the Development resulting from the COVID-19 Pandemic, ongoing supply chain issues, labor shortages, and increases in insurance costs resulting from significant losses by the State of Texas due to natural disasters. Additionally, there have not been any insurance proceeds received related to the Force Majeure event.



If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at lora@betcohousinglab.com.

Sincerely,

Lora Myrick, Principal
BETCO Consulting, LLC

EXHIBIT A



Multifamily Direct Loan - Application Log - May 30, 2024 2024-2 Notice of Funding Availability

The following data was compiled using information submitted by each applicant. While this data has been preliminarily reviewed by the Department, errors may still be present. Those reviewing the log are advised to use caution in reaching any definitive conclusions based on this information alone. Where Applications are layered with 9% or 4% Tax credits, the Applications are also subject to evaluation under the Department criteria for those fund sources. Applicants are encouraged to review 10 TAC §61.11b) concerning Due Diligence and Applicant Responsibility, along with the OAP requirements related to Application Submission Requirements, Eligibility Criteria, Board Decisions and Waiver of Rules for Applications. This log will be updated periodically as staff completes application reviews and as more applications are received. The Multifamily Direct Loan Program - Application Log is presented for informational use only, and does not represent a conclusion or judgment by TDHCA, its staff or Board. Applicants that identify an error in the log should contact Connor Jones at connor.jones@tdhca.state.tx.us as soon as possible. Identification of an error early does not guarantee that the error can be addressed administratively.

Applications sorted by date received within set-aside.

Application #	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request/ Award	Target Population	Application Acceptance Date ²	Comments
24501	Royal Gardens Lufkin	Lufkin	Angelina	5	NC	\$5,410,000.00	General	4/30/2024	
24504	Sweetwater Station	Sweetwater	Nolan	2	NC	\$5,000,000.00	Elderly	4/30/2024	
24505	Riverview Manor	Kerrville	Kerr	9	NC	\$4,000,000.00	Elderly	4/30/2024	
24503	Pioneer Crossing	Brownwood	Brown	2	NC	\$2,800,000.00	Elderly	4/30/2024	
24506	FishPond at Walker	Huntsville	Walker	6	NC	\$3,500,000.00	Elderly	4/30/2024	
24507	FishPond at Victoria	Victoria	Victoria	10	NC	\$4,900,000.00	Elderly	4/30/2024	
24511	Round Grove Living	Lewisville	Denton	3	NC	\$4,438,911.00	General	5/7/2024	
Total Amount Requested						\$ 30,048,911			
Total Amount Awarded						\$ -			
Total Amount Remaining						\$ 30,048,911			\$30,048,911

1 = Housing Activity: New Construction=NC, Rehabilitation=AR, Adaptive Reuse

2 = Application Acceptance Dates are subject to review and may be modified or removed for Applications determined to not qualify for a particular date

EXHIBIT B

July 2021 – Development was awarded 2021 LIHTCs.

June 1, 2022 – Developer requested Force Majeure, due to GC contract cost increases of 43.89% (now that figure is at 35.18% after value engineering) from initial application in 2021.

July 7, 2022 – Developer purchased the first (contiguous) site.

August 23, 2022 – Developer purchased the second (contiguous) site.

September 9, 2022 – Developer submitted application for permits to the City of Lufkin.

January 27, 2023 – Developer submitted request for supplemental credits, which was only available to 2021 HTC application awards. This award came with an automatic Force Majeure to 2023 credits.

August 4, 2023 – Developer received permit approvals from the City of Lufkin.

February 29, 2024 – Developer submitted an Intent to Apply for requesting State Housing Tax Credits (SHTC) under the one-time priority allocation set-aside for previously awarded LIHTC allocations.

April 30, 2024 – Developer applies for MFDL funds under the 2024-3 NOFA

May 16, 2024 – Royal Gardens Lufkin is identified as the highest scoring application on the MFDL 2024-2 NOFA application log.

August 14, 2024 – We receive confirmation the development cannot receive both SHTCs and MFDL funds under the 2024-2 NOFA. Developer officially terminates request for SHTCs to pursue the MFDL funds alone.

August – September 2024 – Developer receives two deficiencies (during programmatic, MFDL, and legal reviews) regarding the MFDL application and timely responds to all requests.

September 2024 – Developer officially starts closing calls with Raymond James, the Tax Credit Investor, in anticipation of receipt of the MFDL award to get a head start on closing this permit ready transaction once (if) the MFDL award is received.